

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF KENTUCKY
3 PADUCAH DIVISION

3 UNITED STATES OF AMERICA,) Case No. 5:06-CR-19
4)
4 Plaintiff,)
5)
5 VS.)
6)
6 STEVEN D. GREEN,)
7) May 20, 2009
7 Defendant.) Paducah, Kentucky

8 *****
9 TRANSCRIPT OF GOVERNMENT'S CLOSING ARGUMENT
10 FROM JURY TRIAL
11 BEFORE THOMAS B. RUSSELL
12 UNITED STATES DISTRICT CHIEF JUDGE
13 *****

11 APPEARANCES:

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21 [Defendant present.]

22
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25 Proceedings recorded by mechanical stenography,
transcript produced by computer.

1 APPEARANCES (Continued):

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1 (Begin proceedings in open court at 9:26 a.m.)

2 MR. SKARET: Thank you, Your Honor.
3 Counsel, Your Honor, ladies and gentlemen of the jury.

4 This is Hadeel, Hadeel standing with her
5 sister Abeer, with Mohammed and Ahmed. Of course,
6 Hadeel down here under the arm of Abeer.

7 And now we know a little bit about her. We
8 know she has a beautiful name, the sound of the water.
9 We know that she was a playful little girl, that she
10 liked to play outside with her brother like so many
11 other little sisters in this world like to do. We also
12 know that this little one had a sweet tooth, that she
13 liked to eat the sweet, soft, sugary plant called
14 shesmalla, that she would pick that plant, and that's
15 exactly what she was doing on March 12th.

16 And he shot her in the face with a weapon of
17 war. Imagine, if you can, how her body must have
18 snapped as that bullet plowed through her face. But
19 they say that Lieutenant Colonel Kunk wasn't an engaged
20 leader?

21 She died holding shesmalla in her hand. Her
22 braided hair soaked up her death's blood. And they say
23 that there was no sand in the HESCO barriers?

24 He blew the hair clip right off of her head.
25 There it is. He blew it right off of her head. And

1 they say that Sergeant Fenlason didn't visit the TCPs?

2 And he couldn't just shoot her once. You've
3 heard the evidence. You've heard the testimony. You've
4 seen her death certificate. She died of multiple
5 gunshot wounds.

6 Now let's go to Kassem. This is Kassem,
7 Mr. Kassem Al-Janabi. Looks like he's at a party of
8 some sort with his brother.

9 What did we learn about him? Well, we
10 learned that he was a poor, humble man. We learned that
11 he liked to help his sons with their homework. We
12 learned that if he was still alive, he'd be upset
13 because his kids aren't in school because they're not in
14 the mood. Here he is with his son.

15 We know that he had dreams. He was a hard
16 worker. He had dreams like every single one of us,
17 dreams of home ownership. This is not such a far away
18 land that they don't have dreams like we do. We know
19 that on his wedding day that he told his sister, he
20 said, "Aminahi, I like your girls so much, if I ever
21 have two of my own, I'm going to name them Abeer and
22 Hadeel." And that's exactly what he did.

23 We also know that he wasn't a bad guy. We
24 know American soldiers had searched his house, just like
25 they had many, many other houses, and they let him keep

1 a weapon in their home. We heard from Abu Firas that
2 this was a man who had no enemies, only friends.

3 And he blew his head open with a shotgun.
4 And they say that Green had to use a WAG bag for a
5 toilet?

6 Kassem died to the sounds of his daughter
7 being raped in the next room. Imagine that. You know
8 how that would have sounded. And Dr. Gur tells us that
9 Green has a small frontal lobe? Well here's Kassem's
10 frontal lobe. It's in the rug. And his son Mohammed
11 had to come home to his house and find his father's
12 brains on the wall.

13 What about Fakhriya, Mrs. Fakhriya
14 Al-Janabi? Well, unfortunately, we don't have a picture
15 of her in life. We only have a memory of her likeness
16 as he left her.

17 But we do know something about her. We know
18 that she was a stay-at-home mom. We know that she loved
19 her husband Kassem. Aminahi told us she loved him so
20 much. We know that she liked to stay at her house and
21 play with Ahmed. We know that she would laugh at her
22 children, at all the stuff they would do. We know that
23 she was a cook. Mohammed told us that everything she
24 cooked, he ate. And that is frankly amazing.

