

No. 20-443

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**In the Supreme Court of the United States**

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UNITED STATES OF AMERICA, PETITIONER

*v.*

DZHOKHAR A. TSARNAEV

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*ON WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT*

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**JOINT APPENDIX  
(VOLUME 2)**

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PETITION FOR A WRIT OF CERTIORARI FILED: NOV. 5, 2020  
CERTIORARI GRANTED: MAR. 22, 2021

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Feb. 17, 2015  
10:56 a.m.

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**JURY TRIAL—DAY NINETEEN**

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\* \* \* \* \*

[19-42]

\* \* \* \* \*

THE CLERK: Juror No. 480, please.

THE JURY CLERK: Juror No. 480.

THE CLERK: Juror No. 480. Please have a seat.  
Just make sure the microphone is pulled up to you.



THE COURT: Good afternoon.

THE JUROR: Good afternoon.

THE COURT: Have you been able to follow my instructions to avoid talking about the case with anyone?

THE JUROR: Pretty much, yeah. It's really hard to avoid.

THE COURT: Well, I told you that you could talk about the fact that you had to come here. But have you talked about the case itself?

THE JUROR: Somewhat.

THE COURT: Tell us what you've talked about.

THE JUROR: Pretty much with my mother as far as having to call every week. And it was starting to get stressful. And then when it came down to every other day, I knew I would get called in sooner or later.

THE COURT: Okay. So you've talked about the schedule [19-43] that you've been on to try to keep up with whether you had to come back, is that—

THE JUROR: Yes, because I spoke to them at work, made sure it was okay with them that I would be able to serve.

THE COURT: Is it okay with them?

THE JUROR: Yes. And it—basically, the unknown. You call up. Okay. Wait till—I'm sure everyone is going through it, but—

THE COURT: Have you talked about the merits of the case at all with anyone?

THE JUROR: No.

THE COURT: Have you also been able to avoid reading or hearing media stories about the case?

THE JUROR: That's very hard, too, yeah. So much news on lately with the storms and everything. You try to look the other way. So, for the most part, I try to do my best there.

THE COURT: Okay. So let me ask you about your work. You are a telecommunications engineer, is that it?

THE JUROR: Yup. I'm a telecom engineer for Partners HealthCare. I work at Mass. General. I really don't have patient interaction. We've been working on a big upgrade with 30,000 phones. So it's a big overtaking.

THE COURT: Is your work confined to the Mass. General campus? Partners has other entities.

THE JUROR: Partners has Brigham's and Nantucket.

[19-44]

THE COURT: Are you involved in any of the others, or are you just Mass. General?

THE JUROR: We are involved in them. Whether we have to go to those sites is a different story. Mostly it's remotely.

THE COURT: Okay. The day of the bombing, after it occurred, people were brought to the emergency room at MGH. Were you working that day?

THE JUROR: I was working. We have a lot of buildings at Mass. General. The building I'm in is

White Building, and it's sort of like near the main entrance. But I'm on the 14th floor. We had the TV on. As far as seeing patients come in, they have a new entrance and stuff like that, that they come in that way.

THE COURT: So you were in the hospital itself, but you weren't nearby where the people were—

THE JUROR: Yeah. We're sort of out of the way. We don't hang out in the E.D. There's just so much going on there.

THE COURT: Let me just go back to—if you'd look at the questionnaire, I want to go back to Page 5 for a minute, Question 9.

THE JUROR: Yup.

THE COURT: Let me just ask: Would that be an issue for you if you were a juror in the case?

[19-45]

THE JUROR: It's hard to say because, like, when we were sitting up here earlier, I was focusing on you, and I could pick up everything pretty good.

THE COURT: Okay. Do you use any assists?

THE JUROR: I don't wear a hearing aid. I did years ago. It was too distracting. Maybe some day I'll try it again, but—

THE COURT: Okay. Let me just ask you. We asked about use of social media. You use Facebook, Instagram, Twitter, almost daily.

THE JUROR: Pretty much, yeah. I'm on those.

THE COURT: Can you tell us what kinds of things you do?

THE JUROR: Before I got back to Mass. General, I used to work for a travel company, and I've been—I traveled all over and met people all over. It's a good way to keep in touch with people from the Caribbean and stuff like that.

THE COURT: Okay. As a social matter rather than as a business matter?

THE JUROR: Just basically social.

THE COURT: Let me ask you to look at Page 20, Question 77, near the top.

THE JUROR: Yup.

THE COURT: We asked here whether—based on things you'd seen or read in the media or from other sources whether [19-46] you had an opinion—formed any opinions about whether the defendant was guilty or not or whether he should receive the death penalty or not. That's Part (a), (b), (c), and (d). And to each of those you checked "unsure." Could you tell us about that?

THE JUROR: Yeah. Basically, when it did happen, it was all over the media. Everyone comes up with their own opinion. Mine is I don't know whether he was involved or not. I'm not there. I mean, I need to sit and look at evidence that would be provided and make my decision from that.

THE COURT: You understand that in a criminal case the defendant is presumed to be innocent, or not guilty, of anything he's charged with unless the government proves him guilty by producing evidence at trial that is convincing to the jury so that they can conclude

that the defendant is guilty of the charge beyond a reasonable doubt. You understand those principles?

THE JUROR: Yes.

THE COURT: Are you saying you would be able to faithfully apply those principles if you were a juror on the case?

THE JUROR: Sure.

THE COURT: And if—for any particular charge, if you thought the government had failed in its burden of proof, would you be able to vote not guilty on that charge?

[19-47]

THE JUROR: I could, yeah.

THE COURT: We asked a series of questions about your attitude toward the death penalty beginning at Page 23. And in Question 88 we asked a general question. If you had any views, what were they?

THE JUROR: What question was that?

THE COURT: 88. It's on Page 23. There it is. Can you tell us what you were getting at in that answer? Take a minute to read it.

THE JUROR: I guess basically what I was saying is, in terms of the death penalty, sometimes it's—I feel it's better to have life in prison depending on the situation.

THE COURT: Okay. Well—okay. Let me ask you to turn to Page 24, Question 90. We set out a series of possible statements and asked if there was one that

you thought best reflected your own view, and you selected statement (e). Why don't you just take a minute to review the question and see—what I'm going to ask you is whether that still represents your best choice as to what matches your thinking about the matter.

THE JUROR: I think that goes back to the last question where I felt that life in prison could be in some cases more favorable than the death penalty.

THE COURT: More favorable to whom?

THE JUROR: Be more favorable to—I don't know how to put that.

[19-48]

THE COURT: Okay. Well, Statement (e) says if—I'm just reading Statement (e). It says, "I'm in favor of the death penalty." So that indicates a general disposition to favor the death penalty. Is that your view?

THE JUROR: Yeah.

THE COURT: "But I could vote for a sentence of life imprisonment without the possibility of release if I believed that sentence was called for by the facts and the law in the case." Is that also your view?

THE JUROR: Yeah.

THE COURT: I'm trying to—depending on how you understood the facts—and you heard me describe the so-called penalty phase this morning, right?

THE JUROR: Uh-huh.

THE COURT: Are you prepared to be able to consider that the death penalty is the right punishment?

THE JUROR: I believe so.

THE COURT: And also consider that life imprisonment might be the right punishment?

THE JUROR: I believe so.

THE COURT: Okay. Follow-up?

MR. CHAKRAVARTY: Just very briefly. Good afternoon. My name is Alope Chakravarty. I'm one of the prosecutors in the case. Just a couple quick questions.

THE JUROR: Sure.

[19-49]

MR. CHAKRAVARTY: Your work in the telecom department at Mass. General, will that affect your ability to be fair and impartial and listen to the evidence in court to be able to make up your decisions in this case?

THE JUROR: I don't think it would affect it because I'm working with telephones and stuff like that. I'm not doing anything with patient care or—you know what I mean?

MR. CHAKRAVARTY: And the—whatever you had seen about the case on the news, are you prepared to put that aside and listen to the evidence in the case in court to be able to make up your decisions?

THE JUROR: Yeah, I could.

MR. CHAKRAVARTY: That's all. Thank you.

MS. CLARKE: Hello. My name is Judy Clarke. I'm one of the lawyers for Mr. Tsarnaev, and I had a few questions if that's okay.

THE JUROR: Sure.

MS. CLARKE: Just to follow up on your work, inside Mass. General, you're actually stationed inside the hospital facility?

THE JUROR: I am—most of our telecom people are placed over in the Charlestown Navy Yard. Unfortunately, we're—have lack of space, and we are building a new site in Somerville in a couple years. Then we will be all together. We'll be out of the hospital. There is a spot up on the 14th [19-50] floor at the hospital that they've had forever, so they decided to keep that for now.

MS. CLARKE: So that's where you actually work out of?

THE JUROR: Yes.

MS. CLARKE: The 14th floor of the hospital?

THE JUROR: Yes.

MS. CLARKE: You were there at the hospital the day of the Marathon?

THE JUROR: Yes.

MS. CLARKE: Working?

THE JUROR: Working.

MS. CLARKE: Can you tell us what you saw or heard that day?

THE JUROR: Basically, there's about six to eight of us in the office at any given time. We do have a TV if there's emergencies. One of the gentleman that works with us, his brother works for BWH. He called him. He said, There's an emergency going on at the Marathon, so we turned the TV on. That's how we knew.



MS. CLARKE: And saw the events of the day?

THE JUROR: Yeah.

MS. CLARKE: What about, as people came into the hospital facility, did you see any of that activity?

THE JUROR: Like I mentioned, Mass. General is so big. I could be at one end of the place, and the other end could be [19-51] something going on and we would never know.

MS. CLARKE: Sure. But did you see anything—

THE JUROR: No.

MS. CLARKE: —that afternoon, the rest of that day or the next day?

THE JUROR: No. They have a brand-new emergency room that the ambulances and patients come in at this different entrance. So us, where we were, I wouldn't see them.

MS. CLARKE: Were you aware of any of the activities at the hospital that week or in the few days after the Marathon?

THE JUROR: Obviously, I was aware that the bombing did happen, and they brought people to all different hospitals throughout the city. That is usually common knowledge. They send out all user emails stating what's going on.

MS. CLARKE: What did you learn from those emails?

THE JUROR: Basically, the same as what we heard on TV when we were—when we turned the TV on after we heard of the incident.

MS. CLARKE: Can you recall more specifics about what you got from the emails as opposed to what you got from the TV?

THE JUROR: I think it was basically the same. A lot of times they get the emails from the reports from the news media.

MS. CLARKE: Were there any fund-raising efforts at [19-52] the hospital or any meetings about helping people?

THE JUROR: Like I said, I'm more of a technical person, and I'm not involved in any patient care and stuff like that. So it was sort of out of the picture.

MS. CLARKE: Were you able to carry on your work that week the same as ordinary?

THE JUROR: Yeah. Like I said, I mean, Partners and Mass. General have so many sites and—you could feel something in the air. You know what I mean? You could feel a buzz that something happened.

MS. CLARKE: Could you describe that a little bit more for us?

THE JUROR: I think the thing was—I mean, you—how do I put it? You know something is going on, but you don't really have all the facts. We knew there was a bombing. We knew there were a lot of injured people. Other than that, we—I mean, even though it was up there, we still have work to do.

MS. CLARKE: Sure. I guess one of the things to think about is whether you got information that nobody else got. And so you got that sort of buzz feeling. That's what I'm really trying to explore.

THE JUROR: Well, I think—if I was in patient care, I would have got probably different emails. I get the generic email for—

[19-53]

MS. CLARKE: The telecom email?

THE JUROR: Yeah, basically, an all-user email. But if you're in patient care, I mean, there's probably different types of information provided.

MS. CLARKE: Okay, okay. On Question 77, which was at Page 20, that was the questions about the opinions. And I certainly appreciate you saying it was all over the media, but as a juror, I have to listen to the evidence. The question is: Have you ever formed an opinion about Mr. Tsarnaev's guilt or about the penalty outside of thinking about being a juror?

THE JUROR: Well, I would say so when—first happened, I mean, with all the media attention, you say, Okay. They got the person who they assumed did this. Other than that, I mean—they had two or three other reports out there that other people had done this as well. So it was, like, who was right and who was wrong? So, I mean, so—

MS. CLARKE: But you weren't able to form an opinion based on anything you knew before you came in to fill out your questionnaire?

THE JUROR: Not really, no.

MS. CLARKE: How about as to the penalty that should be imposed?

THE JUROR: I haven't had a chance to go through all the counts and all the charges.

MS. CLARKE: Sure. That makes absolute sense that you [19-54] would wait to hear the evidence. But did you have an opinion when you came in to fill out the questionnaire—

THE JUROR: No.

MS. CLARKE: —about the penalty?

THE JUROR: No.

MS. CLARKE: You didn't?

When you say, on Question 88, Page 23, that the “death penalty can be overrated sometimes and it may be better from the defendant’s view if he is guilty than to live out his life in prison.” Can you talk to us just a little bit more about what you meant?

THE JUROR: I guess—I mean, when I came in to fill this out, it was a long day already. I guess what I was trying to say, I mean, due to the fact his age was—he was in his 20s and stuff like that, sometimes I thought it might have been—this is my answer I should have said to you earlier—was it might be, from my standpoint, that he lives the rest of his life in prison versus the death penalty. I mean, I’m still going back and forth on that. I mean, I wrote something down, but I’m not sure what I really was trying to get across.

MS. CLARKE: Okay. Can I just have one second?

THE JUROR: Sure.

(Discussion held off the record.)

MS. CLARKE: Thank you very much. Thank you.

THE COURT: All set. Just leave the form there.  
[19-55]

You're done.

\* \* \* \* \*

[1969]

THE CLERK: Juror No. 487, please.

THE JURY CLERK: Juror 487.

THE CLERK: Juror No. 487. You may have a seat. Just make sure you speak into the microphone.

THE COURT: Good afternoon.

THE JUROR: Hi. How are you?

THE COURT: Have you had success in avoiding any discussion of the case with people?

THE JUROR: Yes.

THE COURT: And how about avoiding media coverage?

THE JUROR: Absolutely, yes.

THE COURT: Okay. So that's the questionnaire you filled out. We're going to follow up on some of the questions.

THE JUROR: Okay.

THE COURT: I want to start with Question 10 on Page 5 where we asked about the schedule in the case and what it might mean for you. First of all, did you have your trip?

THE JUROR: Yes, I did. Can you tell I was a little [19-70] panicked about that?

THE COURT: You only said it three times, I think.  
But anyway—

THE JUROR: Happy belated birthday to me.

THE COURT: Hope you had a nice trip.

THE JUROR: Thank you.

THE COURT: That's one of the few advantages of this drawn-out process, is that people get to take their trips.

THE JUROR: Yeah.

THE COURT: Now, you also were, I think, concerned about whether, if you were a juror on the case, you would be sequestered. That would be a problem for the family. That's not going to happen.

THE JUROR: Okay.

THE COURT: With that—the way I read your answer, that if it's not the case, you're okay with the schedule?

THE JUROR: Yeah. My—I have four kids: one in college; my next one is a senior in high school, who has her own car, who would be able to help with my two eighth-grader twin boys. It's not ideal coming from the Cape, but there would be worse off people than me in that sense.

THE COURT: Would it be okay with your employer?

THE JUROR: Yes.

THE COURT: Will you continue to get paid?

THE JUROR: I do get paid.

[19-71]

THE COURT: So I think the next thing I want to go to is Page 20, Question 77.

THE JUROR: Okay.

THE COURT: There we asked whether, based on things you'd seen or read or learned from whatever source, you had formed an opinion that the defendant was guilty or not and whether he should receive the death penalty or not. As to (a) and (b), which were about whether he was guilty or not guilty, you said you had formed an opinion that he was guilty. As to the appropriate penalty, you said you're unsure. Okay.

Then at the second part of the question, just below that, you were asked, If you answered yes to any of these questions—and you answered yes to Part (a)—would you be able or unable to set aside your opinion and base your decision about guilt solely on the evidence presented to you in court, and you checked “able.” You would be able to do that. Can you tell us about that?

THE JUROR: Okay. Basically, I'm not a huge news follower to begin with. But the little bit that I knew of the case, you know, there was video evidence and, you know, being in the boat, the whole bit, obviously, it seemed he played a role in it. So that was, like, my feeling of guilt.

On the death penalty, I've never had an opinion about it one way or the other. I just didn't—I've never been questioned on how I feel about that. So, to me, since I don't [19-72] already have strong feelings about it, I could—if—once I knew the rules of it and what goes into it, then I think I could be—form an educated opinion about it. Whether—that's what I mean about, like, on

the evidence presented to me. Like, I understand you're not guilty until you're proven guilty.

So I would have to—I think I would be able to put that aside until I see all the evidence because, obviously, I have not seen any evidence really other than what's been out there. But if someone said to me, like this, Do you think he's guilty?, Yeah, I thought so because of what I've seen so far.

THE COURT: But from what you've said, I guess you recognize the principle that the government has the obligation to prove somebody's guilty—

THE JUROR: Right, right.

THE COURT: —by the evidence at trial.

THE JUROR: Right.

THE COURT: And that's what the jurors will focus their attention on and decide whether, based on that evidence and not ideas from other sources, they can make their judgment.

THE JUROR: That's what I feel. I would be able to put that aside and see what the real evidence really is.

THE COURT: Do you understand that the burden of proof is exclusively with the government; that is, the government has the responsibility to prove somebody guilty?

[19-73]

THE JUROR: Yes.

THE COURT: A person accused doesn't have any obligation to prove he's not guilty.



THE JUROR: Okay.

THE COURT: It's always—the question is never which side has convinced me. It's has the government convinced me that this person is guilty as charged. Do you understand that?

THE JUROR: I do understand that.

THE COURT: Do you think you could apply that principle?

THE JUROR: I do think that I could apply that principle, yes.

THE COURT: We asked a series of questions about the death penalty and your attitudes about it beginning on Page 23, and Question 88 is the first one. That asks whether you have any views about it in general; and, if so, what are they? And you say you've never really had a strong opinion either way. Is that—

THE JUROR: It's true. You know, I—I don't have an opinion either way. I do think life imprisonment is a horrible life, but it's a life, you know. Obviously, death would be the worst penalty you can have. But I've never felt it shouldn't exist. I really didn't have an opinion one way or the other on it.

THE COURT: Okay. On Page 24, Question 90, we asked [19-74] you to review a series of statements and see if one of them reflected your feelings about the death penalty involving someone guilty of murder. You picked (d). If you want, why don't you just take a moment to review the entire question and see—obviously, what I'm going to ask you is does that still represent your choice?

THE JUROR: Okay, yeah. It definitely—I don't have a strong opinion one way or the other, so it would have to be (d).

THE COURT: Okay. Based on your—I gather from the answer then, you think that, based on your assessment of the evidence—you heard me describe the penalty phase and how the government would be trying to convince you that there were aggravating factors that made this a serious—more serious offense and, therefore, punishable by the death penalty while the defense would likely present evidence of things that arguably mitigate the punishment and make life imprisonment the better punishment and so on. You would be able to consider all that before making up your mind whether death—

THE JUROR: Yeah.

THE COURT: —or life imprisonment was appropriate?

THE JUROR: I would hope so, yes, I mean, because I'm not for or against it. So I think I would think, once I knew the criteria and if it felt that the guiltiness leaned more towards what that criteria is, then I would be for it. If it [19-75] wasn't, I would be against it.

THE COURT: All right. Follow-up?

MR. CHAKRAVARTY: Just very briefly. Good afternoon. My name is Alope Chakravarty. I'm one of the prosecutors.

THE JUROR: Okay.

MR. CHAKRAVARTY: Just a couple quick things. One, on Page 23, Question 87.

THE JUROR: Yup.

MR. CHAKRAVARTY: I just want to—so nobody wants to see disturbing things. The question is will you view the evidence—will you be able to view the evidence even if it's disturbing and pay attention to it and not look away essentially even if you—it's not a pleasant experience? You think you will be able to do that in this case?

THE JUROR: I think that would be the hardest part for me, but I would know that would be my job to do that, so I would have to.

MR. CHAKRAVARTY: Then on Page 26, Question 98, I think it's just a clarification. Your answer there, was that in reference to essentially whether you were going to get paid?

THE JUROR: No, no, because I do get—I receive child support. He's not an option. If I was sequestered, he's not an option for my kids to go to him.

MR. CHAKRAVARTY: So it's the commuting.

THE JUROR: It was the commuting, like, them having a [19-76] parent around. I'm their only parent.

MR. CHAKRAVARTY: Finally, at the end of the day in this case, there will be two phases. It's one thing to intellectually arrive at a decision that the death penalty or life imprisonment is appropriate.

THE JUROR: Right.

MR. CHAKRAVARTY: But do you feel confident that you can make the decision to take somebody's life?

MS. CONRAD: Objection.

THE COURT: Yeah, phrased that way.

MR. CHAKRAVARTY: Sorry. In—not in this case particularly but just in the process of doing a death penalty trial in federal court, a juror is asked to cast a vote for life imprisonment or the death penalty. And you will be given the criteria, and you will be given the rule of law from the judge. You'll have to assess the fact as to whether it merits that.

THE JUROR: Right.

MR. CHAKRAVARTY: Do you feel confident that you can make that decision?

MS. CONRAD: Objection.

THE COURT: No. Go ahead.

MS. CONRAD: "Feel confident"?

THE COURT: Go ahead. Answer the question if you can, if you understand it.

[19-77]

THE JUROR: I do understand it. I would feel confident if I—from the evidence presented and the criteria, if it's met and that's the law and those are the things that it falls under, then I would feel confident that that would be the choice I would have to make.

MR. CHAKRAVARTY: Well, you never have to make—you have your own will to be able to make whatever choice you want.

THE JUROR: No. Right.

MR. CHAKRAVARTY: I just want to get a sense of whether—if you thought conscientiously that it was the appropriate thing, that you could cast that vote.

MS. CONRAD: Objection. Asked and answered.

THE COURT: No. Go ahead. You can answer it.

THE JUROR: Yes.

MR. CHAKRAVARTY: Okay.

MS. CONRAD: Good afternoon.

THE JUROR: Hi.

MS. CONRAD: My name is Miriam Conrad. I'm one of Mr. Tsarnaev's lawyers.

THE JUROR: Okay.

MS. CONRAD: First, let me ask you a little bit. You work for the school system?

THE JUROR: I do.

MS. CONRAD: Were there any events that the school system held either to raise money for victims of the Marathon [19-78] bombing or sort of Boston Strong type events that you recall?

THE JUROR: No, not on—at our school.

MS. CONRAD: What about the schools that your children attend?

THE JUROR: My children attend the school I work at right now.

MS. CONRAD: But then?

THE JUROR: But then, no, no.

MS. CONRAD: Do you know anybody who was present?

THE JUROR: My ex-husband's cousin was a runner, but I didn't even know that until afterwards.

MS. CONRAD: How about anybody within the schools?

THE JUROR: No.

MS. CONRAD: And did you talk to your kids about the events?

THE JUROR: Well, my kids are a little bit older. And we were in Texas for April vacation that year, and we couldn't fly home. So, yeah, I mean, they understood. They knew what was happening. They knew the flights were all canceled and we couldn't get back.

MS. CONRAD: Were they upset?

THE JUROR: I don't—I mean, I wouldn't think it was—probably not to the extent. We were on vacation, so they weren't sitting in front of a TV. They didn't see a lot of the—you know, it kind of—it downplayed it a little bit in [19-79] that sense for them. You know, they didn't see a lot of it.

MS. CONRAD: Do you understand—I assume you know that one of the people who was killed was an eight-year-old boy.

THE JUROR: Yes, I knew that.

MS. CONRAD: As a mother of three sons—

THE JUROR: Right.

MS. CONRAD: —do you have any thought about how you would feel listening to and hearing and seeing evidence about that death?

THE JUROR: Yeah. That would be—I would think that's going to be the hardest part for me.

MS. CONRAD: Do you think that would make it hard for you to be impartial, listening to the evidence?

MS. PELLEGRINI: Same objection, your Honor.

THE COURT: Yeah, sustained, I think. Up to there it was okay, but—

MS. CONRAD: Do you think that would affect your decision about the appropriate penalty in this case?

MS. PELLEGRINI: Objection.

MS. CONRAD: Your Honor, if I may, Mr. Weinreb asked that exact question in a previous—

THE COURT: The problem is that it asks both permissible effect and impermissible effect. I assume—maybe this is a rash assumption, but I assume that that would be part [19-80] of the government's aggravation case.

MS. CONRAD: Fair enough, fair enough. Let me try a different question.

If I could just ask you, ma'am, to turn to Question 89.

THE JUROR: Which page is it?

MS. CONRAD: I'm sorry. It's Page 23.

THE JUROR: Okay.

THE COURT: You selected 6 on the number scale.

THE JUROR: Okay.

MS. CONRAD: Does that reflect that you are slightly more in favor of the death penalty than against it?

THE JUROR: Oh, isn't that interesting? I didn't even realize that I did that. No. I think that I would be right in the middle.

MS. CONRAD: And that's what you reflected on the next question.

THE JUROR: Right because, I mean, I just—

MS. CONRAD: You also said—well, strike that.

Let me stick with the death penalty for a second. You mentioned the guidelines, that you would listen to what the guidelines were for the penalty phase—

THE JUROR: Right.

MS. CONRAD: —if you got to that point.

THE JUROR: Right.

[19-81]

MS. CONRAD: As Judge O'Toole told you this morning, the penalty phase would include things about the crime as well as things about the defendant.

THE JUROR: Okay.

MS. CONRAD: Would you be willing to consider things that have nothing to do with the crime itself, but facts about the defendant, in deciding whether or not the death penalty was appropriate?

THE JUROR: Not the evidence itself?

MS. CONRAD: No, not the crime itself.

THE JUROR: Not the crime itself.

MS. CONRAD: You would hear evidence, for example—let me just make this general. In a death penalty case generally, would you be willing to consider



facts about the defendant such as his criminal history, his personal background, childhood, and so forth?

THE JUROR: Yes.

MS. CONRAD: The judge also described how you would—the jury would be instructed to weigh the aggravating factors and mitigating factors. Do you think that the fact that the death of a child was part of this case would make it difficult for you to weigh both sides before—

MR. CHAKRAVARTY: Objection, your Honor.

MS. CONRAD: —before coming to a decision?

THE COURT: Sustained.

[19-82]

MS. CONRAD: On Page 19, Question 74.

THE JUROR: Yes.

MS. CONRAD: You said that when you realized when you—basically, when you realized it was this case, you weren't very happy about it. Was there anything about that other than the length—

THE JUROR: Length. Well, I mean, and the brutality and the gruesomeness of it probably, you know, is my first—and the length.

MS. CONRAD: On Page 21, Question 82, you said that you bought a Boston Strong T-shirt for your nephew.

THE JUROR: Yeah. He's a cross-country—

MS. CONRAD: What does that phrase mean to you?

MR. CHAKRAVARTY: Objection, your Honor.

THE COURT: Yeah. I'll sustain the objection to that. This isn't a discovery deposition.

MS. CONRAD: Well, your Honor, but I think it's a reflection—

THE COURT: You can ask about the circumstances if you want.

MS. CONRAD: Okay. So can you tell us why you bought a Boston Strong T-shirt for your nephew?

THE JUROR: My nephew is a cross-country runner, and he originally lived in Boston. And so, to me, it was more like a Boston thing.

[19-83]

MS. CONRAD: How old is he?

THE JUROR: How old is my nephew? The same age as my oldest. Nineteen.

MS. CONRAD: Would the fact that you have children of your own make it difficult for you to be a fair and impartial juror in this case?

MR. CHAKRAVARTY: Objection, your Honor.

MS. CONRAD: Your Honor, that's the exact question Mr. Weinreb asked. I have it in my hand from the transcript.

THE COURT: Was it objected to?

MS. CONRAD: I'm sorry?

THE COURT: Was it objected to?

MS. CONRAD: No, it was not objected to, but it seems to me—well, I still think it's a fair question. It wasn't objected to because it's a fair question.

THE COURT: Go ahead. You can answer it.

THE JUROR: Repeat the question.

MS. CONRAD: Sure. Would the fact that you have children of your own, including three boys, make it difficult for you to be a fair and impartial juror in this case?

MS. PELLEGRINI: I'm going to object to the question being phrased that way because that puts more emphasis, sounds to me, on the gender of the victims, and we get right back to the question of the child.

MS. CONRAD: I'm tracking what Mr. Weinreb asked. But [19-84] would the fact that you have children of your own make it difficult for you to be a fair and impartial juror in this case?

THE JUROR: No. I mean, Mr. Tsarnaev was a child also during this. Is that what you mean? Because of him?

MS. CONRAD: No, I meant more that a victim was a child.

THE JUROR: No.

MS. CONRAD: Thank you.

THE COURT: All right. We're done. Thank you very much. Please leave that there.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Crim. No. 13-10200-GAO  
UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: Dec. 1, 2014

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**AGREED-UPON PRELIMINARY JURY INSTRUCTIONS**

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Counsel for the government and for the defendant, Dzhokhar Tsarnaev, hereby submit the attached agreed-upon proposed jury instructions to be given (1) to the jury venire members prior to the distribution of written questionnaires, and (2) prior to the beginning of oral questioning of prospective jurors on their voir dire.

Dated: Dec. 1, 2014

Respectfully Submitted,

DZHOKHAR TSARNAEV  
By his attorneys

/s/ DAVID I. BRUCK  
DAVID I. BRUCK

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\* \* \* \* \*

**JOINT REQUESTED PRELIMINARY INSTRUCTIONS  
CONCERNING JURY QUESTIONNAIRES**

\* \* \* \* \*

There has been a great deal of publicity about this case. I expect that the media will continue to report on it. The mere fact that you may have read or heard something about the case does not mean that you cannot be a juror. We simply need to know what you have read, seen, heard, or experienced in relation to the case. There are no “right answers.” We only want your honest and true thoughts and opinions. The purpose of the jury selection process is to try to ensure that each person selected is an appropriate juror for this case, and that the jury as a whole will fairly represent the community.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Crim. No. 13-10200-GAO  
UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

---

Filed: Dec. 2, 2014  
FILED UNDER SEAL

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**JOINT SEALED MOTION FOR LEAVE TO FILE  
DOCUMENT UNDER SEAL**

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The United States of America, by and through its undersigned counsel, and Dzhokhar Tsarnaev, by and through his undersigned counsel, respectfully request leave to file this motion and the attached joint proposed jury questionnaire under seal. As grounds for this motion, the parties state that the goal of obtaining candid responses to the questionnaire could be jeopardized if potential jurors obtain advance copies of it.

Respectfully Submitted,

CARMEN M. ORTIZ  
United States Attorney

/s/ WILLIAM WEINREB  
WILLIAM WEINREB  
Aloke S. Chakavarty  
Nadine Pellegrini

Assistant U.S. Attorneys

DZHOKHAR TSARNAEV  
by his attorneys

/s/ JUDY CLARKE, ESQ.  
JUDY CLARKE, ESQ.  
David I. Bruck, Esq.  
Miriam Conrad, Esq.  
Timothy Watkins, Esq.  
William Fick, Esq.

\* \* \* \* \*

JUROR QUESTIONNAIRE  
PRELIMINARY INSTRUCTIONS

\* \* \* \* \*

78. How would you describe the amount of media coverage you have seen about this case:

\_\_\_ A lot (read many articles or watched television accounts)

\_\_\_ A moderate amount (just basic coverage in the news)

\_\_\_ A little (basically just heard about it)

\_\_\_ None (have not heard of case before today)

79. What did you know about the facts of this case before you came to court today (if anything)?

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80. What did you think or feel when you received your jury summons for this case?

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81. To the best of your recollection, what kinds of things did you say to others, or did others say to you, regarding your possible jury service in this case?

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82. If you did any on-line research about this case, or about anything relating to it, after receiving your jury summons, please describe it:

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83. As a result of what you have seen or read in the news media, or what you have learned or already know about the case from any source, have you formed an opinion:

- (a) that Dzhokhar Tsarnaev is guilty? ☐ Yes ☐ No
- (b) that Dzhokhar Tsarnaev is not guilty ☐ Yes ☐ No
- (c) that Dzhokhar Tsarnaev should receive the death penalty ☐ Yes ☐ No
- (d) that Dzhokhar Tsarnaev should not receive the death penalty? ☐ Yes ☐ No



If you answered “yes” to any of these questions, can you set aside your opinion and base your decision about guilt and punishment solely on the evidence that will be presented to you in court?

☐ Yes ☐ No

84. If you answered “yes” to any of the above, have you expressed or stated your opinion to anyone else?

☐ Yes ☐ No If “yes,” please explain.

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\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Dec. 30, 2014  
10:35 a.m.

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**LOBBY CONFERENCE**

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On Behalf of the Defendant

\* \* \* \* \*

[47]

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THE COURT: Okay. Obviously, these will get re-numbered because we're eliminating . . .

Now, I'm on 18—79. I guess I see this as a [48] question that will cause trouble because it will be so unfocused I don't know if—I mean, I guess it's one that might get very interesting answers. Maybe it's a trigger to follow-up.

MS. CLARKE: I think it is. I mean, you know the point.

THE COURT: I expect you'll get answers which have untrue facts. I mean, something everybody would agree was untrue.

MR. BRUCK: Or very prejudicial facts which are not going to come into evidence. People know everything about this case, it's been reported, whether it's true or not, whether it's admissible or not.

MS. CLARKE: You might want to add a few more lines.

THE COURT: You would have to. I guess that's one of my concerns. But if you want to live with it—this is a question that we'll probably be asking every voir dire person.

MR. FICK: I think it helps to flush out at the top whatever anybody said. No matter how they impressionistically treated it, it's useful to trigger a follow-up.

MR. WEINREB: I suppose it could be amended to say what are the, you know, three or four most memorable things.

MR. BRUCK: That will reduce the value. Everyone will say the same thing: Bombs went off at the Marathon. A police officer was killed.

[49]

MR. WEINREB: I guess my concern about it is that—is the opposite of an overlong answer which is getting a partial answer, you know, that a juror may know ten things about it, and if you only put down two of them, does that give you a fair picture?

MR. BRUCK: Well, that's a probe and it's for follow-up.

MR. CHAKRAVARTY: We could end up following up on every fact asserted. Then that would be—I'm not sure how constructive that would be. This would take forever with every witness.

MR. WEINREB: Yeah. And if the question is designed to determine whether the jurors have been exposed to pretrial publicity, that might have affected their ability to be fair and impartial, but I do think that the case law of the Supreme Court ruled it is not necessary to ask jurors what the pretrial publicity is to which they have exposed; it's only possible to ask whether they can put it aside and be fair and impartial.

And I am concerned that this one question will turn out to be the question that dominates the entirety of voir dire of the individual jurors unnecessarily.

THE COURT: Yeah, I guess that's my concern as well, I guess. There will be sort of unmanageable data, I guess is my concern about that. I think that the preconceptions, and so on, we deal with in a series of other kinds of questions—I [50] think we're better off without this one as a narrative.

MR. BRUCK: We would—I think our feelings about that would be affected by the extent to which

there will be questioning on this exact issue in individual voir dire where jurors can—

THE COURT: I think one of the common questions is going to be to a juror who answers to 83A, that she thinks Dzhokhar Tsarnaev is guilty, and then we're going to have to ask regardless of that idea that you have now, would you be able to hear the evidence and judge it fairly and perhaps change your mind if the evidence warranted that? We'll do all that with these other questions, I think.

MR. BRUCK: But it's true that there is a 5-to-4 Supreme Court decision that says it does not violate due process not to ask for content, *Mimin versus Virginia*. It's very much the minority view among courts, state and federal, in the country. And it tends to, in a case like this where you—where you have really no ideas what the juror may have swirling around in their head, it makes the juror the judge of their own impartiality in the end not to be able to—

THE COURT: To a large extent that's true.

MR. BRUCK: I'm sorry?

THE COURT: To a large extent that's true, the juror is ordinarily—

MR. BRUCK: But the Court can evaluate more [51] realistically when you know what it is the juror and how much—

THE COURT: I think the other questions will help us do that. I think this is—I think we can do without 79. I mean, I think what we touched on is the biggest issue in voir dire, obviously, because there are going to be a lot of people with preconceptions. As a matter of fact,

you may even wonder about people who have a preconception in the other direction, whether they pay attention to anything in the world. If they say, no, I know he's not—that's another—maybe touching on that—so we're going to get a lot of "yes" answers to 83A.

MR. MELLIN: Your Honor, Question 78 talks about how much have you been exposed to.

THE COURT: Right. So I think we'll do okay with that.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Fri., Jan. 2, 2015  
11:05 a.m.

---

**LOBBY CONFERENCE**

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On Behalf of the Defendant

\* \* \* \* \*

[7]

\* \* \* \* \*

MR. BRUCK: It was 79, “What did you know about the facts of this case before you came to court today, if anything?”

THE COURT: Yeah. Right. Yeah. No, we took that out. We took it out. It implied that there were facts of the case that they could objectively know and I didn’t want to support that misimpression.

MR. BRUCK: If it were changed to “What did you read or hear about this case before you came here,” it would solve that problem.

THE COURT: No, I think it—again, I think it's too unguided. I think the questions we asked are okay, so

. . .

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
SEALED

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No. 13-10200-GAO  
UNITED STATES OF AMERICA  
*v.*  
DZHOKHAR A. TSARNAEV

---

Filed: Jan. 13, 2015

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**SEALED MOTION TO SEAL DEFENDANT'S**  
**PROPOSED FOLLOW-UP QUESTIONS**  
**RE VOIR DIRE**

---

Defendant moves that this Court grant him to leave to file both the instant Motion and the attached Defendant's Proposed Follow-up Questions Re Voir Dire under seal, per the Court's instruction.

Respectfully Submitted,

/s/ DAVID I. BRUCK  
DAVID I. BRUCK  
JUDY CLARKE  
MIRIAM CONRAD  
WILLIAM FICK  
TIMOTHY WATKINS  
Attorneys for Dzhokhar Tsarnaev

**Certificate of Service**

I hereby certify that this document was served by email upon counsel for the government this 13th day of Jan., 2015.

/s/ DAVID I. BRUCK  
DAVID I. BRUCK

**DEFENDANT'S REQUESTED VOIR DIRE**  
**QUESTIONS (GENERAL)**

- 1) Before coming here today, have you heard or read about anything this case?
- 2) What stands out in your mind from everything you have heard, read or seen about the Boston Marathon bombing and the events that followed it?<sup>1</sup>  
 [If juror has difficulty responding, prompt with:  
 Do you recall anything. . . . ]
  - a) About how the bombings occurred?
  - b) About the people who are supposed to have carried it out?
  - c) About any of the bombing victims who died?
  - d) About any of the victims who were hurt but survived?
  - e) About the MIT police officer who was killed several days later?
  - f) About the defendant, Dzhokhar Tsarnaev?
  - g) About any members of Mr. Tsarnaev's family?

\* \* \* \* \*

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<sup>1</sup> *Skilling v. United States*, 561 U.S. 358, 371 (2010) (noting that jurors were asked on questionnaire “to report on ‘what st[ood] out in [their] mind[s]’ of ‘all things [they] ha[d] seen, heard or read about Enron.’”)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thurs., Jan. 15, 2015  
9:29 a.m.

---

**JURY TRIAL—DAY FOUR**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
NADINE PELLEGRINI, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
Boston, Massachusetts 02210

- and -

UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
Capital Case Section

1331 F Street, N.W.  
Washington, D.C. 20530  
On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE

By: MIRIAM CONRAD, Federal Public Defender  
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Boston, Massachusetts 02210

- and -

CLARKE & RICE, APC

By: JUDY CLARKE, Esq.  
1010 Second Avenue  
Suite 1800  
San Diego, California 92101

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, Esq.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[4-35]

\* \* \* \* \*

MR. BRUCK: Again, we feel that—we had hoped that since none of these questions were put into the questionnaire despite our requests, that this would be the time that we would find out what jurors bring into

the courtroom given the unprecedented level of publicity and the unprecedented level of direct talk, verbal communication and direct experience of the marathon bombing in this division of the Massachusetts—of the District of Massachusetts. So we would—we really feel that it's impossible to assess the impartiality of a juror like this without getting to what he has heard or read.

In addition, it's—this is a juror who believes the defendant is—I'm sorry. This is a defendant [*sic*] who says he's unsure whether he's guilty or not. That covers an awful lot of territory. We think our Number 11—our 10 and 11, which asks the juror to imagine that he was on the jury and the government didn't prove its case and they acquitted Mr. Tsarnaev and he went home, and then the juror is asked to [4-36] say, Well, how do you think people would react, how would you react, how would you feel about that prospect, that gets at whether or not jurors can put it aside; not the verbal formulation of whether they could listen to the evidence and come to their own conclusion.

But this is reality, and there may be jurors who say, If the government didn't prove their case, sure, I could do that. But there are going to be a lot of jurors who will say, Well, we all know he's guilty and people would be furious and there would be an uproar. But if we don't ask the question, we'll never know.

So we think that these questions are really quite critical. In effect, we're asking can these jurors really presume this man innocent or is it a situation where everybody knows he's guilty and let's get on to the penalty phase, but, sure, I could listen to the evidence and, you know, make it look like I was a regular juror.



\* \* \* \* \*

[4-38]

\* \* \* \* \*

MR. MELLIN: Your Honor, may I respond to that?

THE COURT: Go ahead.

[4-39]

MR. MELLIN: As to the issue about the pretrial publicity, I think the Court has been able to determine and assess the credibility of witnesses based on their answers concerning that. If there was some concern that the Court had about their truthfulness about whether or not something they read or saw before they came into Court today, the Court would be able to follow up on that.

Up to this point these jurors have been very clear about the fact that they are not affected by what they have read or seen prior to coming into court. So I don't think there's any need for what Mr. Bruck is asking for, which would be to ask each of these jurors exactly what article did you read or which news story did you see on television. I think that's completely unnecessary. I think in a case-by-case basis based on the answers that a juror gives, I'm sure the Court will ask some follow-up questions, but I think it's unnecessary at this time.

\* \* \* \* \*

[4-41]

\* \* \* \* \*

THE COURT: As it goes for other matters, I make the same observation about publicity questions. We have detailed answers in the questionnaire concerning what exposure to the media about this is. I don't think as a general matter we have to repeat all of that and get—there are multiple concerns about that, one of which is committing the witness, the juror witness, to positions that he'll feel he has said here and has to stick with. And so digging for details from someone who hasn't prepared by spending time reflecting and recalling all of that will not likely yield reliable answers and, again, it's [4-42] a matter I covered in the questionnaire.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Fri., Jan. 16, 2015  
9:24 a.m.

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**JURY TRIAL—DAY FIVE**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

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NADINE PELLEGRINI, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
Boston, Massachusetts 02210

- and -

FEDERAL PUBLIC DEFENDER OFFICE

By: MIRIAM CONRAD and WILLIAM FICK, Federal  
Public Defenders

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- and -

CLARKE & RICE, APC

By: JUDY CLARKE, Esq.  
1010 Second Avenue  
Suite 1800  
San Diego, California 92101

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, Esq.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[5-9]

MR. BRUCK: If I could finish with our request, what we have done here, your Honor, is to boil down the earlier series of requests. We're not withdrawing any of the ones that we made in writing in our prior filing, which were three sets of requests: one on publicity, one on *Morgan*, and one on *Witherspoon*. But I have combined them for efficiency sake into a single follow-up request. I'd like to say a couple of things about some of the other ones that Miss Conrad didn't refer to.

The first one, as we noted, What stands out in your mind?, is the question that was included in the *Skilling* transcript at the defense request, and the Court cites that with approval. That question was excluded from

the questionnaire when we asked for it or any similar question about content. And the Court at that time—it told us that that would be covered in the oral voir dire. So we think it's—to ask this *Skilling* question is, to say the least, appropriate.

And then we've suggested some prompts for jurors who say, Well, just what I read in the papers, or Nothing particular. Got to say that the investigation that we've done [5-10] tells us that jurors know an extraordinary amount of detail. They know things about the welfare history of this family. It's constantly being talked about on talk radio. They know things—derogative information, much of it false, about the defendant's sisters. And that is the staple of talk radio. But if there isn't a question posed, these people will be on the jury, and none of us will be any the wiser. We really—if ever there was a case where some modest amounts of content inquiry is necessary, this is the case.

\* \* \* \* \*

[5-14]

MR. WEINREB: Your Honor, if I might, I'll respond in reverse order. With respect to that last request, the government agrees that a searching and probing voir dire of the jurors is appropriate in this case, but we also believe that that is the process that has taken place. And the parties jointly negotiated over a 100-plus-question questionnaire, were given an opportunity to review those, ask for follow-up on specific questions. The Court has asked follow-up on many of the questions, asked follow-up on questions of his own. It [5-15] will always be the case that one more question

could be asked or a hundred more questions could be asked if you had more and more information.