25 And he shot her in the chest. He shot her

1 in the chest, but they tell us that the soldiers lost
2 their iPods and their CDs in the FOB fire?

3 She died just like her husband, listening to
4 the screams of her daughter. She bled to death
5 listening to men penetrate her 14-year-old girl. And
6 they say that many of these soldiers didn't really like
7 their mission? They liked it better on previous
8 deployments. They didn't like holding ground. They
9 didn't like manning the TCPs.

10 When Sergeant Yribe arrived at the house and
11 he went into that bedroom, you heard the testimony. You
12 heard him say that he had to open that door hard. He
13 had to push that door open because Fakhriya was up
14 against it on the other side.

15 And I wonder if you discussed this in your
16 last deliberations. I wonder if you discussed the fact
17 that her last moments were a struggle. Her last moments
18 were either trying to get out of that room to her
19 daughter next door or trying to block that door so that
20 he wouldn't come back in. And that's where Sergeant
21 Yribe found her, dead just like that.

22 And that brings us to Abeer, Abeer
23 Al-Janabi. Here, of course, she is as a little girl. I
24 mean, what a beautiful picture. Probably taken on a
25 50-cent camera. What a beautiful likeness of a little

1 girl. And, of course, here a little older, her arm
2 around Hadeel, next to her little brothers.

3 And we know she had a beautiful name, too,
4 the fragrance of flowers. We know that Abeer was a sick
5 girl as she suffered from asthma. We know that she was
6 slim, but that she was beautiful and that she liked to
7 wear beautiful clothes and that she was proud to be
8 young. You heard Aminahi say that. What a beautiful
9 thing to say about someone, that they were proud to be
10 young.

11 And she helped her mom. She helped with the
12 kids. She helped cook. She helped clean. But we also
13 know that she had dreams, dreams like all of us. She
14 had dreams of escaping her circumstances, of getting out
15 of that small town, moving to the big city, meeting a
16 man, and living in the city lights. And because of
17 Mr. Green, she never got to chase that dream.

18 Indeed, after she had been twice raped, he
19 took his turn between her slender legs. And when he was
20 done raping her, we know what happened. He shot her in
21 the face with an AK-47. And they say that Green's dad
22 spent a lot of time at Riley's Bar? They say that they
23 didn't get their mail out on the TCPs?

24 He didn't have to shoot her again, but he
25 did. He chose to shoot her again. He shot her a second

1 time, and he shot her a third time. And as her flesh
2 burned, he tried to blow up the house.

3 And, of course, we all know what he said
4 when he got back to the TCP. "Well, that was awesome."
5 And there are a lot of words to describe what he did
6 that day, and awesome is not one of them. Unthinkable,
7 outrageous.

8 And you know what else is outrageous? It's
9 outrageous to try to blame this or justify, mitigate,
10 whatever you want to call it, trying to mitigate this
11 based on the deaths of American heroes. We have heard so
12 much about Lieutenant Britt, about Lopez, Munger,
13 MacKenzie, Owens, and other men who died honorably over
14 there.

15 We heard about Sergeants Nelson and Casica.
16 These were men that died honorably fighting for us.
17 Nelson and Casica, these were men who believed in their
18 mission, who believed in the Iraqis, who believed in
19 winning the hearts and minds over there, and who died
20 literally in the midst of that mission. And if they
21 knew that their deaths were being somehow provided to
22 you as mitigation for this, they would roll over in
23 their graves because it's outrageous, because there's no
24 connection to their deaths and hers.

25 For the last week or so, we have all been

1 witness to a most sophisticated blame game. Witness
2 after witness has paraded up to that witness stand, and
3 they've sought to provide you a scapegoat. They've
4 sought to provide you someone to shield the blame from
5 the man who bears sole responsibility for these crimes.

6 Colonel Kunk, Colonel Ebel, Lieutenant
7 Colonel Marrs, mom, dad, brother, sister, stepdad. How
8 many people are they going to blame before it ends?

9 They are creating a smokescreen to prevent
10 you from seeing the fire. And in this case, literally
11 the fire that he started.

12 They've tried to make Mr. Green a victim in
13 this case. But we know who the victims are, and he is
14 not one of them. He is the perpetrator. He is the one
15 who committed these heinous acts on vulnerable victims.
16 These girls had no, no way to fight back. They had no
17 way to try to spoil what he had in mind for them on that
18 day.

19 This is not about leadership. It's not
20 about the stress of war. It's not about his background.
21 It's about heinous acts committed on vulnerable victims.
22 This is about choices, really bad choices, decisions
23 that were premeditated, that were committed, that were
24 carried out, and celebrated by a really smart guy.

25 And so today, ladies and gentlemen, this

1 blame game stops. The search for a scapegoat stops
2 here. It stops with you. It starts with your
3 deliberations.

4 And as you deliberate, you're going to have
5 to decide whether Green's crimes warrant a sentence of
6 life in prison or a sentence of death. And like the
7 guilt phase, the judge is going to send you back for
8 your deliberations with jury instructions. You're going
9 to have verdict forms, and you're going to have one
10 packet of verdict forms for every single count, and
11 you're going to have to consider and deliberate each
12 count separately. It's going to be a lot of paperwork.

13 And I'd like to take you through one of
14 these verdict packets. I'd like to take you through
15 Count 3 as an example of how you might go about this as
16 you go back to deliberate.

17 So we'll start with Section No. I, the age
18 of the defendant. Now, under the law, before you can
19 even consider the death penalty in this case, the United
20 States has to prove to you beyond a reasonable doubt the
21 defendant was 18 years or older at the time of the
22 offense.

23 Here, you have Green's DD 214 that lists his
24 date of birth as May 2nd, 1985. He was 20 years old
25 when this happened, and there's really no dispute about

1 that. So as you're deliberating, you check and sign and
2 go on to the next one.

3 The next section, Section II, these are the
4 threshold mental state factors. Kind of like the age of
5 the defendant, there are factors sometimes called
6 gateway factors that you need to address before you can
7 even consider the death penalty. And the reason they're
8 called gateway factors, you have to walk through this
9 gateway before you can weigh aggravators, before you can
10 weigh mitigators.

11 And these gateway factors aren't going to be
12 hard for you to find. We've proven these things beyond
13 a reasonable doubt, things like whether the defendant
14 intentionally killed the victims. You can reach back
15 into the guilt phase, you can marshal all of that
16 evidence, consider it all, and apply them to these
17 factors.

18 There's no doubt that he intentionally
19 killed these victims. It wasn't some mistake or an
20 accident that he was pointing an AK-47 at young Hadeel
21 and pulled the trigger. Check and sign. Go to the next
22 one.

23 Have we proven beyond a reasonable doubt
24 that the defendant intentionally inflicted serious
25 bodily injury that resulted in the death of the victims?

1 Sure we have. I mean, shooting someone in the head with
2 a weapon of war is serious bodily injury. You're going
3 to find that.

4 Same with the third. Have we proven that
5 the defendant intentionally participated in an act
6 contemplating that the life of a person would be taken?
7 Well, that much we know for sure. He participated in an
8 act. He went to the house, shoved the people into the
9 bedroom. He contemplated that a life would be taken.
10 He said he was going to do it. He went into the room,
11 he killed these people.

12 The next one, do you unanimously find that
13 the government has proved beyond a reasonable doubt that
14 the defendant intentionally and specifically engaged in
15 an act of violence? Well, of course, shooting someone
16 in the face with a gun is an act of violence.

17 Did he know that that act created a grave
18 risk of death for that person? Of course.

19 Was that a reckless disregard for human life
20 for Ms. Al-Janabi? Of course.

21 Did she die as a result? Of course. And
22 the same holds true for all these other factors.

23 Now, in order to get through this gate, in
24 order to get through these threshold mental factors, you
25 only have to find one of these factors, but I suggest

1 that for every count that you'll find all four.

2 Now, just like the threshold factors, in
3 Section III, the statutory aggravating factors, you have
4 to find at least one of these before you can even
5 consider the death penalty. And like these other
6 things, I suggest that you will find more than one of
7 these, that you will likely find all of them apply in
8 this case.

9 Let's take a look at the first one. Do you
10 unanimously find that the government has established
11 beyond a reasonable doubt that the defendant
12 intentionally killed Abeer in an especially heinous,
13 cruel, or depraved manner and that this constituted
14 serious physical abuse?