The whole point of that process was to try and come up with an approach that satisfied the objectives and the needs of voir dire without making the process unduly cumbersome, lengthy, and perhaps even counter-productive from having to drag on too long. We don't believe that there's any need for these additional specific questions. \* \* \*

\* \* \* \* \*

[5-18]

THE COURT: Let me—I don't want to prolong this by again going through each of the questions and addressing it. I understand the arguments, and I think you will—I think largely we—particularly as we got going and got further experience with the jurors, we did most of this satisfactorily yesterday. I expect I might make some modest amendments, and so you'll—I understand your positions. You'll see what they are as they come up.

In other words, one of the difficulties here is being too tied to a script. Every juror is different. Every juror has to be sort of questioned in a way that is appropriate to the juror's questionnaire answers and then to the preceding voir dire answers and so on. So to try to stick with a repeatable formula is—can be counter-productive actually rather than helpful. So I understand the points.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Jan. 21, 2015  
9:21 a.m.

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**JURY TRIAL—DAY SEVEN**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
NADINE PELLEGRINI, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
Boston, Massachusetts 02210

- and -

UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
Capital Case Section

1331 F Street, N.W.  
Washington, D.C. 20530  
On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE

By: MIRIAM CONRAD, Federal Public Defender  
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Fifth Floor  
Boston, Massachusetts 02210

- and -

CLARKE & RICE, APC

By: JUDY CLARKE, Esq.  
1010 Second Avenue  
Suite 1800  
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- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, Esq.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[7-16]

\* \* \* \* \*

First, we would ask that the Court explore the facts before instructing the juror; that is to say, to find out what the juror thinks, what the juror knows, what the juror has heard, the basis of the juror's opinions, if they



have any, before telling the juror what the law is and their obligation, if they can, to put those opinions aside.

We think that it's important to understand the underlying facts behind the juror's opinion in order to assess [7-17] its strength, and that's why we're asking that it be done in that order. The particular questions that probe for the facts are listed on the second page of our request.

We appreciate the latitude the Court has given us, and to the extent the Court does not itself ask these questions, we would—we will seek to ask them ourselves, but we think it's better for the Court on the initial round to ask probing questions of the jurors because the Court has greater authority and greater prestige with each juror, and we just think we're going to get better results if that is done.

\* \* \* \* \*

[7-19]

\* \* \* \* \*

MR. WEINREB: Your Honor, as a general matter the government objects to these requests. And I say “as a general matter” because I think if the Court were to determine in a particular case that asking one or more of these questions made sense, we wouldn't necessarily object to it. But as a general matter, asking jurors the basis of their opinions I would suggest starts off voir dire in the wrong direction. It gives the jury—it would suggest to the jurors that all the things that they have heard and seen in the press and the things that [7-20] they have—the opinions they formed based on that is

the important thing in this case, the important thing going forward, when they're not. The important thing is the jurors' ability to put aside what they have heard and what they might believe based on what happened outside the courtroom and decide the case based on the evidence inside the courtroom.

And I think that that same consideration counsels against asking in detail how you first heard about it, how did the news make you feel and so on. It suggests—it will suggest to the jurors that all of those things are the essential considerations for them when, in fact, they are not.

\* \* \* \* \*

[7-22]

\* \* \* \* \*

THE COURT: Okay. I have your requests in mind. I think by and large the manner in which we've conducted the voir dire has been successful, and I don't think I intend to make [7-23] major changes in it. We've had the discussion about how to ask the questions about Question 77. I agree with the government with respect to that, that detailed questioning about what the juror thinks he or she knows about the events and the sources places the wrong emphasis for the juror. Many, obviously, have views about this because of the extensive publicity. That's far from limited to the local community. And to emphasize them, I think, misdirects things a little bit.

It's been my experience over the years that jurors take their responsibilities very seriously, including particularly the obligation to hold the government to its

proof. I think reminding them of that is not—and getting their reaction to that task that they will have, knowing what they know, I think is a way of determining whether the juror is prepared to undertake the service that we might ask of him or her.

Jurors tell me from time to time that they can't do that, so it's not an automatic answer, and it's one, of course, that we make observations of the juror as well when he or she is answering that question and can form some judgments about whether that's a rogue answer or a sincere one and a commitment to look forward to the presentation of evidence rather than look backward to the exposure to the events.

So in general I'm satisfied with the course we've been following and, again, subject to adjustment as necessary for [7-24] each witness—sometimes we do have to get more specific because of what the juror says. But generally, I think as I say, I'm satisfied with the method we've been using.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Jan. 20, 2015  
8:37 a.m.

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**JURY TRIAL—DAY SIX**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
NADINE PELLEGRINI, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
Boston, Massachusetts 02210

- and -

UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
Capital Case Section

1331 F Street, N.W.  
Washington, D.C. 20530  
On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE

By: MIRIAM CONRAD, Federal Public Defender  
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- and -

CLARKE & RICE, APC

By: JUDY CLARKE, Esq.  
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San Diego, California 92101

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, Esq.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[6-38]

\* \* \* \* \*

MS. CLARKE: On Question 73, that asks about how much media coverage you had followed and you marked “a lot.” Can you tell us what you remember—

what stands out most in your [6-39] mind about what you read or heard?

THE JUROR: Probably the boat incident, when it was covered by world news—

MS. CLARKE: Can you tell us what you remember about that?

THE JUROR: —live. Just kind of the chase situation.

MS. CLARKE: Where were you that night?

THE JUROR: Home watching television.

MS. CLARKE: Very far away?

THE JUROR: Somerset, Massachusetts.

MS. CLARKE: Okay. Anything else come to mind, stand out in your mind?

THE JUROR: You know, just the scenes. Obviously, I work in healthcare, so I think every hospital learned or became more aware of emergent needs in situations like that. So, yeah, as part of my work, I think I became more aware as well.

MS. CLARKE: Okay. Did you have anything to do with any healthcare for people that were involved?

THE JUROR: No, no, no.

\* \* \* \* \*

[6-93]

\* \* \* \* \*

MR. BRUCK: The judge asked you about Mass. General's role in treating wounded. Do you recall anything else out of the ordinary that involved Mass. General in the week of the immediate aftermath of the bombing? I guess I should be clearer. You said you read a moderate amount—you checked the box—about this in the news media.

THE JUROR: At the time, you mean?

MR. BRUCK: At the time, right.

What does that mean? Can you tell us what stands out about what you saw or read about the marathon?

THE JUROR: I know I was watching the news during that time. As far as what I saw or—I don't recall reading anything because I don't really read newspapers.

MR. BRUCK: Okay.

THE JUROR: I don't know. Just really what was—

MR. BRUCK: As far as Mass. General.

THE JUROR: Oh, as far as Mass. General?

[6-94]

MR. BRUCK: I mean, that's just as an example. Do you remember hearing anything—

THE JUROR: The only thing I remember hearing about Mass. General was that it seemed like—I remember that either there were people being brought to Mass. General or thought to be brought to Mass. General, but I'm not even sure—I'm not even sure, like, who that was.

MR. BRUCK: Do you remember that the President of the United States visited Mass. General?

THE JUROR: I did not remember that.

MR. BRUCK: That was not something that you recall?

THE JUROR: No. Now that you're saying it, I vaguely, maybe, remember that, but I did not remember it.

MR. BRUCK: Okay. And you didn't recognize the names of any doctors from Mass. General on the witness list?

THE JUROR: No, I did not. We have a lot of doctors there.

MR. BRUCK: I understand.

\* \* \* \* \*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thurs., Jan. 22, 2015  
9:12 a.m.

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**JURY TRIAL—DAY EIGHT**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

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NADINE PELLEGRINI, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
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Boston, Massachusetts 02210

- and -

UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
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Washington, D.C. 20530  
On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE

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Boston, Massachusetts 02210

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CLARKE & RICE, APC

By: JUDY CLARKE, Esq.  
1010 Second Avenue  
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San Diego, California 92101

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, Esq.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[8-81]

\* \* \* \* \*

MS. CONRAD: Good morning. My name is Miriam Conrad. I'm one of Mr. Tsarnaev's lawyers.

I think you said something about the media was thrown in your face. What sticks out in your mind

about what you heard, read about this case or about the events?

THE JUROR: The day it occurred there was no school, obviously. It's a holiday. And my son and I went to lunch that afternoon. And I didn't really pay attention to what happened at that time.

I think it was later on during the week when some [8-82] other incidents had happened where I followed a little bit more, not so much on the—Boston itself but out of Boston, the Watertown. That's when everything just started coming together.

So I think I focused more on that, the whole Watertown incident. But other than that . . .

MS. CONRAD: And how old is your son?

THE JUROR: He will be 15 in March. He's a freshman in high school.

MS. CONRAD: But about—you said that you focused more on the Watertown?

THE JUROR: I think just because it was—at the time it happened, nobody really knew what was going on, and then later on as the week went on, just so much—just the constant—just constant media.

MS. CONRAD: And were there any particular facts that stand out in your mind as you sit here today?

THE JUROR: Not necessarily, no.

MS. CONRAD: Well, you said that based on what you've read and heard you've formed an opinion that Mr. Tsarnaev is guilty. So what were the facts that you read or heard that caused you to form that opinion?

THE JUROR: The capture of him. The day of the capture.

MS. CONRAD: Anything in particular about that—

[8-83]

THE JUROR: Sure.

MS. CONRAD: —that stands out?

THE JUROR: Hiding in the boat. I think that's the biggest thing that sticks in my mind, is the whole town being closed down and looking for the individual.

MS. CONRAD: Were you personally affected by that?

THE JUROR: No. No.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Fri., Jan. 23, 2015  
9:26 a.m.

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**JURY TRIAL—DAY NINE**

---

APPEARANCES

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By: WILLIAM D. WEINREB and ALOKE CHAKRAVARTY,  
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Suite 9200  
Boston, Massachusetts 02210  
- and -

UNITED STATES DEPARTMENT OF JUSTICE

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On Behalf of the Government

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LAW OFFICE OF DAVID I. BRUCK

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220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[9-31]

\* \* \* \* \*

MS. CLARKE: Where were you on that marathon  
Monday?

THE JUROR: I was at work. I was right at the end of my day. We leave work at three, so we're usually back a little before—like 2:40 or so—watching TV.

MS. CLARKE: And did you watch the events unfold on TV?

THE JUROR: Yeah. Yes.

MS. CLARKE: And the 19th of April, the last day of the week when Mr. Tsarnaev was arrested, where were you then?

THE JUROR: We were still working. I think I was—I think I worked every day that week. I'm trying to remember.

MS. CLARKE: Let me ask this: Did you follow the events on TV or radio?

THE JUROR: Not really a lot. I mean, here and there I would catch bits and pieces of it, but it was mostly watching for the weather-wise.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Mon., Jan. 26, 2015  
9:31 a.m.

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**JURY TRIAL—DAY TEN**

---

APPEARANCES

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By: ALOKE CHAKRAVARTY and NADINE PELLEGRINI,  
Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
Boston, Massachusetts 02210  
- and -

UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
Capital Case Section



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Washington, D.C. 20530  
On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE

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San Diego, California 92101

- and -

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220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[10-155]

\* \* \* \* \*

MS. CONRAD: Interesting.

You said you had obviously, as most people have  
been, been exposed to news reports and media reports

about the Boston Marathon bombing. Can you tell us what sticks out in your mind about what you have seen, heard, read?

[10-156]

THE JUROR: After it happened what sticks out in my mind that I read?

MS. CONRAD: Yeah. Just everything you've been exposed to. What are the main things?

THE JUROR: Just about how many people did get injured, and, you know, how people were in shock, and the horribleness *[sic]* of it.

\* \* \* \* \*

[10-173]

MS. CLARKE: Can you tell us what stands out in your mind as to what you saw or heard in the media?

THE JUROR: When it first happened, it was basically all over the news. And in the beginning actually I—what I saw was—the thing was the whole, the beginning of everything, of what took place. After that, it fade out. That was it. Is not something I like go on Internet or something to follow up or something like that. If it's on the news, maybe I might work and start playing on the television or something, and people talking about it. That's basically all I learned about it.

MS. CLARKE: And did anything stand out in your mind that you heard or learned about?

THE JUROR: Not really.

\* \* \* \* \*

[10-174]

MS. CLARKE: One last question, I think, about the [10-175] news coverage. Do you remember anything about the news coverage that you saw?

THE JUROR: Yes.

MS. CLARKE: What?

THE JUROR: I remember the guy—I remember this old guy that was Jack Ryan, and when he—the explosion went off, and he fell. Yes. I remember that.

MS. CLARKE: Were you watching the television as it occurred, or was this playbacks?

THE JUROR: No, this is playback.

MS. CLARKE: Where were you on the 15th of April, 2013, the day of the marathon?

THE JUROR: April 15? I'm not sure. I'm not sure. Probably sleeping, because I work nights, so I sleep during the day.

MS. CLARKE: What about on the Friday of that week, the 19th?

THE JUROR: I'm not sure. The 19th? I'm not sure.

MS. CLARKE: That Friday was when there was the shelter-in-place order. Do you remember that?

THE JUROR: Yes.

MS. CLARKE: Does that help at all?

THE JUROR: I think I was either home—I'm not sure, to be honest with you.

MS. CLARKE: Okay. Thank you very much.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thurs., Jan. 29, 2015  
11:10 a.m.

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**JURY TRIAL—DAY ELEVEN**

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- and -

UNITED STATES DEPARTMENT OF JUSTICE

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By: DAVID I. BRUCK, Esq.  
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Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[12-99]

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MS. CONRAD: And I think you indicated that  
you'd heard or read a lot about this case.

THE JUROR: Yes.

MS. CONRAD: Can you tell us what you heard or read?

THE JUROR: I would say probably the—I don't know anybody personally involved in the case at all. No one. When I looked at the list of names, I didn't know a single name. So to be honest, I've heard really what the general public in this area has heard.

MS. CONRAD: What?

THE JUROR: Anything that was on TV at the time, you know. The day that basically Boston was shut down, I was [12-100] working at a job in downtown Boston that day, and I was one of the many people who was inconvenienced in terms of transportation issues. So really I've heard kind of what everybody else has, but I recognize that sometimes the media can be inaccurate. I can tell you that I recall hearing conflicting reports on aspects of this case depending on what channel I was watching.

This is going back to the time of the case.

MS. CONRAD: Sure.

THE JUROR: And I remember feeling frustrated, Well, those two things contradict each other. They can't both be right.

MS. CONRAD: Do you remember what it was that was the conflict?

MR. WEINREB: I object.

THE COURT: Yeah, sustained.

THE JUROR: So I remember feeling confused about the media reports, but I think it's safe to say that

I've heard just about the same thing that most people living in this area have heard.

MS. CONRAD: Is there anything in particular that stands out that you heard?

MR. WEINREB: I object.

THE COURT: You can answer that.

THE JUROR: I'm trying to think—different—[125-101] can't tell you with clear preciseness, but I remember hearing conflicting reports about what the friends of the defendant heard at different times and where they were at different times, and I just remember not getting consistent reports from the media about that. That does stand in my mind. And I remember feeling aggravated at times and snapping the TV off and saying, Enough of this already.

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[12-131]

MS. CONRAD: Well, you did say in Question 74—73, excuse me—that you had seen a moderate amount of media coverage in this case.

THE JUROR: I seen it at work, which I'm in the break room 10 to 15 minutes three times a day.

MS. CONRAD: Okay. I'm just asking you, sir. I'm sorry. I'm just trying to find out what you've seen about this case and how it might affect your thinking about the case.

THE JUROR: Okay.

MS. CONRAD: So can you tell me what you have seen or read about this case?



MR. WEINREB: Objection.

THE COURT: Well, no, go ahead. You can—in general terms.

THE JUROR: Honestly, I don't—it was, what, over a year ago? So, I mean, I don't live around here so I [12-132] wouldn't—I didn't pay as much attention, probably, to people that live up here, but I know something bad happened.

MS. CONRAD: Okay. Anything else that stands out in your mind?

THE JUROR: No, just what was on TV for the few days that it was.

MS. CONRAD: So you did watch some of the reports on TV?

THE JUROR: In the break room at work, yeah. The TVs are on. There's three TVs.

MS. CONRAD: Sure. And you also get some news from the Internet?

THE JUROR: I don't have anything listed on my thing. I just get whatever comes up on my phone.

MS. CONRAD: Yeah. But, no, you said on 68 "What is your primary source of news?" you said the Internet.

THE JUROR: That's my phone.

MS. CONRAD: I'm just asking you—

THE JUROR: Maybe I wasn't—I really don't watch the news, okay? Whatever comes up on my phone—if I see something that's posted, then I'll read it. That's it. I'm not chasing after anything.

MS. CONRAD: Sir, I'm sorry. I didn't mean to suggest that you were. I'm just trying to find out what you might have seen or heard about this case.

[12-133]

THE JUROR: Well, I said Fox at work too. On 71? Yeah, that's where I've seen it, is Fox at work. They have Fox at work in the break room.

MS. CONRAD: Were you at work on the day of the bombing?

THE JUROR: I honestly couldn't tell you. I don't remember. What day was it on, what time? I work second shift.

MS. CONRAD: April 15, 2013.

THE JUROR: What time?

MS. CONRAD: About 2:30, 2:40 in the afternoon.

THE JUROR: I would just be going to work.

MS. CONRAD: Okay. And you don't remember—do you not remember how you found out about the bombings?

THE JUROR: Probably at break while the TVs were on.

MS. CONRAD: It wasn't something that people were talking about when you got to—

THE JUROR: I would just be going to work at three o'clock. I'm not with a bunch of people.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Fri., Feb. 6, 2015  
10:19 a.m.

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**JURY TRIAL—DAY FIFTEEN**

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- and -

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By: DAVID I. BRUCK, ESQ.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[15-153]

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MS. CONRAD: I appreciate your understanding of  
the concepts of needing to be impartial, but part of what  
we're trying to do here is to find out what's in your mind

and what's in your heart. And let me ask you this: Before you ever knew you might be a juror in this case, did you have any opinion one way or another about whether Mr. Tsarnaev was guilty?

THE JUROR: No, I just know what I saw on TV.

MS. CONRAD: Okay. And what did you see on TV?

THE JUROR: Just the hunting down of—you know, when they come up—him being in the boat, and then you hear about the MIT officer and some other shootout when his brother was killed.

MS. CONRAD: So when you saw that on TV, did you draw from that that he was guilty?

THE JUROR: No, I just—I don't know what he was, you know.

MS. CONRAD: Well, did you think it wasn't true?

THE JUROR: No.

MS. CONRAD: Did you think it was true?

THE JUROR: I didn't know.

MS. CONRAD: Did you ever discuss it with anybody?

THE JUROR: Nope.

MS. CONRAD: And where were you on the day of the [15-154] bombing? I'm sorry if the judge already asked you that. I apologize.

THE JUROR: I believe I was at work.

MS. CONRAD: And you said that EMC, the headquarters in Hopkinton, shuts down, right?

THE JUROR: Yes.

MS. CONRAD: So your office doesn't shut down too?

THE JUROR: No, I'm in manufacturing. I'm in a totally different building. I'm in Franklin.

MS. CONRAD: Okay. But I'm still asking whether—because the headquarters shuts down, whether your office shuts down.

THE JUROR: No.

MS. CONRAD: Do you remember when and how you learned about the bombing?

THE JUROR: I think it was near the end of the day, someone on their phone said that there was a—excuse me—a bombing at the marathon.

MS. CONRAD: And did you watch any of the TV footage that day?

THE JUROR: Just when I'm going through and, you know, the news came on with the quick blips and stuff like that.

MS. CONRAD: So you don't recall watching the TV news that evening about—

THE JUROR: No. Like I said, I really don't watch the [15-155] news.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Feb. 11, 2015  
10:26 a.m.

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**JURY TRIAL—DAY SIXTEEN**

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APPEARANCES

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- and -

UNITED STATES DEPARTMENT OF JUSTICE

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Capital Case Section

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CLARKE & RICE, APC

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On Behalf of the Defendant

\* \* \* \* \*

[16-52]

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MS. CLARKE: Okay. You mentioned—let me see if I can find it—on page 19, Question 70, up at the top of page 19—

THE JUROR: Yeah.



MS. CLARKE: —that you listen to the Howie Carr Show two or three times a week?

THE JUROR: Yeah.

MS. CLARKE: Have there been any presentations on that show about this case or about the Tsarnaev family?

THE JUROR: No, no. He's just—not that I know of. I read the *Herald*, you know, like his show. Not that I know of.

MS. CLARKE: And have you heard him talk about or read anything that he's written about the Tsarnaev family?

THE JUROR: Yes.

MS. CLARKE: And what is that?

THE JUROR: What I've read about his family?

MS. CLARKE: Yes.

THE JUROR: Or what Howie's talked about his family?

MS. CLARKE: Yes.

THE JUROR: I think he's mentioned his parents' background and stuff.

MS. CLARKE: Can you tell us what you remember about [16-53] that?

THE JUROR: I know something that he said his mother went back to—or got caught shoplifting or something at the mall, or one of the family members. So that's what I remember.

MS. CLARKE: Does that influence you in any way?

THE JUROR: No, not really.

MS. CLARKE: What was your reaction when you heard that?

THE JUROR: More comical.

MS. CLARKE: More comical? Is that sort of what the Howie Carr Show—

THE JUROR: Yeah, absolutely. If you're from Boston, you know Howie Carr.

MS. CLARKE: You know Howie Carr?

THE JUROR: Absolutely.

MS. CLARKE: Even if you're not from Boston I think you know Howie Carr.

THE JUROR: Okay.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Nov. 12, 2013  
10:02 a.m.

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**STATUS CONFERENCE AND MOTION HEARING**

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APPEARANCES

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- and -

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 On Behalf of the Defendant

\* \* \* \* \*

[40]

\* \* \* \* \*

The government has not responded to our request for any communications among government agents, prosecutors, government officials in general, and communications with the Court regarding Mr. Tsarnaev's request—repeated request both orally and in writing—for a lawyer.

With respect to the government's—our request for information about the Waltham murders and Mr.—and Tamerlan Tsarnaev's alleged involvement in that, the government simply says it's an ongoing investigation. Well, that is a qualified privilege, and under the local rules the government's declination does not carry the day. The Court has an obligation, including in camera inspection, if necessary, to determine whether or not that information should be disclosed.

With respect to the A files and Rule 16, the government's reliance on *United States versus Armstrong*,

frankly, is misplaced because in that case the information that was sought was information that was relevant to a pretrial motion to dismiss based on selective prosecution. What we're seeking here is information, documentary information, that the [41] government has within its possession that we have been denied, even with releases from the individual—signed releases from the individuals concerned, that would assist us in our development of mitigation.