15 Well, you're going to have the definitions
16 for things like heinous and cruel and depraved and
17 serious physical abuse. And I suggest that when you
18 apply these facts, you will find that. You know that
19 this is a senseless killing.

20 As I believe the instructions say, is the
21 crime a gratuitous killing? It was. He did this for
22 his own selfish pleasure. And it sounds terrible to say
23 it, but he did it for fun. Check that, sign, and go on.

24 The next one, has the government proved
25 beyond a reasonable doubt that the defendant committed

1 the offense of premeditated murder after substantial
2 planning and premeditation to cause the death of these
3 victims?

4 And, again, we reach back into the guilt
5 phase, we reach back into the facts, and we find that,
6 yes, this was premeditated murder, this was substantial
7 planning. As soon as he came to the agreement of what
8 he wanted to do, he started planning the cover-up. He
9 started planning how he was going to do it. He got
10 dressed, he got into his ninja suit, he grabbed his gun,
11 they went to the house. He planned on pushing all these
12 people into the same room. This was premeditated and
13 substantially planned from the very start.

14 Next factor, do you unanimously find that
15 the government has established beyond a reasonable doubt
16 that Ms. Abeer Al-Janabi was particularly vulnerable due
17 to youth?

18 Now, you won't find this factor in all of
19 your counts. They don't apply to Kassem and Fakhriya
20 because they were not kids, but obviously Hadeel and
21 Abeer were. This is an aggravating factor. These kids
22 had no way to fight back. They were up against trained,
23 battle-hardened men, a man who had been in combat, who
24 had been to infantry school. They had no way to fight
25 back.

1 Let's go to the next one. Do you, the jury,
2 unanimously find that the government has established
3 beyond a reasonable doubt that the defendant
4 intentionally killed more than one person in a single
5 criminal episode?

6 Well, I suggest this is relatively
7 straight-forward. The instructions will define words
8 like single criminal episode to you, and it's clear. He
9 went there. He killed all these people in a space of
10 just a couple minutes. Four people walked into the
11 bedroom, one person walked out. It only took a couple
12 minutes, and they were all dead.

13 Next, I'd like to go to the non-statutory
14 aggravating factors. These factors are more
15 case-specific. These are ones that the prosecution has
16 submitted for you to consider. These are factors that
17 we believe make this crime a little more deserving of
18 the death penalty.

19 The first one, do you, the jury, unanimously
20 find that the government has proved beyond a reasonable
21 doubt that the defendant killed Abeer Al-Janabi in order
22 to eliminate her as a witness to his crimes?

23 This factor is about witness elimination,
24 and this goes to the heart of this case. Because as
25 soon as he figured out this plan, as soon as he figured

1 out that he wanted to kill Iraqis that day and he was
2 serious about it, as soon as he had this plan with
3 Barker to go and rape this lady, they started planning
4 the cover-up. And witness elimination is part one of
5 any cover.

6 He knew he couldn't just go in there and
7 kill one of them and leave witnesses. If he would have
8 done that, he would have been locked up in a couple
9 minutes or at most an hour. They would have walked
10 straight to the nearest TCP and told exactly what
11 happened. He wasn't going to walk in there and kill
12 Kassem and think that Fakhriya wouldn't leave and go
13 explain what happened.

14 The cover-up plan was serious. The cover-up
15 plan involved killing every single witness. There's no
16 other way he could have gotten, you know, away with
17 this.

18 Do you, the jury, unanimously find that the
19 government has proved beyond a reasonable doubt that the
20 defendant caused injury, harm, and loss to the family of
21 Abeer Al-Janabi, as evidenced by her personal
22 characteristics as a human being?

23 This is pretty self-explanatory. You've
24 seen the victims' family members up there. You've seen
25 their grief. You've seen their tears. And although

1 they may not represent grief like all of us know it and
2 have grown up with it, you've seen it. You've seen it
3 in their tears. They'll never have another holiday
4 dinner with Abeer Al-Janabi, with Kassem. They'll never
5 see these people again.