And it seems to me this is precisely the type of area where the Court's supervisory authority comes into play. There is absolutely no reason why this information shouldn't be provided to us, especially under the existing protective order. It would make our work easier. It would be—add to our efficiency in trying to do this. And the government, on the one hand, seems to want to be pushing for an early trial date, and at the same time is withholding information that could give us the ability to move forward more quickly.

Going back, if I might, for one moment to the issue of both surveillance before April 15th and interceptions and tips provided by Russian authorities, the government says this is premature. As I mentioned, it doesn't say when it intends to either disclose this or tell us it has such information. The Classified Information Procedures Act, Section 2, permits any party to request a pretrial conference to address the existence of such information. So it's within the Court's authority to schedule such a conference and to address this.

Your Honor, with respect to the Court's comment that your Honor does not see what we're requesting as *Brady*, I'm frankly somewhat at a loss. I mean, it seems to me we've [42] identified particular areas.

And crucial among those areas are issues regarding the family—Mr. Tsarnaev’s family—issues regarding the relative roles of Tamerlan and Dzhokhar Tsarnaev in the bombings. And it seems to me that those are precisely the core types of issues that go to mitigation and are—and the government’s—

I’m not sure if your Honor is saying that your Honor feels that the disclosures so far are adequate or that those are not issues that go to mitigation. And it would be helpful if your Honor could expand on that.

THE COURT: Your better argument, in my view, is under Rule 16 than under the *Brady* doctrine, which I view as, I guess, more specific and limited than perhaps you do.

MS. CONRAD: Well—

THE COURT: *Brady* is essentially a remedy for what we might call knowing suppression of identified information that is recognizable to the government as exculpatory in the various categories. It is not a general materiality standard as might be more generously available to you under Rule 16.

MS. CONRAD: Well, I understand your Honor’s point, but the government, nevertheless, has an obligation under *Brady* as it’s broadly used. And as we have discussed in some of the cases, they addressed—and we’ve discussed the government’s opposition in which the government talks about materiality.

Materiality is the postconviction standard. And *Brady* [43] does impose an obligation, but it also imposes a remedy. The remedy comes into play when the government has failed to disclose or has suppressed material exculpatory or mitigating evidence.

But the fact that we are in the pretrial stage, I would submit, expands rather than contracts the scope of the government's obligation. And that's something that's recognized in the U.S. Attorney's manual. We cited the case *United States versus Safavian* that talks about the fact that in addressing pretrial disclosure in the pretrial standpoint, the government should—that the withholding of evidence should not be viewed with the benefit of hindsight after trial.

It is true that Rule 16 requires disclosure of material documents and objects, and we believe that that requires the government as well to provide this. But Rule 16, the government notes, also talks about evidence relating to the case-in-chief.

Now, we think that is too narrow a view of the *Armstrong* case. But I think materiality is clearly not the standard under *Brady* in the pretrial posture in which we currently find ourselves.

And it seems to me that some of the cases we cited, including the *Karake* case, the *Delatorre* case, the *Perez* case, the *Ablett* case, all of those are cases in which the government was ordered to provide mitigating evidence in a capital case [44] before notice was filed.

May I just have one—

And I think *McVeigh* addresses this as well. It talks about the government's burden under *Brady* which includes information that is helpful to the defense both with respect to punishment and guilt or innocence.

So, your Honor, I would submit that the government has not complied, and, frankly, the whole tenor of the government's opposition, especially this line about virtually all mitigating evidence, is, you know, We'll give it

to you if we feel like it, when we feel like it. And your Honor has the authority to order full disclosure at this juncture so that we can make effective, and I would stress efficient, use of that information in our development and investigation of this case.

THE COURT: All right. Mr. Weinreb?

MR. WEINREB: Your Honor, I think it is a completely untrue and unfair characterization of the government's motion or of its position in this case of how we've conducted discovery to say that our view has been, We will give you what we want, when we want. On the contrary.

As the Court itself acknowledged in the beginning, as we all have to acknowledge, because it's written in ink in the local rules, there is no requirement that mitigation evidence be produced at any particular time, under Rule 16 or under the local rules. And under the Constitution, it seems clear that [45] *Brady*—to the extent mitigation evidence rises to the level of *Brady*, it need only be produced in time for it to be used.

Notwithstanding that, the government has produced virtually all the mitigation evidence in its possession already; in other words, we have voluntarily stepped up, combed through our files carefully to look for both evidence identified by the defense as mitigating and evidence that in our own judgment could be mitigating, and we have given it to the defense early so that they could make the greatest use of it.

We have not withheld any favorable material information from them and we do not intend to. We have not tacked close to the wind, in a phrase that's favored



by the defense and from *Kyles v. Whitley*; on the contrary, we've erred on the side of caution and we have produced everything that we believe corresponds to genuine categories of—or falls within genuine categories of favorable material evidence that they could use either at trial or in sentencing. In some cases we've given over entire reports. In virtually all cases, we've just given them all the reports even though those reports contain much—much of what's in those reports, under no conceivable standard, could be considered *Brady* or mitigating.

In some cases we've provided complete and accurate summaries of what the witnesses have said that either corresponded to categories identified by the defense as [46] mitigation theories or that we have judged are potentially mitigating. To characterize them as tweets sounds like a statement being made for the benefit of the press, not an argument to the Court.

Obviously, these are not meant to be—maybe I shouldn't say “obviously”—it's obvious to us; I hope it's obvious to the Court—but these are not meant to be bare minimum statements, but rather, complete, accurate, total summaries of all the information that bears on the categories that were identified.

What the government has not produced is unfavorable information, information that we believe we could use against the defense, either at trial or in sentencing, or that we might use to impeach defense witnesses. That is our right under the adversary system.

In asking for access to our files, the defendant is not asserting a right that exists under *Brady*, under Rule 16, under the local rules or under any other law. They

admit in their motion that they don't even know their mitigation theories yet.

If you look at page 6 of the defense reply brief they write, "At this stage the defense does not have fixed mitigation theories; instead, various hypotheses under our investigation in the alternative are not necessarily consistent with each other"—that's what they characterize as their [47] *Brady*—"and therefore," they go on to say, "the attempt to characterize facts as either favorable or unfavorable is a futile attempt." It can't be done.

Essentially what the defense is trying to do here is obliterate the distinction between favorable and unfavorable evidence and say, Since every single nugget of information in your files is potentially favorable to us, you should open it up to us and let us go on a fishing expedition looking for things that we might turn to our advantage.

That obviously is not the law. It's certainly not the law under the Constitution, it's not the law under Rule 16—under any reading of the Rule 16—the local rules, and it's not compatible with the adversary system. To the extent that there is overlap evidence, evidence that could be used both at trial and at sentencing, we have produced it. So that is a nonissue.

As for our asserting, with respect to some specific requests of the defense, that the requests are premature, the purpose of that is, first of all, to raise the general objection that it's all premature, because we believe that as a purely legal matter it is all premature. No legal right to any mitigation evidence has yet attached. The only legal right to mitigation evidence, as I said earlier, exists under the Constitution, and it's clear under *Brady*

that the standard is that it be produced in time for them to make use of it.

[48]

In this case we not only don't have a trial date, but the defense is urging the Court not to set a trial date for months hence. To say that at this point the legal right to all mitigation evidence has attached would be novel under the case law, I believe. Instead, we have asserted that defense simply to make the point that we are producing what we are producing voluntarily, and that in a very few narrow cases, we are essentially still working on certain matters.

And let me turn to the specific requests so that I can address those specifically. Essentially, with respect to Requests 5, 7 and 8, the government's position is not that we have material responsive to those requests and that we are refusing to produce it; our response is that to the extent that there is material responsive to those requests, we will either produce it or we will file an appropriate pleading with the Court. But at this point a motion to compel is premature because there's no legal obligation on our part to produce that information at this time.

With respect to Request 9, which is the information about the Waltham homicide, that's a different matter. That is a matter that is still actively under investigation by the Middlesex District Attorney's Office. For that reason, we have tacked closer to the wind when it comes to information with respect to that investigation. Obviously, as is the case with any criminal investigation,

revealing the details of it while [49] it's still under investigation would have a tendency to jeopardize it, to undermine it.

If there were, in fact, a legal right for the defense to have that information at this point, formal compliance with the requirements of the local rules and so on might be required, but that's simply not the case at this point. The defense cannot articulate a reason why they need all the information relating to that investigation at this point. They may never be able to articulate that kind of argument. But even if they could come up with any kind of argument on that score, they can't possibly show that with respect to that narrow issue they need it now.

The defense spent a great deal of time earlier today talking about how they're so overwhelmed with discovery that it's going to take them months and months and months to go through it, and even more time because they have to write motions simultaneously. For them to say that despite all of that they need the information that falls into these very narrow categories immediately is disingenuous. It is certainly not based in any legal right.

Given what the Court said, let me just address one other thing. With respect to in camera review, the government has nothing to hide. We have complied with our obligations. We have no objection to allowing the Court to review anything that's in our possession to assure compliance with our legal [50] obligations, if that's what the Court desires. We do not, however, think the defense has a legal right to demand that that be the case. They're not entitled to second-guess the government's judgment of whether it has complied with its obligations

under *Brady*. That, under the law, is committed to the government in the first instance.

We have complied with our obligations. And although it is the case that the government sometimes, in cases where it feels uncertain about whether something is *Brady*, asks the Court to review it in camera and render essentially an advisory legal opinion on it, we are not doing so in this case because we're confident that we have fulfilled our obligations by going above and beyond what the law requires in this area.

The defense also said at some point that the Court under its supervisory authority could order that things be produced, such as the A files of people remotely connected to the defendant: friends of his, you know, relatives, cousins, nieces, nephews. The government objects to that. There is no right. The Court cannot, under its supervisory authority, simply create new rules of discovery that the defense can then come in and ask it to compel.

Congress, in writing Rule 16, the court in drafting the local rules, and the Supreme Court in interpreting the Constitution, have created and articulated what the rights to discovery are for the defense, and there's no legal basis for [51] the Court to simply draft new ones because it suits the defense, or they claim it would save them work or allow them to substitute our investigation for theirs.

And that's really what this boils down to, your Honor, from the government's point of view. We are not in any way attempting to inhibit the defense from conducting a thorough investigation of this case. We acknowledged when the indictment was filed, yes, 17 of the charges

carry a potential death penalty. Obviously, it was a potential death penalty case from the start. We did not object to the defense having learned counsel, counsel learned in the death penalty appointed days after the defendant had his initial appearance, indeed, which was months before the indictment was even filed.

The defense has been thoroughly investigating the case since then, including any mitigation case. The government has been investigating its case. Under the adversary system, they don't have to open their files to us and we don't have to open our files to them. To the extent that fairness requires that we produce certain information to them, we've produced it. But we also have an obligation to zealously represent the United States in this case, and to that extent, it's our duty to assert our rights to keep in our own files information that are the fruits of our investigation that we can use down the road in the event that there is a trial and a sentencing phase in this case.

[52]

And that is all we are seeking to do in this case.

MS. CONRAD: May I just respond very briefly, your Honor?

THE COURT: Go ahead.

MS. CONRAD: First of all, I'm going to start with the—down in the weeds and hopefully work my way up a little bit.

On this business about the A files, let's be clear about what we're talking about here. Mr. Weinreb talks about, you know, peripheral people. We're talking about the defendant's nuclear family. We've asked for

other individuals; it is true. We have asked immigration for the A files. We have provided signed release forms. We have been refused. We are now probably going to have to embark on FOIA litigation to get those files, which the government could get with a phone call and provide to us.

Now, if the Court wants to see CJA counsel and CJA-paid investigators spend their time on FOIA litigation to obtain something that we submit these individuals have a legal right to, that the government could provide to us at will, it seems to me that that is a very poor use of judicial resources, especially in this difficult budget time. And I think it falls squarely within Rule 16(a)(1)(E). It is not a new rule. It's been there for a very long time, although it used to be called 16(a)(1)(C), but it still said the same thing, which is [53] documents material to the preparation of the defense. And *Armstrong* doesn't cover it, and the government could provide it and has not offered a single reason why it won't.

And it seems to me that this is illustrative of the government's position throughout this matter. The government keeps saying it doesn't have to provide this information now, but that is because the government is of the—has taken an extremely narrow view of 16(a)(1)(E), and the government also takes a view that is contrary to the decisions in *Perez*, *Karake* and so forth, *Delatorre*, that once there's a capital indictment, we are entitled to mitigation evidence. We are entitled to helpful evidence.

For the government to say, They have their investigators, we have ours, frankly, is ridiculous. Yes, we have investigators. We do not have a network of hundreds, maybe thousands, of law enforcement, FBI agents

all over the world who are working on this case. As your Honor well knows, we have a small group of people who are doing our best with a large amount of information, much of which does not relate to mitigation.

In addition, we do not have a grand jury. I'm not saying we should have one. But frankly, this is not a level playing field. We do not have the power to subpoena witnesses and hold them in contempt if they fail to appear or refuse to testify.

[54]

So the government has all these resources and the government also has, as a result, a proportional obligation to at least level the playing field a little bit. And to say that the Court can't second-guess but has to take their representation at face value that they have provided everything that they're required to, when it is based on a cribbed reading of their obligation, an erroneous view of the timing obligation and an erroneous view of 16(a)(1)(E), it seems to me is just plain wrong.

And for them to say, We've given you virtually all of the discovery evidence, doesn't cut it. We are entitled to all of it. And the Court is entitled to order the government to provide information in an orderly and efficient manner, especially if the government is eager for a trial date as soon as possible. Thank you.

THE COURT: Okay. I'll take the matters under advisement.

And I think, unless there's something else that we haven't touched on—

MR. WEINREB: Nothing for the government.



MR. CHAKRAVARTY: I'm sorry, your Honor. Just excludable delay, your Honor.

MS. CONRAD: Oh, I'm sorry. May I just say one more thing? I apologize.

On the Waltham murder issue, as to that, I would [55] stress that under the relevant cases the Court does have—well, first of all, the government under 116.6 under the local rules bears the burden in showing why that shouldn't be disclosed. And the law enforcement privilege is a qualified privilege as explored in the *In Re Homeland Security* case that we cited in our papers.

So if the government is going to continue to withhold that evidence, we do urge the Court, at a minimum, to look at that material in camera.

MR. WEINREB: Your Honor, we would ask that if we are going to wait to set additional dates in the future, that the defense agree to an order of excludable delay and that the Court enter the order notwithstanding—

THE COURT: Until February 12th, which is our next status conference?

MR. WEINREB: Yes, your Honor.

MS. CLARKE: No problem, your Honor.

THE COURT: I think it's palpably appropriate under the statute, and I'll so order. All right. We'll be in recess. Thank you.

THE CLERK: All rise for the Court.

The Court will be in recess.

(The Court exits the courtroom and the proceedings  
adjourned at 11:31 a.m.)

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Nov. 12, 2014  
10:03 a.m.

---

**STATUS CONFERENCE**

---

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By: JUDY CLARKE, ESQ.  
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On Behalf of the Defendant

\* \* \* \* \*

[12]

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We have no other such reports. If any are produced, we will provide them to the defense when they are produced.

MR. FICK: If I might very briefly, your Honor?

THE COURT: Go ahead.

MR. FICK: On the Waltham issue, first the government suggested that Middlesex is not part of the prosecution team. And that strikes me as an extraordinarily

artificial and erroneous distinction given the way events in all of this transpired.

The investigation of Waltham involving Mr. Tsarnaev that led to all of this sort of hubbub began with the marathon bombings. A joint team of Massachusetts state troopers and FBI agents, according to the Florida Attorney General's report, went down and interviewed Mr. Todashev when the supposed confession was made and when Mr. Todashev was killed. So we have joint federal and state involvement at that point from inception.

We also have in this case a second search warrant for Tamerlan Tsarnaev's Honda CR-V that we cited—a federal [13] search warrant, approved in federal court, submitted by federal agents, that we cited chapter and verse the supposed probable cause they had to believe Tamerlan Tsarnaev might have been involved in the Waltham murders.

So from the very beginning the investigation of Waltham has been a joint federal-state enterprise that flowed out of the marathon bombing investigation. And so for the government to suggest now that they're taking a see-no-evil, hear-no-evil approach, "We don't want to know what Middlesex knows anymore," I would suggest is an artificial attempt to evade its discovery obligations that are clearly set forth in all of the case law.

The second thing that the government argues is that it would not be relevant. And here I think there likely will be litigation around a potential sentencing phase, but for the government to say the only thing that matters is the relative culpability of two individuals within the four corners of what is charged in this case clearly

can't stand up for the case law which says that any potential sentencing phase in terms of mitigation and aggravation, all kinds of factors, both aggravating and mitigating about participants in the crime, can be taken into consideration. So to suggest that Waltham can't be part of that I think is simply not supported in the law.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thurs., Apr. 9, 2015  
9:37 a.m.

---

**STATUS CONFERENCE**

---

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On Behalf of the Defendant

\* \* \* \* \*

[16]

MR. BRUCK: In connection with that, I think I should apprise the Court, first, that we would like to file something responsive to the Waltham motion the government has filed. We had earlier advised that we did



not intend to go into that at the guilt phase, and of course we didn't attempt to. We do intend to raise it, if we're permitted to do so, at the penalty phase; and, in fact, plan to submit a *Touhy* request for an FBI agent with knowledge of the confession of the decedent who implicated Tamerlan Tsarnaev.

That there is further motions in limine that the government has with respect to other bad acts of Tamerlan Tsarnaev is news to us. We think that probably this is going to have to be—we would like written notice of what it is and—so that we can respond to it. Right off the cuff, it is so obvious that the relationship between the older brother and the youngest child in the family is so critical to this story and the question of who Tamerlan Tsarnaev was. His manner of interacting with the world, his violence, his aggressiveness are all parts of the penalty-phase story of the likely relationship between our client and his oldest brother.

There is also testimony the Court has not yet heard concerning the cultural background to this issue, the special dominance of the oldest brother in a Chechen family that is unfamiliar, and we plan to present expert testimony and also lay testimony on that issue.

[17]

So to some degree this is not something that can be resolved—or I think can be best resolved as a pretrial—you know, before the evidence has begun to develop, including our expert and some of our lay testimony that provides the cultural background that one would need to assess relevance and any 403 claim, but it's certainly not something that we can respond to before we know with

more precision other than Waltham what it is the government objects to.

MR. WEINREB: So, your Honor, the motions that the government filed that is still pending was a motion to exclude any reference or evidence of the Waltham triple homicide and any other prior bad acts of Tamerlan Tsarnaev. So that actually was filed months ago and briefed by the government months ago. This isn't the first time the defense is hearing about it.

We didn't specifically enumerate particular bad acts, but we did, I think, set out our theory of the reason to exclude them, which is both relevance, but largely more the penalty-phase equivalent of 403, that in a case where the defense is laying a huge amount of emphasis in their mitigation case on both relative culpability for the crimes that were committed and any influence that Tamerlan Tsarnaev may have had on their client, that the risk that the jury will be confused and misled by evidence of prior bad acts by Tamerlan Tsarnaev of which there's no evidence that the defendant had any idea or [18] influenced him in any way but simply invite the jury to speculate is extremely high. So, again, we don't need to further argue it or resolve it now, but that's simply background.

THE COURT: Well, I think what we'll—

MR. WEINREB: If I may just say one more thing. With respect to Ms. Vogelsang, the other thing I wanted to add is that she was originally noticed as a biopsychosocial expert, and she's now being cast as a social historian. When she was a biopsychosocial expert, we assumed there were going to be opinions made by her relating to biological and psychological evidence. And in

particular, since no psychiatrist or psychologists have been noticed by the defense in light of their withdrawal of their 12.2 notice, it's unclear to us whether Ms. Vogelsang now intends to render opinions of a psychological nature.

We have received no notice of any opinion testimony by her whatsoever, and we assume, therefore, there will not be and she will not be standing in for psychologists or psychiatrists who are not going to testify but she may have consulted with and spoken to and . . .

THE COURT: Can we get a quick answer to that?

MR. BRUCK: Yes. Ms. Vogelsang has not met the client. She is not going to provide opinion testimony. She, in effect, is going to organize so much of the social history [19] and the family history as does not come out through lay witnesses—

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO  
REDACTED

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: Oct. 7, 2013

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**MOTION TO COMPEL DISCOVERY**

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\* \* \* \* \*

*Defense Request # 8. All documents concerning or comprising “tips,” warnings, or other information provided by Russian authorities concerning Tsarnaev family members.*

To each of these two requests, the government responded: “To the extent such information exists, the government will follow all legal requirements respecting its production.” Ex. A at 10.

The government’s evasive answer, which fails to confirm the existence of these materials or the basis on which it will or will not produce them, is unsatisfactory. The defense has a strong basis to believe that materials responsive to both requests exist. *See, e.g., Bender & Bierman, THE BOSTON GLOBE, supra.* To the extent the government is relying upon FISA or other authority to resist disclosure, it still must disclose information that

is relevant and helpful to the defense. *Amawi*, 695 F.3d at 470. Information concerning the development of radical views or suspicious activity by Tamerlan Tsarnaev bears on the relative culpability of the defendant in comparison.

*Defense Request # 9. All documents concerning the investigation of the triple homicide that occurred in Waltham, MA on September 10-11, 2011, including without limitation documents concerning investigation of the alleged involvement of Tamerlan Tsarnaev, Ibragim Todashev, and/or our client in those murders.*

The government responded: [REDACTED]

The government's response is not satisfactory. The law enforcement investigative privilege cannot trump the government's *Brady* obligations. *See Delatorre*, 438 F. Supp. 2d at 902 (ordering government to produce various categories of materials in capital prosecution; "[t]he law enforcement investigatory privilege is not absolute. It can be overridden in appropriate cases by the need for the privileged materials."). Here, evidence about the nature and extent of Tamerlan's alleged involvement in the Waltham murders, and the absence of information about any involvement by our client, provides critical mitigating information.

### **Conclusion**

For the foregoing reasons, this Court should order the Government to produce the requested discovery.

Respectfully submitted,

DZHOKHAR TSARNAEV  
by his attorneys

/s/ WILLIAM FICK  
WILLIAM FICK

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**Certificate of Service**

I hereby certify that true copies of this document and all exhibits have been served by email PDF upon counsel of record for the United States on this 7th day of October, 2013.

/s/ WILLIAM FICK  
WILLIAM FICK

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

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Filed: Oct. 21, 2013

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**GOVERNMENT’S OPPOSITION TO DEFENDANT’S  
MOTION TO COMPEL DISCOVERY**

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\* \* \* \* \*

Defense Request #9. This request is patently overbroad insofar as it seeks “all documents” concerning the investigation of the triple homicide that occurred in Waltham on September 11, 2011, regardless of whether those documents relate to Tsarnaev or his brother. It should be denied on that basis alone.

To the extent this request seeks documents that relate to Ibragim Todashev’s involvement in the triple homicide, it should be denied on the ground that such documents are not discoverable under the Federal or Local Rules of Criminal Procedure or Brady.

To the extent this request seeks documents that relate to Tamerlan Tsarnaev’s involvement in the triple homicide, it is premature. As Tsarnaev concedes, information about his brother’s criminal history will be relevant, if at all, only in a future sentencing hearing to

determine whether Tsarnaev himself should receive the death penalty. As noted earlier, such a hearing may never occur, in which case Tsarnaev will never have a right to the information. And even if such a hearing does occur, many other phases of this case must first be completed.

Without intending to waive any of these arguments, the government has declined to produce all documents relating to the triple homicide investigation pursuant to Local Rule 116.6. It is well-settled that “[f]ederal common law recognizes a qualified privilege protecting investigative files in an ongoing criminal investigation.” In re Department of Homeland Security, 459 F.3d 565, 569 (5th Cir. 2006) (citation omitted) (collecting cases). That privilege can be overcome only if “the harm to the government if the privilege is lifted” is outweighed by the “need of the litigant who is seeking privileged investigative materials.” Id. That test is not met here. The Middlesex District Attorney’s Office is engaged in an active, ongoing investigation into the Waltham triple homicide. Disclosure of the details of that investigation could jeopardize it. Tsarnaev, in contrast, has no urgent need for the privileged investigative materials he seeks. Even assuming, as Tsarnaev claims, that “the nature and extent of Tamerlan’s alleged involvement” in the Waltham triple homicide is “critical mitigation information,” Tsarnaev Mot. at 16, this case has not yet even been set down for a trial date, let alone sentencing.

In any event, the government has already disclosed to Tsarnaev that, according to Todashev, Tamerlan Tsarnaev participated in the Waltham triple homicide. Any benefit to Tsarnaev of knowing more about the precise “nature and extent” of his brother’s involvement



does not outweigh the potential harm of exposing details of an ongoing investigation into an extremely serious crime, especially at this stage of the proceedings.

WHEREFORE, the government respectfully requests that the Court deny Tsarnaev's Motion to Compel Production.

Respectfully Submitted,

CARMEN M. ORTIZ  
United States Attorney

/s/ WILLIAM WEINREB  
WILLIAM WEINREB  
Aloke S. Chakavarty  
Nadine Pellegrini  
Assistant U.S. Attorneys

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

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Filed: Mar. 28, 2014

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**FURTHER MOTION TO COMPEL DISCOVERY OF  
FAVORABLE EVIDENCE**

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\* \* \* \* \*

4. Information obtained during law enforcement interviews with Ibragim Todashev concerning Tamerlan and the 2011 Waltham murders

FBI agents reportedly interviewed Tamerlan's friend Ibragim Todashev on at least two occasions prior to May 22, 2013, when he was shot and killed during questioning by the FBI and state police. Law enforcement has publicly disclosed that Todashev confessed during his final interview that he and Tamerlan Tsarnaev committed the September 11, 2011 Waltham murders together. Todashev's statements to the FBI are also highly likely to have focused on Tamerlan's religious beliefs, his mental condition, his violent behavior apart from the Waltham murders, his trip to Dagestan, and his relationship with his younger brother. The materiality of this infor-

mation to the question of the brothers' relative culpability has already been explained. Indeed, media reports of interviews with Todashev's girlfriend, Tatiana Gruzdeva—who has since been deported—indicate that the earlier police interviews of Todashev focused on Tamerlan and the Boston bombings, and did not even touch on the Waltham murders. The government's unexplained claim that all of this information is protected by the law enforcement investigative privilege—a claim which should be evaluated by the Court, and balanced against the defendant's need for the evidence, see generally, Association for Reduction of Violence v. Hall, 734 F.2d 63 (1st Cir, 1984)—does not excuse its failure to disclose any of the information provided by Todashev and his friends.

As for the Waltham crimes themselves, it should be added that Tamerlan's having committed a gruesome triple murder—and having included a “close friend” among the victims—would powerfully support the inference that Dzhokhar experienced his older brother as an all-powerful force who could not be ignored or disobeyed. Since Todashev was shot and killed by FBI agents while confessing to his role in the Waltham murders, the defense has no remaining source for what Todashev knew other than the government. The Todashev 302s and any other memorialization or records of his May, 2013 interviews are Brady material and should be disclosed.

5. Withheld memoranda of FBI interviews with immediate family members

The defendant's prior Motion to Compel Discovery sought production of unedited FBI 302s (Memoranda of Interviews) with his close family members (hereinafter

“Family 302s”), over and beyond the short summaries of “Brady” material from the 302s that the government had provided. The Court denied this request as overly broad, and because the motion did not specifically identify why the Family 302s themselves were likely to contain exculpatory material. DE 151, at 1-4. The defendant has now spelled out with greater specificity why a broad range of information concerning the defendant’s family is not merely material but critical to his case in mitigation, and on this basis he renews his request for disclosure of these 302s.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: June 13, 2014

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**SUPPLEMENTAL MEMORANDUM RESPECTING**  
**DEFENDANT'S SECOND MOTION TO COMPEL**  
**DISCOVERY OF FAVORABLE EVIDENCE**  
**(TODASHEV STATEMENTS CONCERNING**  
**WALTHAM MURDERS)**

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The Court currently has pending before it the defendant's request, DE 233 at 19-20, to compel disclosure of statements made by Ibragim Todashev describing Tamerlan Tsarnaev's alleged murders of three people in Waltham, Massachusetts on September 11, 2011. On April 25, at the Court's direction, the government submitted "items relating to Ibragim Todashev . . . for an in camera ex parte review." DE 266. Since the submissions were made ex parte, defense counsel do not, of course, know what these items are. When it first ordered the in-camera submissions, the Court appears to have assumed that the best evidence of the Todashev statements regarding the Waltham murders would be contained in FBI 302s:

THE COURT: What's the volume of this material?

MR. WEINREB: Are you referring to the material—

THE COURT: The 302s.

MR. WEINREB: Solely related to any purported involvement by Tamerlan Tsarnaev in both murders?

THE COURT: Both, I guess.

MR. WEINREB: I would say not great.

THE COURT: Well, my thought is I may review it in camera.

Transcript of 4/16/2014 Hearing at 21, DE 270.

The March 28, 2014 defense request which led to this submission was for “[t]he Todashev 302s *and any other memorialization or records* of his May, 2013 interviews” with the FBI (emphasis added). DE 233 at 20. To be sure, when defense counsel filed this discovery request on March 28, we had not yet had the opportunity to scrutinize a 161-page report by the State’s Attorney for the Ninth Judicial Circuit of Florida, released just three days earlier, that revealed that the Massachusetts State Police had created no fewer than four video (with audio) recordings and one audio-only recording of the Todashev interviews on the night he was killed.<sup>1</sup> The full Florida State’s Attorney’s report is attached to this

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<sup>1</sup> After a careful review of the Florida state investigative report that could not have been conducted in the few days between its release and our last discovery motion deadline, as well as additional public information that has become available since then, we have identified many additional items regarding Todashev and Tamerlan’s involvement in the Waltham murders that should be provided to us. We will be requesting by letter in the very near future that the government furnish this evidence.

filing. The pertinent portion of the report, found at page 42, reads as follows:

Three recording devices were used by the MSP at various times during the interview due to battery life. This resulted in a total of four video recordings with audio and one audio only recording. The recordings captured the majority of the interview and confession of Todashev . . .

It is entirely possible, of course, that the government has already provided these MSP electronic verbatim recordings to the Court for its in-camera review. Out of an abundance of caution, however, counsel wish to bring the existence of these recordings to the Court's attention, in case the government's in-camera submission did not include them.

The electronic recordings of the Todashev interviews disclosed by the Florida state investigators' March, 2014 report would have been the best evidence of what Todashev said about Tamerlan Tsarnaev under any circumstances. But the fatal ending of the FBI's May 22, 2013 interview with Todashev, and the controversy that followed, provide particular reasons why the Court should examine the actual video and audio recordings of the Todashev statements, rather than confining its review to second-hand renditions by the very FBI agent whose conduct has been under intense scrutiny ever since.

As Dzhokhar Tsarnaev's prior filings have made clear, any sentencing proceeding in this case will likely center on a comparison of the defendant's character, record, and conduct with those of his considerably older brother. Had the FBI not killed Todashev in the middle of his description of Tamerlan's commission of a bloody

triple-murder, Todashev's in-court description of Tamerlan's violence and brutality on September 11, 2011, would have been an important part of the story. Indeed, were Todashev appearing as a mitigation witness to describe Tamerlan's behavior and character as exemplified by the sequence of events leading to the Waltham murders, it is hard to imagine that the government would even object. In addition, how Tamerlan induced Todashev to participate in this very serious crime may shed light on the process by which he allegedly drew his younger brother into violence some 19 months later. Given that the FBI has rendered Todashev forever unavailable as a mitigation witness—and because the Rules of Evidence do not apply at the penalty phase of a capital case under the Federal Death Penalty Act, 18 U.S.C. § 3593(c)—the defendant submits that he is entitled to obtain the best surviving evidence of Todashev's eyewitness account of Tamerlan's murderous behavior. And that evidence is the MSP's actual contemporaneous recording of Todashev's account, not the subsequent memorialization of that account by the very agents who killed him before he finished it.

### **CONCLUSION**

For the foregoing reasons, counsel for the defendant Dzhokhar Tsarnaev renew their request that the government be required to disclose all eyewitness and other accounts by the late Ibragim Todashev of murders committed by Tamerlan Tsarnaev on or about September 11, 2011, and that such disclosure include the best evidence of Todashev's statements, which are the contemporaneous video and audio recordings made by the Massachusetts State Police on May 22, 2013.



Respectfully Submitted,

DZHOKHAR TSARNAEV  
By his attorneys

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**Certificate of Service**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on June 13, 2014.

/s/ MIRIAM CONRAD  
MIRIAM CONRAD

[Florida State Attorney's Office report on Agent-  
Involved Shooting of Ibragim Todashev]

INVESTIGATION REPORT  
CASE NUMBER: 2013-IN-0063

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**CASE BACKGROUND:**

Shortly after the Boston Marathon bombing, which occurred on April 15, 2013, Federal and State law enforcement agencies identified bombing suspects, **Dzhokhar** and **Tamerlan Tsarnaev**, as criminally responsible for the deaths of three (3) civilians, one (1) police officer and for the injuries of numerous others. According to documents provided by the Federal Bureau of Investigation (FBI), **Ibragim Todashev** was contacted on April 21, 2013, due to his association with bombing suspect **Tamerlan Tsarnaev**. During the course of the FBI's ongoing, open and active criminal investigation, members of the Massachusetts State Police and the FBI Field Office in Boston established **Mr. Todashev** was residing in Orlando, Florida. The assistance of the FBI Field Office in Tampa was then requested by the investigators in Boston. The FBI Resident Agency (ORA) in Orlando was contacted and the **TF Officer** was assigned to assist with the investigation of **Mr. Todashev**. Based on information discovered by law enforcement officers in Boston, **Mr. Todashev** was determined to be a person of interest regarding a triple homicide, which occurred in Waltham, Massachusetts on September 11, 2011.

**Note:** The spelling of **Mr. Todashev's** name, by the authors of the FBI documents; "**Todashev**" and

“*Todoshev*,” are quoted as they actually appear throughout the narratives reviewed.

In one of the first FBI documents<sup>6</sup> reviewed, titled *Synopsis Agent-Involved Shooting*, the narration indicates the following:

“ . . . *In the weeks following, Tampa* [TF Officer and other members of the [REDACTED] FBI Office] *conducted interviews with Todashev and received information indicating Todashev’s possible involvement in a triple homicide in Waltham, Massachusetts on 09/11/2011. Based on this information Boston (BS) Field Office SA* . . . [FBI Agent], *Massachusetts State Police (MSP) Troopers* . . . [Trooper One and Trooper Two], *and TP TFO* . . . [TF Officer] *planned to conduct an interview of Todashev in Orlando, Florida at Todashev’s apartment.* . . . “[Paragraph one]

The interview of **Mr. Todashev** was conducted inside his home address of 6022 Peregrine Avenue. The following excerpt is also taken from this document:

“ . . . *On 05/22/2013 the interview of Todashev took place at his apartment located at 6022 Peregrine Avenue, Orlando, Florida 32819. The interview was conducted by the LEOs [Law Enforcement Officers] and lasted approximately five hours from 7:30 PM to 12:00 AM. During that time* . . . [FBI Agent] *and the two Troopers were in the apartment questioning Todashev about his connection to the triple homicide.* . . . [TF Officer] *remained outside of*

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<sup>6</sup> The aforementioned FBI document is memorialized as attachment number 8, pages 27-28.

*the apartment providing security for the duration of the interview. About 12:00 AM . . . [Trooper Two] stepped outside of the apartment to call a prosecutor in Boston, to explain Todashev had confessed to a role in the triple homicide [REDACTED].”*  
**[Emphasis added, Paragraph two]**

Based on the information provided, when **Trooper Two** exited **Mr. Todashev’s** apartment for the purpose of making contact with the prosecutor in Boston, **Mr. Todashev** attacked the two remaining officers, **Trooper One** and the **FBI Agent**. What is described as a sudden attack by **Mr. Todashev** led to a serious head injury to the **FBI Agent**. Reportedly, the ongoing aggressive behavior of **Mr. Todashev** led to the use of deadly force by the injured **FBI Agent**. The following excerpts are taken from the aforementioned FBI document:

*“ . . . At approximately 12:04 AM Todashev was in the process of writing a confession . . . when he suddenly attacked. He flipped the table he was writing on which was believed to have struck . . . [the FBI Agent] in the head and ran to the kitchen. Todashev was heard frantically grabbing items in the kitchen and reappeared in the doorway wielding a long metal handle of a mop or broom. He [Mr. Todashev] took an attack stance with the weapon, . . . [the FBI Agent] issued verbal commands, to which Todashev did not comply, and violently lunged towards . . . [the FBI Agent] and . . . [Trooper One].”* [Paragraph three]

*“Having already been wounded and fearing for his safety, . . . [FBI Agent] fired 3-4 rounds striking Todashev. Todashev went down on his knees momentarily then ‘sprang’ to his feet and launched to*

*attack again. . . . [FBI Agent] fired another 3-4 rounds dropping Todashev to the floor. . . . [FBI Agent] fired seven shots in total, Todashev was hit seven times with fatal shots to his head and piercing his heart. He [Mr. Todashev] was instantly incapacitated and died on the scene . . . “ [Paragraph three]*

The scene was secured by the officers involved and an investigation was initiated by the FBI. **Mr. Todashev’s** body was later recovered by the District Nine Medical Examiner’s Office and an autopsy<sup>7</sup> was conducted on “*May 22, 2013 at 11:00 am.*” The *Report of Autopsy* authored by Doctor Gary Lee Utz indicates the cause of **Mr. Todashev’s** death was due to “*Multiple gunshot wounds*” and the manner of his death was ruled a “*Homicide.*”

\* \* \* \* \*

### Summary

During the course of Federal and State investigative efforts surrounding Boston Marathon bombing suspect Tamerlan Tsarnaev, **Ibragim Todashev** became a person of interest in a triple homicide which occurred in Waltham, Massachusetts on September 11, 2011. On May 21, 2013, Federal and State Law Enforcement Officers from Massachusetts and Florida made contact with **Mr. Todashev** in Orlando, Florida. Prior to contact being made on this date, each of the officers involved was aware **Mr. Todashev** was a skilled Mixed Martial Arts (MMA) fighter. During the course of a non-custodial,

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<sup>7</sup> The aforementioned autopsy was documented by Medical Examiner report case number **ME 13-00623** and is memorialized as attachment numbers 1, pages 1-16, and 2, pages 17-19.

consensual interview, which occurred in the confined space of **Mr. Todashev's** apartment, **Mr. Todashev** spontaneously attacked and struck the **FBI Agent** with a coffee table, causing a *laceration* to the back of the **FBI Agent's** head. **Mr. Todashev** then ran past both officers towards the kitchen area of the apartment. As **Mr. Todashev** armed himself with a broomstick type pole, he aggressively charged back towards **Trooper One** and the **FBI Agent** in a manner they both perceived as being life threatening.

Based on the actions of **Mr. Todashev**, the **FBI Agent** responded to the imminent threat by discharging his firearm at **Mr. Todashev**. During the initial volley of gunfire, **Mr. Todashev** twisted his upper torso twice as he was being struck by the projectiles. This caused **Mr. Todashev** to pause during his attack. As **Mr. Todashev** regained his footing and made a headlong lunge towards the officers, the **FBI Agent** continued to engage the threat by discharging a second volley of gunfire at **Mr.**

**Todashev**. The **FBI Agent** fired his issued handgun a total of seven (7) times in an effort to eliminate the threat posed by **Mr. Todashev**.

Given the totality of the circumstances at the time of this incident, in my opinion, the use of deadly force by the **FBI Agent** on May 22, 2013, was reasonable and justified, and therefore, lawful.

/s/ ERIC EDWARDS  
 ERIC EDWARDS  
 State Attorney's Office  
 Ninth Judicial Circuit of Florida  
 Chief of Investigations

03/17/2014  
 Date

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

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Filed: Oct. 10, 2014

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**MOTION TO COMPEL DISCOVERY**

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\* \* \* \* \*

Our request was clear—we asked for access to the full report. We did so in part because the chronology included in report was prefaced by the statement that “[m]any of the activities and events that occurred during the period [prior to the Marathon Bombing] cannot be included in this unclassified summary.” Given that the subject matter of the chronology is the activities of older, dominant members of Dzhokhar’s family—notably Tamerlan and Zubeidat—it appears that the classified report contains additional information that is mitigating with respect to Dzhokhar because it tends to demonstrate Tamerlan’s (and perhaps others’) dominance, leadership, priority, and control. For this reason, an itemization of unclassified materials mentioned in the publicly-available summary cannot substitute for access to the entire classified report.



Exhibit F. By letter dated August 15, the government stated: “We have conducted a thorough review of all of the information that underlies the references in the OIG report cited in your letter. The review revealed no additional discoverable information. Accordingly, we decline this request.” Exhibit G.

The government should be required to submit the OIG report to the Court for *in camera* review.

### **Waltham Murders**

The defense previously moved to compel the production of information and evidence concerning a 2011 triple homicide in Waltham, allegedly committed by Tamerlan Tsarnaev and Ibragim Todashev. The government declined production on the basis of the law enforcement investigation privilege. The Court, after ordering production of Ibragim Todashev’s statements for *in camera* review, ultimately denied the motion without comment. This issue is now ripe for renewed examination (including the continuing viability and weight of any investigative privilege) as the trial nears.

Simply put, information and evidence tending to show that Tamerlan Tsarnaev participated in a triple homicide in 2011, and information depicting the brutality of those murders, is critical to the defense case in mitigation. Such evidence would tend to corroborate Tamerlan’s dominant role in the charged offenses and would place the brothers’ respective personal characteristics and relative culpability into stark relief.

More narrowly, even the government has conceded that evidence concerning Tamerlan’s participation in Waltham murders might be relevant if Dzhokhar were

aware of it. *See, e.g.*, DE 243 at 24.<sup>2</sup> By letter dated August 15, 2014, the government disclosed that an identified witness would be prepared to testify that Dzhokhar had such awareness. *See* Sealed Exhibit H. Thus, Tamerlan’s alleged role in the Waltham murders is now relevant even on the government’s crabbed reasoning.

For these reasons, evidence of Tamerlan’s role in the Waltham murders and evidence concerning the brutality of those murders should be produced.

#### **Zubeidat Tsarnaeva’s Emails**

The government has produced in discovery certain e-mails from “yahoo.com” attributed to defendant’s mother Zubeidat Tsarnaeva, for which the government obtained and executed a search warrant. By letter dated July 29, 2014, the defense requested production of a forensic copy of the search warrant return from Yahoo. *See* Exhibit I.

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<sup>2</sup> “Even assuming Tamerlan participated in the triple homicide, the defense has not even alleged that Dzhokhar Tsarnaev knew about Tamerlan’s purported involvement. Absent such knowledge, there is simply no logical connection between Tamerlan’s purported involvement in the murders and Dzhokhar Tsarnaev’s experience of Tamerlan.” Government’s Opposition to Defendant’s Motions to Compel at 24, DE 243 (April 11, 2014).



U.S. Department of Justice

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Aug. 15, 2014

**BY ELECTRONIC MAIL**

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 William Fick, Esq.  
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Re: United States v. Dzhokhar Tsarnaev, Crim.  
No. 13-10200-GAO

Dear Counsel:

We write to provide you with the following information.

In recent discussions with Assistant U.S. Attorneys prosecuting the case of United States v. Dias Kadyrbayev, Robert Stahl, Mr. Kadyrbayev's attorney, told the prosecutors that he believed that Mr. Kadyrbayev,

may be able to provide information along the following lines:

- Kadyrbayev learned in the fall of 2012 from Dzhokhar Tsarnaev that Tamerlan Tsarnaev was involved in the Waltham murders;
- Dzhokhar Tsarnaev told Kadyrbayev that his brother “had committed jihad” in Waltham;
- Tamerlan Tsarnaev had a knife collection;
- Tamerlan Tsarnaev had possession of a gun, which he got rid of before being interviewed by law enforcement;
- Dzhokhar Tsarnaev had a conversation with Kadyrbayev approximately one month before the Marathon bombings during which he told Kadyrbayev and Tazhayakov that he knew how to make a bomb and discussed the virtues of being a Shaheed and of martyrdom;
- Starting in January 2013 and continuing until April 2013, Kadyrbayev noticed a change in Dzhokhar Tsarnaev’s demeanor and behaviors. For example, Tsarnaev stopped drinking and smoking, began praying more, started regularly watching Islamic videos on YouTube, showed jihadi videos to Kadyrbayev, did not socialize as much with Kadyrbayev, made up excuses as to why he couldn’t spend time with Kadyrbayev, and did not attend Kadyrbayev’s birthday celebration or travel with Kadyrbayev and Tazhayakov for spring break;
- Dzhokhar Tsarnaev obtained a gun from Silva;

- Dzhokhar Tsarnaev obtained ammunition for that gun from Silva's residence without Silva's knowledge;
- Kadyrbayev and Dzhokhar Tsarnaev exchanged text messages about Tsarnaev's desire for a gun and about how he intended to lie to Silva to keep the gun that Silva loaned him; and
- Kadyrbayev did not see the gun Silva gave to Tsarnaev but did see the ammunition.