6 And you'll see with the counts that
7 reference Kassem and Fakhriya, there's another one of
8 these non-statutory aggravators, and this is the special
9 harm that accrued to Mohammed and Ahmed. Those two boys
10 will never drive to the market with their dad again.
11 They'll never have their parents' support with their
12 homework again. This family is suffering, and the
13 United States suggests that this is an additional
14 aggravator that makes this crime worse.

15 Now, just like you have gone through the
16 aggravating factors, you'll also see some mitigating
17 factors for you to consider. And there are a number of
18 these, and I'm going to leave most of them for
19 Mr. Wendelsdorf. I imagine he'll go through some of
20 these with you. So I'm not going to address all of
21 them, but I'd like to address a few of them in groups.

22 I'd like to group some of these together,
23 the first being the mental or emotional disturbance of
24 Mr. Green. They claim that the mental or emotional
25 disturbance of Mr. Green should be a mitigator, that it

1 is a mitigator in this case, that it should be a
2 mitigator that you weigh. They would have you believe
3 that the stresses of war, that the lack of leadership,
4 and that Lieutenant Colonel Marrs had something to do
5 with what happened on March 12th, but they haven't
6 connected those things to his crimes.

7 There's no doubt that the Triangle of Death
8 was a dangerous place. There's no doubt that the loss
9 of comrades hurts. There's no doubt that some of those
10 men over there didn't like their bosses. But none of
11 that explains what he did to that family. They have not
12 made that connection in any meaningful way.

13 And I think the best evidence of this comes
14 from Bryan Howard. You remember Mr. Howard. I asked
15 Bryan Howard, "Were you there at the card game? Did you
16 hear what they were talking about?"

17 "Yes."

18 "Were they talking about HESCO barriers?"

19 "No, they weren't."

20 "Were they talking about Sergeant Nelson,
21 Sergeant Casica that day?"

22 "No, they weren't."

23 Ladies and gentlemen, they weren't worried
24 about security on that day. They were playing cards
25 outside the HESCO barriers. It doesn't matter they were

1 empty. They were playing outside in full view of all of
2 Yusufiyah. They weren't talking about revenge that day.

3 I asked Mr. Howard, "What were they talking
4 about?"

5 Sex. Pure unadulterated sex. They were
6 talking about screwing Iraqi chicks.

7 This has nothing to do with the Army. It
8 doesn't have anything to do with rank, with orders,
9 lawful orders, illegal orders. It has nothing to do
10 with that. It has everything to do with a criminal and
11 a perverse mind that took advantage of a situation that
12 he thought he could breeze through without anybody
13 finding out what happened. Period.

14 Now, while we're on this proposed emotional
15 disturbance that Mr. Green had, let's talk about
16 Dr. Gur. Dr. Gur came in here and told you that two
17 years after the fact, after this happened, that he put
18 Green's brain through a bunch of computer tests and that
19 his frontal lobe is slightly smaller than it should be
20 and, therefore, he has some impulse control issues.

21 Now, of course, yesterday you heard from
22 Dr. Mayberg. You heard that his theories and his
23 conclusions, his opinions were fundamentally flawed
24 because Dr. Gur was comparing apples and oranges. He
25 was comparing deli meat and carved turkey. And,

1 furthermore, Dr. Mayberg explained to you that even if
2 Dr. Gur had followed all of his procedures, all of his
3 protocols, that even so that you can't tell anything
4 about a person's behavior by looking at a computer
5 printout.

6 Moreover, there is no evidence in this case
7 that Mr. Green has ever done anything criminal based on
8 his impulses. There's no evidence of that. March 12th
9 was not about instinct or impulse. This is not like
10 being at a cocktail party and being insulted and
11 snapping and wanting to punch your insulter in the face.
12 That is not what this case is about.

13 This is about sitting around with your
14 buddies talking about what you want to do, playing
15 cards, drinking beer, and planning a murder. There is
16 no evidence that this was a crime of impulse or crime of
17 instinct.

18 And Dr. Gur told you that he thought it
19 would be surprising that Mr. Green could put all this
20 together, that he could have the state of mind to form a
21 cover-up in this case. Well, we all know that that's
22 exactly what we did. He premeditated this. He formed a
23 cover-up. Maybe that should tell Dr. Gur that before he
24 comes into federal court and tells a jury what his brain
25 is and isn't capable, that maybe he ought to take a look

1 at the facts.