This information was provided orally by Mr. Stahl. This letter is a complete and accurate summary of Mr. Stahl's statements, to the best of the AUSAs' ability to remember them. This information should be treated as sensitive under the terms of the protective order.

Very truly yours,

CARMEN M. ORTIZ  
United States Attorney

By: /s/ ALOKE CHAKRAVARTY  
ALOKE CHAKRAVARTY  
William Weinreb  
Nadine Pellegrini  
Assistant U.S. Attorneys

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

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Filed: Oct. 24, 2014

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**GOVERNMENT'S OPPOSITION TO DEFENDANT'S  
FOURTH MOTION TO COMPEL**

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\* \* \* \* \*

7. Offices of Inspectors General ("OIG") report. Tsarnaev has offered no reason whatsoever to doubt the government's representation that it reviewed the April 14, 2014, classified OIG report concerning the Marathon bombings in light of the portions of the unclassified OIG report cited by Tsarnaev in his discovery request and determined that it contains no additional discoverable information. Consequently, there is no basis for ordering an in camera review of the classified report.

8. Waltham triple homicide. The government informed Tsarnaev over a year ago that Ibragim Todashev told police that Tamerlan Tsarnaev participated in the Waltham triple homicide. Tsarnaev subsequently moved for production of any written or recorded account of Todashev's statement concerning Tamerlan Tsarnaev's involvement. The government opposed the motion on

the grounds that production of any such writing or recording (as opposed to the information itself) was not required by the rules of discovery and would needlessly jeopardize the Middlesex District Attorney's ongoing investigation of the triple homicide. After reviewing pertinent materials in camera, the Court denied the motion to compel.

Nothing has occurred to warrant reconsideration of the Court's earlier ruling. The government has no additional evidence that Tamerlan Tsarnaev participated in the Waltham triple homicide. And we have been informed by the Middlesex District Attorney that her investigation of the Waltham murders remains active and ongoing.

As the government previously pointed out, moreover, the defense has not articulated a mitigation theory that would make Tamerlan Tsarnaev's *actual* participation in the Waltham triple homicide relevant. If Tamerlan Tsarnaev actually participated in that crime but Dzhokhar Tsarnaev knew nothing about it, then Tamerlan's participation could have had no bearing on Dzhokhar Tsarnaev's mental state. If, on the other hand, Dzhokhar Tsarnaev *believed* his brother had committed the Waltham murders, then it makes no difference from a mitigation standpoint whether Tamerlan committed the murders or not, and the facts related to the murders would similarly be irrelevant.

Tsarnaev's motion inaccurately states that "the government disclosed that an identified witness would be prepared to testify that Dzhokhar had such awareness" (i.e. awareness of his brother's involvement in the Waltham murders). In fact, the government disclosed only that a *third party* had informed the government that

there was someone who might say such a thing. Whether that person would actually say it, let alone testify to it, is another matter entirely. In any event, as noted above, the government has no evidence that Tamerlan Tsarnaev actually participated in the Waltham murders, so there is nothing to produce.

9. Zubeidat Tsarnaeva's emails. Local Rule 116.1(C)(1)(b) requires production of a search warrant return only if the search warrant (1) was for the defendant's property or (2) resulted in the seizure of evidence that the government intends to use in its case-in-chief. Neither is the case here. The government has produced all of the actual emails that are even arguably required by the rules of discovery.

#### CONCLUSION

WHEREFORE, the government respectfully requests that the Court deny Tsarnaev's Motion to Compel.

Respectfully Submitted,

CARMEN M. ORTIZ  
United States Attorney

/s/ WILLIAM WEINREB  
WILLIAM WEINREB  
Aloke S. Chakavarty  
Nadine Pellegrini  
Assistant U.S. Attorneys



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

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Filed: Apr. 24, 2015

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**SUPPLEMENTAL MEMORANDUM IN OPPOSITION**  
**TO GOVERNMENT'S MOTION IN LIMINE TO**  
**PRECLUDE ANY REFERENCE TO WALTHAM**  
**TRIPLE HOMICIDE OR OTHER ALLEGED BAD**  
**ACTS OF TAMERLIN TSARNAEV**

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Defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully submits this supplemental memorandum in opposition to the government's Motion in Limine to Preclude Any Reference to Waltham Triple Homicide or Other Alleged Bad Acts of Tamerlan Tsarnaev. [DE 867 (filed under seal).]

At the motion hearing on April 13, 2014, the Court inquired whether there was any activity on Tamerlan Tsarnaev's laptop computer associated with the Waltham murders that took place on September 11, 2011. Counsel was unaware of any, and on further reflection realized that there could not be any such evidence because Tamerlan's Samsung laptop (1W3), was not initially configured until months later, on December 21, 2011. *See*

Trial Exhibit 3308. It is not known what if any computer Tamerlan Tsarnaev principally used in September 2011.

However, review of the internet search history on Katherine Tsarnaeva's MacBook Pro computer reveals the following activity approximately one week after the murders:

| <u>Date (UTC)</u> | <u>Search Term</u>      |
|-------------------|-------------------------|
| 9/18/11 14:04     | 3 men killed in waltham |
| 9/19/11 05:15     | men kill in waltham     |
| 9/19/11 05:18     | tamerlan tsarnaev       |

*See Ex. A* (excerpt of search history, attached).

This activity provides additional circumstantial evidence of a connection between Tamerlan Tsarnaev and the Waltham homicides, whether the searches were conducted by Katherine Tsarnaeva or Tamerlan Tsarnaev himself.

Respectfully Submitted,

DZHOKHAR TSARNAEV  
By his attorneys

/s/ [ILLEGIBLE]

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, A/K/A “JAHAR TSARNI,”  
DEFENDANT

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Filed: May 15, 2015

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**PENALTY PHASE VERDICT**

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**SECTION I. AGE OF DEFENDANT**

**General directions for Section I:**

- As used in this section, the term “capital counts” refers to:

Count One (1): Conspiracy to use a weapon of mass destruction resulting in death of Krystle Marie Campbell, Officer Sean Collier, Lingzi Lu, and Martin Richard

Count Two (2): Use of a weapon of mass destruction (Pressure Cooker Bomb #1) on or about April 15, 2013, in the vicinity of 671 Boylston Street in Boston, Massachusetts, and aiding and abetting, resulting in death of Krystle Marie Campbell

Count Three (3): Possession or use of a firearm (Pressure Cooker Bomb #1) during and in relation to a crime of violence, namely, use of a weapon of mass destruction as in Count Two of this section, and aiding and abetting, resulting in death of Krystle Marie Campbell

Count Four (4): Use of a weapon of mass destruction (Pressure Cooker Bomb #2) on or about April 15, 2013, in the vicinity of 755 Boylston Street in Boston, Massachusetts, and aiding and abetting, resulting in deaths of Lingzi Lu and Martin Richard

Count Five (5): Possession or use of a firearm (Pressure Cooker Bomb #2) during and in relation to a crime of violence, namely use of a weapon of mass destruction as in Count Four of this section, and aiding and abetting, resulting in deaths of Lingzi Lu and Martin Richard

Count Six (6): Conspiracy to bomb a place of public use, resulting in deaths of Krystle Marie Campbell, Officer Sean Collier, Lingzi Lu, and Martin Richard

Count Seven (7): Bombing of a place of public use (Pressure Cooker Bomb #1) on or about April 15, 2013, in the vicinity of 671 Boylston Street, Boston, Massachusetts, and aiding and abetting, resulting in death of Krystle Marie Campbell

Count Eight (8): Possession or use of a firearm (Pressure Cooker Bomb #1) during and in relation to a crime of violence, namely, the bombing of a place of public use as in Count Seven of this

section, and aiding and abetting, resulting in death of Krystle Marie Campbell

Count Nine (9): Bombing of a place of public use (Pressure Cooker Bomb #2) on or about April 15, 2013, in the vicinity of 755 Boylston Street, Boston, Massachusetts, and aiding and abetting, resulting in deaths of Lingzi Lu and Martin Richard

Count Ten (10): Possession or use of a firearm (Pressure Cooker Bomb #2) during and in relation to a crime of violence, namely, the bombing of a place of public use as in Count Nine of this section, and aiding and abetting, resulting in deaths of Lingzi Lu and Martin Richard

Count Twelve (12): Malicious destruction of property by means of an explosive (Pressure Cooker Bomb #1) on or about April 15, 2013, in the vicinity of 671 Boylston Street in Boston, Massachusetts, and aiding and abetting, resulting in death of Krystle Marie Campbell

Count Thirteen (13): Possession or use of a firearm (Pressure Cooker Bomb #1) during and in relation to a crime of violence, namely, the malicious destruction of property as in Count Twelve of this section, and aiding and abetting, resulting in death of Krystle Marie Campbell

Count Fourteen (14): Malicious destruction of property by means of an explosive (Pressure Cooker Bomb #2) on or about April 15, 2013, in the vicinity of 755 Boylston Street in Boston, Massachusetts, and aiding and abetting, resulting in deaths of Lingzi Lu and Martin Richard

Count Fifteen (15): Possession or use of a firearm (Pressure Cooker Bomb #2) during and in relation to a crime of violence, namely, malicious destruction of property as in Count Fourteen of this section, and aiding and abetting, resulting in deaths of Lingzi Lu and Martin Richard

Count Sixteen (16): Possession or use of a firearm (Ruger P95 9mm semiautomatic handgun) on or about April 18, 2013, during and in relation to a crime of violence, namely, conspiracy to use a weapon of mass destruction as in Count One of this section, and aiding and abetting, resulting in death of Officer Sean Collier

Count Seventeen (17): Possession or use of a firearm (Ruger P95 9mm semiautomatic handgun) on or about April 18, 2013, during and in relation to a crime of violence, namely, conspiracy to bomb a place of public use as in Count Six of this section, and aiding and abetting, resulting in death of Officer Sean Collier

Count Eighteen (18): Possession or use of a firearm (Ruger P95 9mm semiautomatic handgun) on or about April 18, 2013, during and in relation to a crime of violence, namely, conspiracy to maliciously destroy property, and aiding and abetting, resulting in death of Officer Sean Collier

- In this section, please indicate whether you unanimously find the government has established beyond a reasonable doubt that the defendant, Dzhokhar Tsarnaev, was eighteen (18) years of age or older at the time of the offense

charged under the particular capital count. You must mark one of the responses.

**1. Dzhokhar Tsarnaev was eighteen (18) years of age or older at the time of the offense charged under the particular capital count.**

  √   We unanimously find that this has been proved beyond a reasonable doubt with regard to all of the capital counts.

       We do not unanimously find that this has been proved beyond a reasonable doubt with regard to any of the capital counts.

       We unanimously find that this has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**Directions:**

- For each capital count, if you do not unanimously find the government has proven beyond a reasonable doubt the defendant was eighteen years of age or older at the time of the offense charged under the particular capital count, then your deliberations are over as to that count.
- If there is no capital count for which you unanimously find the government has proven beyond a reasonable doubt the defendant was eighteen years of age or older at the time of the offense, skip forward to Section VII and complete that section in accordance with the directions there.



Then notify the Court that you have completed your deliberations.

- If you have found the government has proven beyond a reasonable doubt the defendant was eighteen years of age or older at the time of the offense charged with regard to one or more capital counts, continue on to Section II.

## **SECTION II. GATEWAY FACTORS**

### **General directions for Section II:**

- As used in this section, the term “capital count(s)” refers only to those counts for which you found the defendant was eighteen years of age or older at the time of the offense charged under the particular count in Section I. Do not consider gateway factors in this section with regard to any counts for which you have not found the defendant was eighteen years of age or older at the time of the offense charged under the count in Section I.
- In this section, please indicate which, if any, of the following gateway factors you unanimously find the government has proven beyond a reasonable doubt. For each of the four gateway factors listed below, you must mark one of the responses.

**1. Dzhokhar Tsarnaev intentionally killed the victim or victims of the particular capital count you are considering.**

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

√ We unanimously find that this has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

[1, 4, 5, 6, 9, 10, 14, 15]

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**2. Dzhokhar Tsarnaev intentionally inflicted serious bodily injury that resulted in the death of the victim or victims of the particular capital count you are considering.**

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

√ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

[1, 4, 5, 6, 9, 10, 14, 15]

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3. **Dzhokhar Tsarnaev intentionally participated in an act, contemplating that the life of a person would be taken or intending that lethal force would be used in connection with a person, other than one of the participants in the offense, and the victim or victims of the particular capital count you are considering died as a direct result of the act.**

  √   We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

       We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

       We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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4. **Dzhokhar Tsarnaev intentionally and specifically engaged in an act of violence, knowing that the act created a grave risk of death to a person, other than one of the participants in the offense, such that participation in the act constituted a reckless disregard for human life and the victim or victims of the particular capital count you are considering died as a direct result of the act.**

√ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**Directions:**

- For each capital count you are considering in this section, if you do not unanimously find the government has proven beyond a reasonable doubt at least one of the above gateway factors with respect to that count, then your deliberations are over as to that count.
- If there is no capital count for which you unanimously find a gateway factor has been proved beyond a reasonable doubt, skip forward to Section VII and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.
- If you have found at least one gateway factor with regard to one or more capital counts, continue on to Section III.

**SECTION III. STATUTORY AGGRAVATING  
FACTORS**

**General directions for Section III:**

- As used in this section, the term “capital count(s)” refers only to those counts for which you found the defendant was eighteen years of age or older at the time of the offense charged under the count in Section I and at least one gateway factor in Section II. Do not consider statutory aggravating factors in this section with regard to any counts for which you have not found the defendant was eighteen years of age or older at the time of the offense charged under the count in Section I and at least one gateway factor in Section II.
  - In this section, please indicate which, if any, of the following six (6) statutory aggravating factors you unanimously find the government has proven beyond a reasonable doubt. For each of the six statutory aggravating factors listed below, you must mark one of the responses.
1. **The death, and injury resulting in death, occurred during the commission and attempted commission of, and during the immediate flight from the commission of, an offense under:**
    - a. **18 U.S.C. § 2332a (use of a weapon of mass destruction) [Applies to all capital counts; and/or**
    - b. **18 U.S.C. § 844(i) (destruction of property affecting interstate commerce by explosives) [Only applies to capital counts 1-10 and 12-15.]**

√ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**2. Dzhokhar Tsarnaev knowingly created a grave risk of death to one or more persons in addition to the victim of the offense in the commission of the offense and in escaping apprehension for the violation of the offense. [Applies to all capital counts.]**

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

√ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital

counts. *Identify each count by count number.*

[1, 4, 5, 6, 9, 10, 14, 15]

[16, 17, 18]

3. **Dzhokhar Tsarnaev committed the offense in an especially heinous, cruel and depraved manner in that it involved serious physical abuse to the victim. [Only applies to capital counts 1-10 and 12-15.]**

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

√ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

[1, 4, 5, 6, 9, 10, 14, 15]

4. **Dzhokhar Tsarnaev committed the offense after substantial planning and premeditation to cause the death of a person and commit an act of terrorism. [Only applies to counts 1-10 and 12-15.]**

√ We unanimously find that this factor has been proved beyond a reasonable doubt

with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**5. Dzhokhar Tsarnaev intentionally killed and attempted to kill more than one person in a single criminal episode. [Only applies to capital counts 1-10 and 12-15.]**

  ✓   We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*



- 
- 
6. Dzhokhar Tsarnaev is responsible for the death of a victim, Martin Richard, who was particularly vulnerable due to youth. [Only applies to capital counts 1, 4, 5, 6, 9, 10, 14, and 15.]

√ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**Directions:**

- For each capital count you are considering in this section, if you do not unanimously find the government has proven beyond a reasonable doubt at least one of the above statutory aggravating factors with respect to that count, then your deliberations are over as to that capital count.

- If there is no capital count for which you unanimously find at least one statutory aggravating factor has been proved beyond a reasonable doubt, skip forward to Section VII and complete that section in accordance with the directions there. Then notify the Court that you have completed your deliberations.
- If you have found one or more statutory aggravating factors with regard to one or more capital counts, continue on to Section IV.

**SECTION IV. NON-STATUTORY  
AGGRAVATING FACTORS**

**General directions for Section IV:**

- As used in this section, the term “capital count(s)” refers only to those counts for which you have found that the defendant was eighteen years of age or older at the time of the offense charged under the count in Section I, and at least one gateway factor in Section II, and at least one statutory aggravating factor in Section III. Do not consider non-statutory aggravating factors in this section with regard to the counts for which you have not found that the defendant was eighteen years of age or older at the time of the offense charged under the count in Section I, and at least one gateway factor in Section II, and at least one statutory aggravating factor in Section III.
  - In this section, please indicate which, if any, of the following six (6) non-statutory aggravating factors you unanimously find the government has proven beyond a reasonable doubt. For each of the proposed factors, you must mark one of the responses provided.
1. **In conjunction with committing acts of violence and terrorism, Dzhokhar Tsarnaev made statements suggesting that others would be justified in committing additional acts of violence and terrorism against the United States. [Applies to all capital counts.]**

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt

with regard to all of the applicable capital counts.

√ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**2. Dzhokhar Tsarnaev caused injury, harm and loss to:**

- a. Krystle Marie Campbell and her family and friends [Only applies to capital counts 1, 2, 3, 6, 7, 8, 12, and 13];**
- b. Martin Richard and his family and friends [Only applies to capital counts 1, 4, 5, 6, 9, 10, 14, and 15];**
- c. Lingzi Lu and her family and friends [Only applies to capital counts 1, 4, 5, 6, 9, 10, 14, and 15]; and/or**
- d. Officer Sean Collier and his family and friends [Only applies to capital counts 1, 6, 16, 17, and 18].**

√ We unanimously find that this factor has been proved beyond a reasonable doubt

with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**3. Dzhokhar Tsarnaev targeted the Boston Marathon, an iconic event that draws large crowds of men, women and children to its final stretch, making it especially susceptible to the act and effects of terrorism. [Only applies to capital counts 1-10 and 12-15.]**

√ \_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital

counts. *Identify each count by count number.*

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**4. Dzhokhar Tsarnaev demonstrated a lack of remorse. [Applies to all capital counts.]**

√ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

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**5. Dzhokbar Tsarnaev murdered Officer Sean Collier, a law enforcement officer who was engaged in the performance of his official duties at the time of his death. [Only applies to capital counts 1, 6, 16, 17, and 18.]**

√ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt only with regard to the following capital counts. *Identify each count by count number.*

\_\_\_\_\_

\_\_\_\_\_

**6. Dzhokhar Tsarnaev participated in additional uncharged crimes of violence, including assault with a dangerous weapon, assault with intent to maim, mayhem, and attempted murder:**

a. **On April 15, 2013, in Boston, Massachusetts [Only applies to capital counts 1-10 and 12-15]; and/or**

b. **On or about April 19, 2013, in Watertown, Massachusetts [Applies to all capital counts].**

✓ We unanimously find that this factor has been proved beyond a reasonable doubt with regard to all of the applicable capital counts.

\_\_\_\_\_ We do not unanimously find that this factor has been proved beyond a reasonable doubt with regard to any of the applicable capital counts.

\_\_\_\_\_ We unanimously find that this factor has been proved beyond a reasonable doubt

only with regard to the following capital counts. *Identify each count by count number.*

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**Directions:**

- After you have completed your findings in this section (whether or not you have found any of the above non-statutory aggravating factors to have been proved), continue on to Section V.



**SECTION V. MITIGATING FACTORS****General directions for Section V:**

- As used in this section, the term “capital count(s)” refers only to those counts for which you have found that the defendant was eighteen years of age or older at the time of the offense charged under the count in Section I, and at least one gateway factor in Section II, and at least one statutory aggravating factor in Section III.
- As to the alleged mitigating factors listed below, please indicate which, if any, you find Dzhokhar Tsarnaev has proven by a preponderance of the evidence.
- Recall that your vote as a jury need not be unanimous with regard to each question in this section. A finding with respect to a mitigating factor may be made by one or more of the members of the jury, and any member of the jury who finds the existence of a mitigating factor may consider such a factor established in making his or her individual determination of whether or not a sentence of death shall be imposed, regardless of the number of other jurors who agree that the factor has been established.
- In the space provided, please indicate the number of jurors who have found the existence of that mitigating factor to be proven by a preponderance of the evidence with regard to each of the capital counts.

1. **Dzhokhar Tsarnaev was 19 years old at the time of the offenses.**

Number of jurors who so find: [12]

2. **Dzhokhar Tsarnaev had no prior history of violent behavior.**

Number of jurors who so find: [11]

3. **Dzhokhar Tsarnaev acted under the influence of his older brother.**

Number of jurors who so find: [3]

4. **Whether because of Tamerlan's age, size, aggressiveness, domineering personality, privileged status in the family, traditional authority as the eldest brother, or other reasons, Dzhokhar Tsarnaev was particularly susceptible to his older brother's influence.**

Number of jurors who so find: [3]

5. **Dzhokhar Tsarnaev's brother Tamerlan planned, led, and directed the Marathon bombing.**

Number of jurors who so find: [3]

6. **Dzhokhar Tsarnaev's brother Tamerlan was the person who shot and killed Officer Sean Collier.**

Number of jurors who so find: [2]

7. **Dzhokhar Tsarnaev would not have committed the crimes but for his older brother Tamerlan.**

Number of jurors who so find: [3]

8. **Dzhokhar Tsarnaev's teachers in elementary school, middle school, and high school knew him to be hardworking, respectful, kind, and considerate.**

Number of jurors who so find: [12]

- 9. Dzhokhar Tsarnaev's friends in high school and college knew him to be thoughtful, caring, and respectful of the rights and feelings of others.**

Number of jurors who so find: [11]

- 10. Dzhokhar Tsarnaev's teachers and friends still care for him.**

Number of jurors who so find: [3]

- 11. Dzhokhar Tsarnaev's aunts and cousins love and care for him.**

Number of jurors who so find: [12]

- 12. Mental illness and brain damage disabled Dzhokhar Tsarnaev's father.**

Number of jurors who so find: [12]

- 13. Dzhokhar Tsarnaev was deprived of needed stability and guidance during his adolescence by his father's mental illness and brain damage.**

Number of jurors who so find: [2]

- 14. Dzhokhar Tsarnaev's father's illness and disability made Tamerlan the dominant male figure in Dzhokhar's life.**

Number of jurors who so find: [2]

- 15. Dzhokhar Tsarnaev was deprived of the stability and guidance he needed during his adolescence due to his mother's emotional volatility and religious extremism.**

Number of jurors who so find: [1]

- 16. Dzhokhar Tsarnaev's mother facilitated his brother Tamerlan's radicalization.**

Number of jurors who so find: [10]

- 17. Tamerlan Tsarnaev became radicalized first, and then encouraged his younger brother to follow him.**

Number of jurors who so find: [8]

- 18. Dzhokbar Tsarnaev's parents' return to Russia in 2012 made Tamerlan the dominant adult in Dzhokhar's life.**

Number of jurors who so find: [2]

- 19. Dzhokhar Tsarnaev is highly unlikely to commit, incite, or facilitate any acts of violence in the future while serving a life-without-release sentence in federal custody.**

Number of jurors who so find: [1]

- 20. The government has the power to severely restrict Dzhokbar Tsarnaev's communications with the outside world.**

Number of jurors who so find: [2]

- 21. Dzhokbar Tsarnaev has expressed sorrow and remorse for what he did and for the suffering he caused.**

Number of jurors who so find: [2]

**General directions for Section V, continued:**

- The law does not limit your consideration of mitigating factors to those that can be articulated in advance. Therefore, you may consider during your deliberations any other factor or factors in Dzhokhar Tsarnaev's background, record, character, or any other circumstances of the offense that mitigate against imposition of a death sentence.
- The following extra spaces are provided to write in additional mitigating factors, if any, found by any one or more jurors.
- If more space is needed, write "CONTINUED" and use the reverse side of this page.

22. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

23. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

24. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

25. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

26. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

27. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

28. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

29. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

30. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

31. \_\_\_\_\_

Number of jurors who so find: \_\_\_\_

**Directions:**

- After you have completed your findings in this section (whether or not you have found any mitigating factors in this section), continue on to Section VI.

## **SECTION VI. DETERMINATION OF SENTENCE**

### **General directions for Section VI:**

- As used in this section, the term “capital counts” refers only to those counts for which you found the defendant was eighteen years of age or older at the time of the offense charged in the count in Section I, and at least one gateway factor in Section II, and at least one statutory aggravating factor in Section III. You may not impose a sentence of death on a particular capital count unless you have first found with regard to that count, unanimously and beyond a reasonable doubt, the defendant was eighteen years of age or older at the time of the offense charged in the count in Section I, and at least one gateway factor in Section II, and at least one statutory aggravating factor in Section III.
- In this section, enter your determination of Dzhokhar Tsarnaev’s sentence with regard to each of the capital counts.

**Based upon consideration of whether the aggravating factor or factors found to exist for each count sufficiently outweigh the mitigating factor or factors found to exist for that count to justify a sentence of death, or, in the absence of a mitigating factor, whether the aggravating factor or factors alone are sufficient to justify a sentence of death:**

\_\_\_\_\_ We, the jury, unanimously find, for all the capital counts, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any

mitigating factors, that the aggravating factor or factors are alone sufficient—so that death is the appropriate sentence for Dzhokhar Tsarnaev. We vote unanimously that Dzhokhar Tsarnaev shall be sentenced to death separately as to each count.

\_\_\_\_\_ We, the jury, unanimously find that a sentence of life in prison without the possibility of release is the appropriate sentence for Dzhokhar Tsarnaev for all of the capital counts. We vote unanimously that Dzhokhar Tsarnaev shall be sentenced to life imprisonment without the possibility of release separately as to each count.

√ We, the jury, unanimously find, for some of the capital counts, that the aggravating factor or factors found to exist sufficiently outweigh the mitigating factor or factors found to exist or, in the absence of any mitigating factors, that the aggravating factor or factors are themselves sufficient—so that death is the appropriate sentence for Dzhokhar Tsarnaev with regard to each of the following capital counts only (identify each count by count number):

\_\_\_\_\_ [4, 5, 9, 10, 14, 15]

\_\_\_\_\_

\_\_\_\_\_



With regard to the above listed capital counts, we vote unanimously that Dzhokhar Tsarnaev shall be sentenced to death as to each count.

\_\_\_\_\_ Based upon our consideration of the evidence and in accordance with the Court's instructions, after making all reasonable efforts, we, the jury, are unable to reach a unanimous verdict in favor of a life sentence or in favor of a death sentence, for any of the capital counts.

**Directions:**

- After you have completed your sentence determination in this section (regardless of what the determination was), continue on to Section VII.

**SECTION VII. CERTIFICATION REGARDING  
DETERMINATION OF SENTENCE**

Each juror must sign his or her name and juror number below, indicating that the above sentence determination accurately reflect the jury's decisions:

Date: [5/15/15]

**Directions:**

- After you have completed this section, continue on to Section VIII.

**SECTION VIII. CERTIFICATION**

By signing your name below, each of you individually certifies that consideration of the race, color, religious beliefs, national origin, or the sex of Dzhokhar Tsarnaev or the victims was not involved in reaching your individual decision. Each of you further certifies that you, as an individual, would have made the same recommendation regarding a sentence for the crime or crimes in question regardless of the race, color, religious beliefs, national origin, or the sex of Dzhokhar Tsarnaev, or the victims.

Date: [5/15/15]

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

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John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Apr. 16, 2014  
10:01 a.m.

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**MOTION HEARING**

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\* \* \* \* \*

[18]

\* \* \* \* \*

MS. CONRAD: There was one more area which I believe were interviews with Todashev.

MR. WEINREB: So with respect to the interviews with Todashev, as we state in our motion, the Middlesex District Attorney's Office is continuing to actively investigate the Waltham triple homicide. And we maintain what we said in our first motion and continue to say in

this motion, which is that it would jeopardize that investigation unnecessarily by publicizing details of it just as it would in the case of any homicide investigation.

The defense has since narrowed its focus to certain areas of information that relates specifically to their client and the degree to which he may have been radicalized at different points in his life and other materials which they laid out in their motion. We have agreed to provide all information in the reports responsive to those four areas and have omitted only the ones that relate specifically to the triple homicide and that fit within the perimeter of our [19] earlier concerns about jeopardizing the investigation.

THE COURT: Okay. Mr. Bruck?

MR. BRUCK: Your Honor, I would like to just respond to the last area and then Ms. Conrad will deal with the rest.

We do not yet have the Todashev interview materials that the government has agreed to disclose, so I'm a little bit at a disadvantage in responding to those disclosures, but the one thing that we know we're not going to get under the government's latest response is the information that Todashev provided about the Waltham murders, which as we understand it and as anybody who reads the newspapers knows, apparently implicated himself and Tamerlan Tsarnaev, not our client. I think Mr. Weinreb may have misspoken. We were not looking for materials from Todashev about our client's radicalization, but about his brother Tamerlan's.

MR. WEINREB: I did misspeak. I meant to say Tamerlan's.

MR. BRUCK: What I said at the beginning of this hearing continues to loom large. This case is largely about a family and the relationships between it—between, in this instance, these two brothers. And the fact, if it is a fact, that Tamerlan Tsarnaev slit the throats of three helpless people, one of whom was described as a close friend, whether the defendant ever learned of it or not is clearly a very important part of the story in terms of who is the motivating, [20] the leading, the active participant in what happened later.

We think we're entitled to know what Todashev said about this crime. We realize that he was apparently—or from accounts he was apparently shot and killed before he could finish describing the Waltham murders, but we think it's critically important to find out what he said about Tamerlan Tsarnaev's involvement as long as the interview lasted. The government says no unless we apparently make some greater showing of relevance to our own client's state of mind, but I think what I've said is gracious plenty and that we ought to know that.

This is not disclosing to the public anything about an ongoing investigation. We obviously are subject to a protective order. We don't share this with anybody who's not entitled to have it, that doesn't need to have it on the defense team. It's information in the broad strokes that seem to have been leaked out or published in all different sorts of ways already anyway, so it's a little difficult to see how this additional part of the Todashev interviews is going to prejudice anything about an ongoing investigation that apparently is directed, as far as we know, as two people who are both dead.

We think this is important and we're entitled to it, and we would like the Court to order that that additional portion of the Todashev information be disclosed.

[21]

THE COURT: What's the volume of this material?

MR. WEINREB: Are you referring to the material—

THE COURT: The 302s.

MR. WEINREB: Solely related to any purported involvement by Tamerlan Tsarnaev in both murders?

THE COURT: Both, I guess.

MR. WEINREB: I would say not great.

THE COURT: Well, my thought is I may review it in camera.

MR. WEINREB: We have no dispute with that, your Honor. But I would like to emphasize we have noticed a tendency in the defense pleadings to attempt to establish the materiality of large categories of information simply by labeling it critically important. We really dispute the idea that details about Tamerlan Tsarnaev's purported involvement in the Waltham homicides is critically important, particularly in the absence of any allegation that Dzhokhar Tsarnaev knew anything about it.

We have already disclosed that Tamerlan Tsarnaev was implicated by this man, Todashev, in the triple homicides. Unless there is something that—in it that somehow relates to Dzhokhar Tsarnaev, either that he knew about it, that he somehow participated in it, anything like that, it has—far from being critically important, it really seems to have no relevance. Their mitigation

theory, which is that Mr. Tsarnaev [22] was influenced by his older brother, depends on what Mr. Tsarnaev believed to be the case, not what Mr. Todashev may or may not have said was the case. And there is nothing in those statements that would indicate that Tamerlan Tsarnaev, to the extent that he was involved in the triple homicide at all, conveyed that to the younger Mr. Tsarnaev.

So we don't think it has any relevance at all, let alone critical importance, to the mitigation strategy.

THE COURT: I understand the parties' disagreement about the critical importance and materiality issue. And let me just say that as a general matter, it seems that a good part of the defense argument is—sort of going over that ground by way of general advisory, I'm not inclined to change the view that I took last November about materiality as it relates to discovery issues either as a *Brady* matter or as a Rule 16 matter. That's a general observation occasioned by Mr. Weinreb's comments.

So with respect to this particular problem, then why don't we follow that course. If the government would make a submission in camera indicating what has been provided, what—the portions that have been provided to the defense and what is at issue and the government would seek to withhold, and I'll examine it and make a determination.

I'm not sure that there are a lot of issues that—I mean, the papers—as I've said, I think the papers are pretty [23] complete on setting forth your positions on this, so I guess I'd look to anything that you really want to highlight and—



MS. CONRAD: Sure. Thank you, your Honor. I will try not to go over old ground.

THE COURT: And, again, I say it in the context of what I've just said, which is I think a lot of the defense argument was asking, in a sense, for a reconsideration of the materiality assessment.

MS. CONRAD: But it apparently succeeded in getting the government to reconsider on some of these issues.

THE COURT: On some of the things you did?

MS. CONRAD: So in that respect I suppose I should maybe on those issues quit while I'm ahead.

Your Honor, I would like to focus my attention on two matters primarily, and that is the FTK, Forensic Toolkit, and the FISA. I do think there are outstanding issues with respect to lab reports. I just want the Court to know that we are working very hard. We've had a team go down to Quantico to review discovery there. We've gone to the Mass. State Police. We've gone to two FBI locations. We have reviewed thousands and thousands of items. We have—are in the process of organizing and reviewing the information provided to date.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

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John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thurs., Aug. 14, 2014  
10:03 a.m.

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**STATUS CONFERENCE**

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[5]

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Is that something the government would find acceptable?

MS. PELLEGRINI: Yes, your Honor. And I'll communicate that to the firewall.

THE COURT: Okay. Other than, with respect to communications to the Court, I would expect them to be in writing in the ordinary course anyway, so I don't think we have to provide for that. To the extent they would

not be in writing, they would likely be on the record. So I don't think we have to take any steps on that.

So beyond that, adding the requirement of the log for communications, I see no reason for any further relief. There were four points raised, and the government agreed with 1 and 4. So this addresses Number 2, I think. So that resolves that motion.

To the extent there is a still outstanding issue about further discovery of what we might call Todashev matters, I thought actually we had resolved it. I had reviewed the matters that the government submitted in camera, including recordings, and I see no reason to compel any further discovery from that material.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Mon., Apr. 13, 2015  
10:04 a.m.

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**SEALED**

**MOTION HEARING**

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\* \* \* \* \*

[3]

**PROCEEDINGS**

THE CLERK: All rise.

(The Court enters the courtroom at 10:04 a.m.)

THE CLERK: For a motion hearing, United States  
versus Dzhokhar Tsarnaev, 13-10200. Will counsel  
identify yourselves for the record, please.

MR. WEINREB: Good morning, your Honor. Bill Weinreb for the United States.

MR. CHAKRAVARTY: Aloke Chakravarty.

MS. PELLEGRINI: Good morning, your Honor. Nadine Pellegrini.

MR. MELLIN: Good morning, your Honor. Steve Mellin.

MR. BRUCK: Good morning, your Honor. David Bruck for the defendant with Judy Clarke and Bill Fick.

THE COURT: Good morning.

All right. So we're going to have argument on some of the pending motions relating to evidence in the penalty phase. Let's start with the government's motion regarding evidence of the Waltham murders.

MR. WEINREB: Your Honor, the defendant's opposition to the motion makes clear that their argument is purely a—essentially a 403(b) type of argument, that it's an argument that Tamerlan Tsarnaev had a propensity to commit violent crimes and to rope others into committing them with him, and the jury should infer from that that he is the type of person [4] who does this and that he acted in conformity with that trait or that character when he—in this case as well.

Putting aside for a moment the relevance of that kind of argument, which as the Court knows is quite suspect and problematic under the law, a condition precedent to that kind of evidence every time it's ever offered is that there is enough evidence for the jury to believe that the prior bad act, in this case Tamerlan Tsarnaev's committing of the murders in Waltham, actually happened. And that evidence is completely lacking in this case.

The only thing that the defense has to offer is the uncross-examined and uncross-examinable statement of someone who was clearly somewhat unbalanced, if not deranged at the time he made it, Abraham Todashev. And I say that because right after making it, as he was writing it down, he attacked a Massachusetts state police officer with the intent to kill him and, as the Court knows, was shot dead in the course of doing that.

It's important to take a look at just how unreliable that statement by Mr. Todashev is. He was interviewed several times about Tamerlan Tsarnaev after the marathon bombings. Three or four at least. In the first of those interviews he never said anything about Tamerlan Tsarnaev being involved in the Waltham triple homicides; in fact, he said that he and Tamerlan Tsarnaev were never close, that they had had a falling-out in 2010 after which they essentially stopped [5] talking.

It was not until agents asked Mr. Todashev about his own potential involvement in the Waltham triple homicides that he first implicated Tamerlan Tsarnaev in them and tried to blame the whole thing on Tamerlan Tsarnaev. He did that at a time when he knew that Tamerlan Tsarnaev had been implicated as a murderer in the Boston Marathon bombings and, therefore, it was plausible to blame the whole thing on Tamerlan Tsarnaev, but he did it when he also knew that Tamerlan Tsarnaev was dead and therefore could not deny his involvement in the Waltham triple homicides. And before saying anything about Tamerlan Tsarnaev at all, he first asked for a deal that would protect him from his own liability in connection with those homicides.

The first time he told the story of what happened that night in Waltham, he blamed the entire thing on Tamerlan Tsarnaev. He said that he personally wasn't even there, that he was there beforehand and that he learned about the murders the next day afterwards. When the police confronted him with evidence suggesting that they could prove differently, that he himself, Todashev, had personally participated in the homicides, he took back everything he had just said, admitted that it was all a lie, and then admitted that he did, in fact, participate in the homicides. But he still tried to blame everything on Tamerlan Tsarnaev, saying that Tamerlan had masterminded it, Tamerlan had actually committed the murders, [6] that Todashev was actually, you know, a somewhat passive participant who just went along.

Even then his story was internally inconsistent. He made statements during it which contradicted each other. When they were pointed out to him, he just took them back and said other things. He said things that seemed fairly, if not wildly, implausible, such as that Tamerlan Tsarnaev proposed the crime at a mosque during Ramadan despite the fact that Tsarnaev had just become very religious. He also said that Tamerlan Tsarnaev had a gun, even though we know that during the marathon bombings he had to use his brother's gun and was very much in search of a gun, and all of the evidence points to the fact that Tamerlan Tsarnaev did not own a gun.

But most importantly, because Mr. Todashev is dead, he can't be cross-examined about any of this. It's little different than if the defense had just picked up a rumor that Tamerlan Tsarnaev had participated in these murders and wanted to put that in front of the jury and have

them conclude on the basis of all of that that Mr. Todashev actually committed them—I'm sorry—that Tamerlan Tsarnaev committed them.

So the Court should exclude the evidence to begin with on the grounds that even assuming that it was relevant and even assuming it was not more prejudicial than probative, which I'll address in a minute, that there simply is not enough evidence that Tamerlan Tsarnaev actually committed these murders. The [7] only evidence again that they offer to propose is this single statement by a person who gave it under circumstances indicating that he had every motive to lie, to implicate somebody else, to cover up his own involvement in it, and he made an accusation against someone he knew was a murderer but who he also knew was dead and couldn't respond to it. And he then himself, immediately after giving it, engaged in an act of violence that resulted in his own death and he can no longer be cross-examined about it. That is about as unreliable a basis for the jury to conclude that this happened as it gets.

The government also moves to exclude it on the grounds that it is—this type of argument in general about propensity and this particular argument is prone to confusing, misleading and distracting this jury. The first thing that will confuse, distract and mislead them is the need for them to determine whether Tamerlan Tsarnaev participated in the murders at all. This is going to require them to consider in detail a great deal of evidence about Mr. Todashev's credibility because if the defense is permitted to put into evidence the statement of Mr. Todashev, the government will be obliged to bring in all the evidence it has to show that Mr. Toda-



shev is not credible. And there is a boatload of evidence. And the jury will be distracted into a sideshow of trying to figure out whether somebody—whether Tamerlan Tsarnaev is guilty of some other crime entirely separate from the one that they are—they just [8] decided. They'll have to be debating or deciding the outcome of a murder case that has nothing to do—or almost nothing to do with the sentencing of the defendant, which is the reason they're here today.

And even if they conclude that based on Mr. Todashev's statement there is reason to believe that Tamerlan Tsarnaev was involved in the triple homicides, they're still going to have to conclude that he was involved in it in the way that Mr. Todashev says that he was because, for example, if Mr. Todashev planned the robbery and just asked Tamerlan Tsarnaev to participate and Tamerlan Tsarnaev was the one who just went along and so on, then the information has zero relevance. There's no propensity argument that could even be made on the basis of it. And the government, therefore, will be obligated to offer evidence to that effect, that there is nothing to corroborate Mr. Todashev's account, at least as far as the government knows, of the respective roles that he says that he and Tamerlan Tsarnaev played in this.

So again, we will be having a mini trial on this that will get involved in forensic evidence, the scope of the investigation, what other witnesses have said about Mr. Todashev, about Tamerlan Tsarnaev, about their relationship with one another and so on.

Then even assuming we get past all of that, the jury still has to decide what weight to give propensity of evidence. [9] And that's something they could also conceivably hear evidence on.

And then the fourth thing they would have to do is figure out what bearing all of this should have on the sentence of Dzhokhar Tsarnaev, which is the reason they're here in the first place. The connection between Tamerlan Tsarnaev's potential involvement in a murder, the circumstances of which will forever be murky and perhaps unknowable because Mr. Todashev, who was the one person who confessed to actually being involved in it, is dead, that is going to become part of the mix of this very difficult decision that the jurors have to make—an individualized decision about the culpability of this defendant, Dzhokhar Tsarnaev, for these crimes. And it's simply too much of a distraction, it's too confusing, it has too much of a risk of misleading them for the Court to admit it given its very, very slim, if existent, probative value.

THE COURT: Mr. Fick?

MR. FICK: Thank you, your Honor.

On the question of reliability, I guess the first thing I would say is all of the things that Mr. Weinreb just said really go more to weight than to admissibility, particularly in a capital sentencing proceeding where the rules of evidence on this kind of thing are relaxed. And the government is, I think, overstating the extent to which the confession is unreliable. I mean, to hear everything the [10] government says, if those arguments could be employed, for example, by a defendant whose admission

is sought to be admitted into evidence, then I would suspect there would be many, many more excluded defendants' confessions in other cases and verdicts of acquittal. Essentially, all of these things are issues for the jury to decide: whether the confession is reliable and why or why not.

The government is also, I think, overstating the extent to which the confession is the only evidence of Tamerlan's involvement in this murder. First of all, you have the computer file that apparently Tamerlan was reading within weeks of the Todashev murder—of the Waltham murders about stealing or taking or seizing the property of infidels. Within a couple of weeks of that the Waltham murders happened. It's characterized as a drug rip-off. And it would seem then that Tamerlan has found the ideological basis for what he's about to do and then goes about doing it with the assistance of his friend Mr. Todashev.

THE COURT: You have, I presume, thoroughly looked at Tamerlan's computers and his files. Is there any connection in there—any mention of Waltham?

MR. FICK: Any mention of Waltham?

THE COURT: Not necessarily by using the word "Waltham," but anything to suggest he was writing about the events that are suspected?

[11]

MR. FICK: Not that I'm aware of, writing about the events either before or after in any specific way.

THE COURT: Are there references to Todashev?

MR. FICK: There's extensive communication, particularly by Skype, with Todashev. Mr. Tamerlan sends

back and forth messages to Mr. Todashev including links to various radical, one might say, jihadist images and videos on the Internet, so they're certainly in communication in the years surrounding all of these events about the views of radical Islam, one might say.

THE COURT: And anything that sounds like they're talking about the Waltham events?

MR. FICK: Not in any explicit way other than the extent to which they're conferring with each other about religiously motivated violence and why that may or may not be justified.

THE COURT: How about selling marijuana?

MR. FICK: I don't have—I'm not sure standing here right now. It's not something that I focused on.

I'd also note that the government sought a search warrant or search warrants—either the government or the Massachusetts authorities. I'd have to look at the warrant now to recall exactly, but it was in the discovery—for Tamerlan's vehicle based on probable cause to believe he was involved in the Waltham murders. And so at least at some point [12] authorities believed there was probable cause to believe that that occurred.

And the final thing is it's a very peculiar argument the government is making because they have chosen taking their representations at face value to insulate themselves from all of the investigation that Middlesex has done about these homicides, and saying essentially, We don't know, and we don't want to know, and in conjunction with that, essentially block the defendant from pursuing additional investigations.

So we have a situation where there is a confession, a confession and implication of Tamerlan Tsarnaev. The person who made that confession was killed by the FBI in circumstances that are, shall we say, murky and not definitively resolved? And so—and at the same time the government has chosen not to learn anything about other evidence that may bear on those murders. And so for all of those reasons, this is really, again, a question of weight rather than admissibility. The jury is capable of sorting out evidence like this, they're capable of deciding what, if any, importance it deserves, and this is not a reason to exclude it.