2 For all these reasons, I suggest to you that
3 the mitigators that deal with the emotional disturbance,
4 with the stresses of war, the lack of leadership should
5 not be given meaningful weight, if any weight at all.
6 There is no evidence that Lieutenant Colonel Kunk pushed
7 Green off that TCP. There's no evidence that Sergeant
8 Fenlason somehow made Green break into that house and do
9 what he did. There's no evidence of that.

10 Second group of mitigators that you'll see
11 is the punishment of others, principally Barker and
12 Cortez. Now, it is true that Barker and Cortez, and
13 Spielman for that matter, were not sentenced to life
14 imprisonment.

15 And here let's talk about their roles. It
16 is true that Barker could have shut this down from the
17 start. It is true that Cortez could have shut this down
18 from the start. It is also true, I might add, that
19 Green could have shut this down from the start.

20 But Barker and Cortez did not aim an AK-47
21 at her. They didn't pull the trigger. They didn't
22 shoot her in the head three times. They didn't blow his
23 brains out of his skull.

24 Now, the defense has tried to suggest to you
25 that Barker and Cortez are going to make parole in seven

1 years. Where is the evidence of this? It is absolute
2 speculation. These men were sentenced to 90 and 100
3 years in prison.

4 Well, let's talk about parole. What is it
5 that the parole board is going to know about these men?
6 Well, of course they're going to know. They're going to
7 have a letter in their file from the U.S. Attorney's
8 office, and that letter is going to say these men abided
9 by their deal.

10 MR. WENDELSDORF: Objection, Your Honor.
11 Facts not in evidence.

12 MR. SKARET: Your Honor, the defense brought
13 this out.

14 MR. WENDELSDORF: There's been no evidence.

15 THE COURT: Let's approach the bench.

16 (Bench conference on the record outside the hearing
17 of the jury.)

18 THE COURT: As I remember -- what I remember
19 about the testimony was that they would receive a letter
20 from the government saying that they cooperated or
21 something.

22 MR. WENDELSDORF: Exactly. If he can
23 speculate as to what they're going to put in the letter,
24 then I can speculate what they're going to put in the
25 letter, too.

1 THE COURT: I think -- he brought out that
2 they were sending a letter saying they cooperated. I
3 think you can say --

4 MR. SKARET: That's all I was going to say,
5 Your Honor.

6 THE COURT: I think that's as far as you can
7 go.

8 MR. WENDELSDORF: I intend to speculate in
9 my closing as to what the letter will contain.

10 MR. BOULDIN: Plus, there's no evidence what
11 a military parole board will consider for parole.

12 THE COURT: I agree with that. I don't know
13 what they're going to consider. I think usually they
14 consider and weigh the facts and make their own
15 decisions.

16 MR. SKARET: Pardon me?

17 THE COURT: I think when you start
18 speculating about what they're going to do -- of course,
19 you're going to argue that they're going to let them
20 out.

21 MR. WENDELSDORF: Well, not necessarily.

22 MR. BOULDIN: They're eligible.

23 MR. WENDELSDORF: Just that they're
24 eligible.

25 THE COURT: I think he can argue they're

1 eligible, but considering all the facts in this case, do
2 you think they'll get it?

3 MS. FORD: Exactly.

4 THE COURT: Both of you are going to argue
5 speculation.

6 MR. SKARET: Thank you, Your Honor.

7 (End of bench conference.)

8 MR. SKARET: As I mentioned, ladies and
9 gentlemen, they're going to have a letter from the
10 United States Attorney's office that said they
11 cooperated in this case.

12 But that parole board is also going to know
13 everything about this case that you and I know. They're
14 going to know that Barker and Cortez had a duty to those
15 people that day and that they failed in that duty.
16 They're going to know that they left two inexperienced
17 privates, Private Howard and Private Scheller, they left
18 them at the TCP that day to fend for themselves while
19 they went off on this little frolic of theirs.

20 They're going to know that Barker knew upon
21 leaving the TCP that day that Green was going to
22 massacre this family. They're going to know that Cortez
23 and Barker raped Abeer while they were wearing their ski
24 masks. They're going to know that they lied to their
25 commanding officers about their involvement.

1 And just as you can speculate that they're
2 going to meet parole in seven years, you can just as
3 easily speculate that these men are going to die under
4 the weight of a 90- and a 100-year sentence.

5 Third, among the other mitigators that you
6 will see is the fact that Mr. Green truthfully told
7 Sergeant Yribe what happened, that he told him the day
8 of the murders and the day after that he had committed
9 these offenses, and that Sergeant Yribe was in charge of
10 this investigation team that went to go over to the
11 house to see what happened. And this implies a measure
12 of remorse on the defendant's behalf.

13 But you will remember that as soon as he
14 told Sergeant Yribe, "I did that. I did those things,"
15 what was the next thing out of his mouth? "Don't tell
16 anyone about this shotgun shell."

17 Yeah, he told the truth about what he did.
18 He also told Till and he told Galloway and Huggins, but
19 he also told them, "Don't say anything about this."
20 Till, "It's a secret." Huggins, "Forget about what I
21 told you." Galloway, "I shouldn't have told you any of
22 that. Keep this under the wraps."

23 And the reason that he went that extra mile
24 was that he wanted to avoid all of this. It's obvious
25 he wanted to avoid you. He wanted to avoid your

1 verdict. And to imply that this is somehow remorse,
2 that he should get credit for what he did based on
3 trying to avoid the consequences, that is certainly not
4 a mitigator in this case.

5 The last group of mitigation evidence that I
6 want to cover here is the defendant's background. The
7 defendant's background. I'd like to remind you of the
8 family tree that you saw. You remember seeing this.
9 I'd like to remind you of this family tree.

10 And let me put this on the overhead, if I
11 could. Whoops. Sorry, Mary. I screwed you up.

12 All right. This is the family tree that the
13 social historian put together. And we heard evidence
14 about the substance abuse in this family. We've heard a
15 lot of evidence that there are a couple of bad apples on
16 this tree, and I doubt that it's any different from most
17 of the family trees in here, frankly. We all have our
18 issues. We all have our backgrounds.

19 But fortunately for us, we live in a country
20 where we are not defined by who our mother is, by who
21 our father is. We're not defined by our birthright.
22 We're not defined with how or where we grew up. We're
23 defined by the choices that we make.

24 We live in a country where anyone can dream
25 to become the president, and you heard the evidence in

1 this case Steven Green had that dream. And fortunately
2 we live in a country where even a kid from a broken
3 home, from a non-traditional family can dream to be the
4 president and can actually be the president. We live in
5 a country where our choices define us, not our
6 birthright.

7 And so if we take a look at the family tree,
8 we see Roxanne and we see Greg, and we see that they had
9 the same father and the same mother. They lived under
10 the same household. They lived it about the same time,
11 and yet their choices define who they are. You saw
12 Dr. Simolke. You know the choices that he's made in his
13 life. And, yes, you've heard about Roxanne, and she's
14 made choices, too.

15 But we live in a country that doesn't value
16 our birthright or how we were raised. It values our
17 choices. It values how we play the cards that the Lord
18 has given us.

19 And while this man has suffered no doubt
20 certain things in his background, he has been given
21 gifts and talents, as well. He's been given family
22 members and friends that we've heard from who have cared
23 for him for his entire life and continue to care for him
24 today. He's been given a sense of humor that is unlike
25 anyone else's.

1 We heard from that young lady from Denver
2 with her Ph.D. She came in here and said, "Mr. Green is
3 about the most brilliant man I've ever met." We've
4 heard about his IQ. And if we fill up this courtroom
5 with a hundred people, Steven Green is about the
6 smartest person here. He's been given cards to play.

7 And he had the opportunity to turn his life
8 around, and indeed he started down that path. He's
9 intelligent, likable, funny, and cool under fire. But
10 he chose a different path.

11 That day, he could have said, "No, I am not
12 putting on a ninja suit. I have earned this uniform in
13 basic training. I earned it with pride. I'm not taking
14 off this U.S. flag off my shoulder." But he chose to
15 trade his uniform for a criminal's disguise. It's our
16 choices that define us, and they have consequences.

17 That's a summary of some of the mitigators
18 that I think are important in this case, mitigators that
19 you're going to have to value.

20 These mitigators that you'll see are like --
21 I guess you could say are like arrows in
22 Mr. Wendelsdorf's quiver. He's got background, he's got
23 lack of leadership, stresses of war, but what makes this
24 case sad is that none of those arrows are actually going
25 to the target. None of these things explain or provide

1 any meaningful mitigation about what he did to the
2 family.

3 So after you have found the aggravators,
4 after you found those beyond a reasonable doubt, after
5 you've considered these mitigators, you're going to have
6 the opportunity to weigh them. And if you find that the
7 aggravators outweigh the mitigators and if you find that
8 the death penalty is appropriate, then the judge will
9 instruct you you shall record your decision that a
10 sentence of death be imposed.

11 You-all remember being on the hot seat
12 during jury selection. And you're on this jury first
13 and foremost because you told the defense that you could
14 consider -- you could give meaningful consideration to a
15 sentence of life in this case despite the horrific
16 nature of these crimes. And you're also on this jury
17 because you told Ms. Ford, Mr. Lesousky, and myself that
18 you could also give meaningful consideration to a
19 sentence of death and, furthermore, if you felt it was
20 appropriate, that you could sign your name to a sentence
21 of death.

22 Well, we've come to it. We've come to it.
23 Here we are. And this is not going to be easy. This is
24 going to be hard, and it should be hard. It should be
25 hard.

1 Because there was not a dry eye in this
2 courtroom when Dr. Simolke came in and he told us about
3 this kid that just couldn't catch a break. Not a single
4 one of us in this room is not moved when we see Steven
5 Green the six-year-old boy in his Fritos shirt.

6 There's not a single one of us that don't
7 have the strings of our heart pulled when we hear the
8 story about the kid who's going to turn his life around,
9 the kid who gets his GED, the kid that has a goal, that
10 plows through three years of high school in four months,
11 not a single one of us who don't feel pride when we see
12 him graduate from basic training and to see his
13 parents -- or see his dad there, to see his uncle there.
14 We feel proud when we see that.

15 We want this story to end well. We want it
16 to end well. But we live in a nation, we live in a
17 country that's governed by the rule of law, not by the
18 rule of emotion. And we live in a democracy where our
19 representatives have decided that there is an ultimate
20 punishment for the very worst of crimes. And the judge
21 is going to instruct you that as you weigh these
22 factors, you must do so without undue sympathy.

23 And so you'll weigh Green's frontal lobe
24 issues with Kassem's frontal lobe issues. You're going
25 to weigh a background of neglect, a destroyed future; a

1 brother who beat up on him and a sister that's been
2 burned beyond all recognition; a son's struggle to get
3 his mother's attention and a mother's last struggle to
4 protect her daughter; the honor -- the real honor of
5 enlisting in the United States military and the dishonor
6 of rape; a future of life, a future of laughter,
7 telephone calls, visits, and mail from people that love
8 you against what? No future, no giggles, no more
9 playtime, no dreams of city lights, just death.

10 And so while we sit in this courtroom and we
11 hear this blame game, we engage in this search for a
12 scapegoat, we listen to Dr. Gur talk to us about his
13 warping analysis, on the other side of the world, there
14 are four victims who are rotting in their graves. You
15 know who they are. You know their names, and you know
16 their stories.

17 And today is the day where you can stand up
18 and you can say, "No, no, no, no. Our soldiers do not
19 do this. We are a good and a decent people." And in
20 this country, when you take innocent life in the very
21 worst of ways, you forfeit the right to live your own.

22 Our choices define us. They define who we
23 are and what we're going to do. He chose what he was
24 going to do that day. He chose his path. He chose to
25 hold their futures in his hands, and he crushed them.

1 Plain and simple, he crushed that family. And in doing
2 so, ladies and gentlemen, he signed his own name to this
3 death sentence.

4 And today the United States asks you with
5 your signature that you finish what he started. The
6 victims in this case cry out to you for justice, and you
7 can bring it to them.

8 That's all I have, Your Honor.

9 THE COURT: Thank you, Mr. Skaret.

10 MR. SKARET: Thank you, ladies and
11 gentlemen.

12 (Proceedings concluded at 10:11 a.m.)

13

14 C E R T I F I C A T E

15 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT
16 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED
17 MATTER.

18

19 s/Terri L. Turner
20 Registered Professional Reporter
Official Court Reporter

June 11, 2009
Date

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