It's particularly odd in the context of a capital proceeding because in any normal case where, say, two brothers were not coconspirators or co-committers of the underlying crime, part of the family history in any normal capital sentencing presentation would talk about instances of violence [13] or instances of bad conduct by other members of the family, instances of mental health problems by other members of the family.

And so this kind of evidence, even if there were no connection to the underlying crimes which we have here, would be sort of part and parcel of the overall family history picture that gets painted in a capital proceeding. And so to exclude it here because it has particularly strong relevance would be a peculiar result indeed.

And I think that essentially—you know, what the government says about the reasons why this particular species of propensity evidence in general would create a sideshow, I mean, any piece of evidence, depending on how the parties focus on it, argue it and the importance the jury attributes to it, could wind up taking on outside pieces of importance in their deliberations or it may not.

But, again, these are things that the parties are capable of arguing and the jury is capable of deciding, whereas here we have a clear—well, we have a variety of types of evidence and types of personal history that we expect to put in evidence about the nature of Tamerlan Tsarnaev, the outside influence he had on his brother, the kinds of interpersonal violence he exercised in a variety of settings to essentially coercively control other people. The evidence that he committed a particularly gruesome crime by sort of enlisting somebody who he had influence over is a very, [14] very—it's an exceptionally strong piece of evidence that the defense ought to be able to introduce.

THE COURT: How would you present the evidence? What would it be?

MR. FICK: Well, in the first instance, we have Todashev's written confession itself, and then there are various investigative materials from a Florida attorney general investigation which we would submit are admissible under the government—official investigation against the government hearsay exception. I mean, so those would, at least in the first instance, paint the picture of this is what Todashev said, this is what the interaction was with law enforcement.

In addition to that, we have the evidence from the computer about the relationship between Todashev and Tamerlan, as well as the—just weeks before this ideological document, so to speak, about seizing or stealing the property of infidels.

Whether we're able to pursue more I guess would depend on the Court's rule. If the Court determines this is admissible, we can certainly pursue initial third-party

discovery of this issue as well. It seems to me that, again, we don't know what Middlesex authority's position is sitting here today, but given the passage of time, the likely—sort of the weighing of their law enforcement privilege, so to speak, as that exists under the law versus the need for the [15] evidence and the potential importance it has in this case, I think that weighing may be different than it was early on when we were seeking discovery really at the beginning of the case. So there may well be forensic and other evidence in the possession of Middlesex authorities which we could obtain, although obviously we do not have it right now.

THE COURT: Okay. Go ahead.

MR. WEINREB: Your Honor, the government—contrary to what Mr. Fick said, the government is not questioning the reliability of Mr. Todashev's confession to his own criminal activity. That is a statement against interests, and I believe that that alone gives that portion of it some indicia of reliability. It's his attempt to shift blame onto a third person that is the opposite of—that's an indication of unreliability, well acknowledged under the case law. The defense cites the hearsay exception for statements against interest, but normally if somebody confesses but in the course of confessing they essentially try to shift all of the culpability onto somebody else, that part is redacted and is excised out. It's just their own confession that is admitted in recognition of the fact that the blame-shifting part is the opposite of reliable and it's only the self-implication part that is normally deemed reliable.

It is not true that the government has chosen to insulate itself from the Middlesex District Attorney's [16] in-

vestigation of the Waltham triple homicides. The Middlesex district attorney's office has decided to insulate us from their investigation. We made requests for that information. They said no. They said it's a confidential investigation by a sovereign that is independent of their investigation of this case, and they declined to allow us to view the file or to look at the evidence in that case. And that position, as far as I know, has not changed.

There is nothing murky about the circumstances under which Mr. Todashev was shot dead after confessing. It was investigated thoroughly by three separate agencies who issued very lengthy published reports. No need for me to repeat what's in them. They speak for themselves. But I think that is yet another example of the kind of sideshow that we will see if this information is put before the jury during the sentencing phase and will just serve to further distract them from the job that they have here, which is to make an individualized assessment of the defendant's character and the nature of his crimes, not the character and nature of other people stretching from his brother all the way through Todashev to the officers who were present in the room when Mr. Todashev was shot.

And then finally, this idea of coercive control, that's just not even in the statement itself. Even Mr. Todashev did not go so far in trying to shift blame onto [17] Tamerlan Tsarnaev to say that Tamerlan Tsarnaev coercively controlled him nor would that have been remotely plausible. Mr. Todashev, as the Court is probably aware, was an extremely experienced mixed martial arts expert. He was a walking deadly weapon. Shortly before he attacked the agents in his apartment,



he engaged in an episode of what's commonly referred to as road rage where he beat someone to a bloody pulp who just got into a traffic altercation with him. There's no evidence that the defense can point to anywhere, including Mr. Todashev's own statement, that Tamerlan Tsarnaev controlled him in any way.

THE COURT: Go ahead.

MR. FICK: Just very briefly on the statement against interests, again, we're, of course, operating not in a strictly, you know, four corners of the rules of evidence. And certainly if Tamerlan Tsarnaev were on trial, Todashev's statement against interests implicating Tamerlan might be excludable in the sense that—well, because the sort of due process right of Tamerlan vis-à-vis the nature and reliability of the statement, that weighing would be different.

But what we have here is a very different situation where Todashev implicates himself. And the only way that implicating of himself makes any sense is to talk about what he did together with Tamerlan. I mean, these people who were killed, Brendan Mess and the two others, these are Tamerlan's [18] friends. There's no indication that Todashev had any preexisting relationship with them. So everything about Todashev's self-implication only makes sense in the context of it being part of what Tamerlan did.

THE COURT: Let me ask about the computer information. Again, with respect to the victims in Waltham, what, if anything, do Tamerlan's computers have to say about that? Do they show a dealing relationship, for example?

MR. FICK: You know, Tamerlan did not communicate a lot on his computer except via Skype and so—and that was largely with either Mr. Todashev in Florida or here or people up overseas. His text messages and emails are really not on the computer itself. There were search warrant returns for providers for those things, and you don't really see a lot of interaction between him and Mr. Mess or others in the electronic evidence that we have.

THE COURT: So I guess what I'm looking for: Is there anything that you're aware of that would tend to be some kind of objective corroboration for your theory about the relationship of Todashev and Tamerlan?

MR. FICK: Well, many, many civilian witnesses, including Tamerlan's wife, although whether we would call her or not is a question, but there's ample sort of lay witness evidence to suggest that Brendan Mess, one of the three people killed, was one of Tamerlan's best friends for years, they [19] spent time together, they smoked marijuana together. There may have been some sales relationship back and forth. And certainly there's evidence to suggest—or there is civilians who would suggest that Mess in particular and the others were sort of large-scale marijuana dealers themselves.

You know, exactly how we could corroborate that in terms of electronic evidence, I'm not certain. That may not be something that within the four corners of electronic evidence is there. But there's—certainly lay witnesses would be able to establish the basic bona fides of the relationship between Tamerlan and the murder victims.

Oh, and the other peculiar piece of behavior was—and this is something that civilians have talked about—Tamerlan did not attend Brendan Mess’s funeral, sort of stayed away, even though for years they had been considered best friends. And that was something that people thought odd, that, you know, there had been questions asked about why law enforcement didn’t think that odd and investigate Tamerlan earlier. But, again, for what it’s worth, that’s another piece of civilian testimony—or available civilian evidence that would go to Tamerlan’s peculiar behavior around these homicides and his relationship with those individuals.

And Ms. Clarke reminds me, again, I would have to go back and look exactly at the call history, but there may well have been some telephone calls around the time of the homicide [20] either between Tamerlan and one or more of the victims and/or between Tamerlan and Todashev. But standing here right now, I don’t have that sort of lined up in my head.

THE COURT: Okay. All right. I’ll reserve on it.

I think the next—actually, the next one in sequence on the docket is the government’s motion regarding plea negotiations. That’s repeated in the omnibus motion. I don’t know whether—why don’t we address that.

Mr. Mellin?

MR. MELLIN: Thank you, your Honor.

Your Honor, as to that, there are actually three circuits that have kind of decided and discussed this issue. It’s the Fourth, Sixth and Eighth Circuits have all come out with either one circuit saying that this information should not come in because it doesn’t go to acceptance of responsibility, or the Fourth Circuit went a little more

restricted in saying that the district court in the *Caro* case did not err in restricting that information from coming in.

The basis of the argument is, your Honor, that under Rule 410, plea negotiations are supposed to be kept private. I mean, that is the whole point of plea negotiations and that's the point of Rule 410, that the information is not supposed to be used by either side later on because that would tend to discourage plea negotiations and not encourage plea negotiations.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

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John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Fri., Apr. 7, 2015  
12:08 p.m.

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**SEALED LOBBY CONFERENCE**

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[3]

**PROCEEDINGS**

THE CLERK: All rise.

(The Court enters the courtroom at 12:08 p.m.)

THE CLERK: The United States District Court  
for the District of Massachusetts. Court is in session.  
Be seated.

For a lobby conference in the case of United States versus Dzhokhar Tsarnaev, 13-10200. Will counsel identify yourselves for the record.

MR. WEINREB: Good afternoon, your Honor. William Weinreb for the United States.

MR. CHAKRAVARTY: As well as Alope Chakravarty, your Honor.

MS. PELLEGRINI: Good afternoon, your Honor. Nadine Pellegrini.

MR. BRUCK: Good afternoon, your Honor. David Bruck, Judy Clarke and Tim Watkins for the defendant.

THE COURT: Okay. Let me begin by resolving some of the issues that were discussed the last occasion. The government's motion in limine to preclude reference to the Waltham triple homicide or other alleged bad acts is granted as to the Waltham events. The reason is that there simply is insufficient evidence to describe what participation Tamerlan may have had in those events. I know that the defense has a theory about what those things were, but I don't believe there's any evidence that would permit a neutral finder of fact [4] to conclude that from the evidence.

From my review of the evidence, which includes an in camera review of some Todashev 302s, it is as plausible, which is not very, that Todashev was the bad guy and Tamerlan was the minor actor. There's just no way of telling who played what role, if they played roles. So it simply would be confusing to the jury and a waste of time, I think, without very—without any probative value.

As to other bad acts, it will depend. I mean, I see on the witness list witnesses who might be able to testify to behavior of Tamerlan that would be relevant to the defense theory of domination. So I'm not going to, as a blanket matter, exclude all bad acts. We'll deal with those issues as they arise.

With respect to the government's motion to preclude reference to plea negotiations, to the extent the government presses its non-statutory aggravating factor of absence of remorse, I think it's fair that the defendant could respond by showing an offer to plead guilty, but it would then be open to the government to explain the conditions that were attached, including with respect to the sentence and the refusal to participate in a proffer. If that goes forward, let me just suggest that the best way to handle that, if the parties wanted to, would be by stipulation, perhaps.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

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Filed: Nov. 27, 2013

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**ORDER**

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O'TOOLE, D.J.

\* \* \* \* \*

What the standard is for assessing materiality under Rule 16(a)(1)(E)(i) is somewhat unsettled. See United States v. Pesaturo, 519 F. Supp. 2d 177, 190 (D. Mass. 2007). Some courts have concluded that it “essentially tracks the Brady materiality rule.” United States v. LaRouche Campaign, 695 F. Supp. 1290, 1306 (D. Mass. 1988). Others have had an arguably more latitudinarian view. See United States v. Lloyd, 992 F.2d 348, 351 (D.C. Cir. 1993) (stating that “evidence is material as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal”) (quoting United States v. Felt, 491 F. Supp. 179, 186 (D.D.C. 1979)). Still others seem to cite both articulations, as if there was no substantial difference between them. See



United States v. George, 786 F. Supp. 56, 58 (D.D.C. 1992).

The defendant has not made a prima facie showing of materiality under any of these formulations. He essentially seeks access to the government's information haystack because he is confident there are useful evidentiary needles to be found there. That is simply not enough to trigger a disclosure obligation under Rule 16(a)(1)(E)(i). Contrast the generality of the defendant's presentation here with the very specific showing of materiality made in Pesaturo. In that case, the defendant presented detailed information in support of his claim to the discoverability of the identity of a non-testifying informant. 519 F. Supp. 2d at 181-83. There is not a similar showing here.<sup>2</sup>

The defendant also contends that certain materials are discoverable under Rule 16(a)(1)(E)(ii) as items that the government "surely" intends to use in its case in chief. The government represented at oral argument that it has produced all such items. I accept that representation in the absence of any specific indication to the contrary. As noted, the government's discovery obligations are ongoing, and if it later appears that the

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<sup>2</sup> In request 9, the defendant seeks "[a]ll documents concerning the investigation of the 2011 triple homicide in Waltham, MA, on September 10-11, 2011." In addition to the reasons discussed in the text as to all his requests, this request should also be denied because of the qualified "law enforcement investigatory privilege," which protects from disclosure investigative files in an ongoing criminal investigation. See Cabral v. U.S. Dep't of Justice, 587 F.3d 13, 23 (1st Cir. 2009). The defendant has not articulated a specific need for these privileged materials, much less a need which overrides the need to keep confidential the details of an ongoing investigation.

government has not produced material covered by Rule 16(a)(1)(E)(ii), the matter can be revisited.

**III. Discovery under Federal Rule of Criminal Procedure 16(a)(1)(B)**

In request 6, the defendant seeks production of all “[a]udio recordings of telephone calls from FMC Devens and reports/transcripts concerning/comprising those calls if/as they are created” under Rule 16(a)(1)(B), which states that:

Upon a defendant’s request, the government must disclose to the defendant, and make available for inspection, copying, or photographing . . .

(i) any relevant written or recorded statement by the defendant if:

- the statement is within the government’s possession, custody, or control; and
- the attorney for the government knows—or through due diligence could know—that the statement exists. . . .

Fed. R. Crim. P. 16(a)(1)(B)(i). The government has responded that while it is obliged only to produce “relevant” recorded statements by the defendant, it will voluntarily produce reports or transcripts of his calls on a periodic basis.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

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Filed: Apr. 17, 2014

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**ORDER**

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O'TOOLE, D.J.

The defendant's discovery motions (dkt. nos. 233, 235) are DENIED with the exception that reports of Ibragim Todashev's statements to the FBI are to be submitted to the Court for in camera review in a way that indicates: (a) what will be produced to the defendant, and (b) what the government seeks to withhold from production.

It is SO ORDERED.

/s/ GEORGE A. O'TOOLE, JR.  
GEORGE A. O'TOOLE, JR.  
United States District Judge

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

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Filed: Nov. 25, 2014

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**OPINION AND ORDER**

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O'TOOLE, D.J.

The defendant's Motion to Compel Discovery (dkt. no. 602) is DENIED.

*Documents from the Russian Government:* The defendant's request for unredacted copies of documents furnished by the Russian government after the Marathon bombings is denied at this time. If the defendant's ability to use disclosed information at trial is hampered by the redactions, the matter can be revisited. In addition, the defendant's request for complete copies of pages with text which appears to have been cut off inadvertently is moot in light of the government's representations that it will try to obtain a copy of the materials with the text restored and will produce the material if successful.

*Pre-2013 Communication from the Russian Government:* The government represents that it has disclosed

the substance of the communication. It does not appear that the production of a copy of the communication would furnish additional information that would be helpful or material to the defense. The defendant's request for a copy of the communication itself, which the government describes as consisting of an unidentified Russian analyst's opinion about the significance of the underlying information, is therefore denied.

*Transcripts/Translations of the Defendant's BOP Calls:* In light of the government's agreement to produce any transcripts in its possession, the defendant's request is moot.

*Reports of Computer Forensic Examinations:* The government has represented that there are no other reports of examination similar to the analysis of the defendant's computer referred to in the defendant's motion. (Mot. to Compel Ex. E (dkt. no. 602-5) (under seal).) In light of the representation, the defendant's request is moot.

*List of Digital Devices:* The defendant's request for the "government's list identifying which among [the digital] devices it actually intends to use at trial," (Mot. to Compel) (dkt. no. 602), is denied in light of the scheduling order establishing a deadline for production of the government's exhibit list.

*Russian Communications Regarding Defense Team Travel Issues:* The defendant's request is denied.

*OIG Report:* The defendant's request is denied.

*FBI Todashev Materials:* The defendant seeks production of certain FBI materials related to Ibragim Todashev's statements about Tamerlan Tsarnaev's participation in the murder of three men in Waltham in

2011. With respect to this issue, the government had submitted to me for in camera review FBI 302 reports of interviews of Todashev, as well as a video and audio recording of an additional interview. Only one of these materials, an FBI 302 report dated June 7, 2013, is pertinent to the request. The government objects to the request.

The government represents that a state law enforcement investigation of the Waltham murders is ongoing and for that reason invokes the limited investigatory privilege. See Comm. of Puerto Rico v. United States, 490 F.3d 50, 62-64 (1st Cir. 2007). It also asserts that it has already conveyed the fact and general substance of Todashev's statements concerning the murders, and principles governing discovery in criminal cases do not require more.

After careful consideration, I agree with the government as to both points. As to the first, disclosure of the report risks revealing facts seemingly innocuous on their face, such as times of day or sequences of events, revelation of which would have a real potential to interfere with the ongoing state investigation. As to the second, I fully understand the mitigation theory the defense thinks the requested discovery may advance. After review, it is my judgment that, contrary to the defense speculation, the report does not materially advance that theory beyond what is already available to the defense from discovery and other sources. It would be a different matter if Todashev were available as a potential witness. Without that possibility, the utility of the report to the defense in building a mitigation case is very low at best. I conclude that the report is not material and helpful in the necessary sense.

The defendant's motion regarding this topic is denied.

*Search Warrant Return for Zubeidat Tsarnaeva's Emails:* The requested materials do not appear to fall within the scope of Local Rule 116.1(c)(1)(B).<sup>1</sup> The defendant's request is therefore denied.

It is SO ORDERED.

/s/ GEORGE A. O'TOOLE, JR.  
GEORGE A. O'TOOLE, JR.  
United States District Judge

---

<sup>1</sup> Implicit in this ruling is my understanding that the government represents that the search warrant also did not lead to the discovery of evidence that the government intends to use in its case-in-chief. See L.R. 116.1(c)(1)(B)(i).

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

No. 13-CR-10200-GAO  
UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: Nov. 7, 2013

---

**REPLY TO GOVERNMENT'S OPPOSITION**  
**TO MOTION TO COMPEL DISCOVERY**

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\* \* \* \* \*

*Defense Request # 9. All documents concerning the investigation of the triple homicide that occurred in Waltham, MA on September 10-11, 2011, including without limitation documents concerning investigation of the alleged involvement of Tamerlan Tsarnaev, Ibragim Todashev, and/or our client in those murders.*

The government argues that disclosure related to Tamerlan Tsarnaev's alleged involvement in the triple homicide is premature and goes on to invoke the common law privilege protecting an ongoing investigation. (Opp. at 21-22.) The government is wrong about timing for the reasons explained above. As to the purported law enforcement privilege, according to the very case that the government cites, it must submit responsive documents to the Court for in camera inspection in



order to determine whether the government's interest in protecting details of the investigation outweighs the defendant's interest in disclosure. *See In re Department of Homeland Security*, 459 F.3d 565, 570 (5th Cir. 2006) ("On remand, the district court should review the documents at issue in camera to evaluate whether the law enforcement privilege applies to the documents at issue. In making its determinations, the court must balance the government's interest in confidentiality against the litigant's need for the documents.") (internal quotation marks omitted).

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Crim. No. 13-10200-GAO  
UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

---

Filed: Apr. 11, 2014

---

**GOVERNMENT'S OPPOSITION TO DEFENDANT'S  
MOTIONS TO COMPEL**

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\* \* \* \* \*

Although the government maintains its position that Anzor and Tamerlan's A-files are not discoverable under either Rule 16 or Brady, it will nevertheless produce them based on the defense representation that receipt of this information will save them considerable time and effort and therefore help ensure that there are no delays in the existing motion and trial schedule.

7. Information relating to FBI contacts with Tamerlan

On April 14, 2011, an FBI agent interviewed Anzor Tsarnaev (with Zubeidat Tsarnaev present). On April 22, 2011, an FBI agent interviewed Tamerlan Tsarnaev (with Anzor Tsarnaev present). The government will provide both interviews to the defense shortly. The FBI did not ask Tamerlan Tsarnaev to be a government informant in either of those interviews (or in any other

interaction of which the government is aware). Indeed, we are not aware of any other FBI interviews of Tamerlan Tsarnaev at all.

8. Ibragim Todashev interviews

Ibragim Todashev's interviews with the FBI do not contain information that is favorable and material within the meaning of Brady or material to preparing the defense within the meaning of Rule 16. Moreover, the Middlesex District Attorney's Office is actively investigating the Waltham triple homicide and continues to believe that disclosure of Todashev's statements concerning that crime would jeopardize its ongoing investigation. Nevertheless, with the exception of information relating to the triple homicide, we will produce all information in the Todashev interviews that relates to Tamerlan Tsarnaev.

Tsarnaev's speculation about the contents of the Todashev interview reports is wrong. Tsarnaev speculates that Todashev's statements about the triple homicide "focused on Tamerlan's religious beliefs, his mental condition, his violent behavior apart from the Waltham murders, his trip to Dagestan, and his relationship with his younger brother." (Deft. Mot. at 19). In fact, Todashev's statements regarding the Waltham murders mention none of those things. All of Todashev's statements to the FBI that relate to Tamerlan's religious beliefs, his mental condition, his violent behavior apart from the Waltham murders, his trip to Dagestan, and his relationship with his younger brother will be produced to the defense.

The government does not agree with the defense that Tamerlan's having committed a gruesome triple murder

—and having a ‘close friend’ among the victims—would powerfully support the inference that Dzhokhar experienced his older brother as an all-powerful force who could not be ignored or disobeyed.” (Deft. Mot. at 20). Even assuming Tamerlan participated in the triple homicide, the defense has not even alleged that Dzhokhar Tsarnaev knew about Tamerlan’s purported involvement. Absent such knowledge, there is simply no logical connection between Tamerlan’s purported involvement in the murders and Dzhokhar Tsarnaev’s experience of Tamerlan.

Indeed, whether Tamerlan Tsarnaev actually participated in the Waltham triple homicide is irrelevant to the question of whether Dzhokhar Tsarnaev’s crimes warrant the death penalty. If the defense theory is that Dzhokhar Tsarnaev heeded and obeyed Tamerlan because he believed Tamerlan was a murderer, then it is Tsarnaev’s belief that matters, not whether Tamerlan actually committed the Waltham murders. The Court should not permit Tsarnaev to conduct a mini-trial of Tamerlan’s involvement in the Waltham murders because it has nothing to do with the brothers’ relative culpability for the murders they committed together. And in any case, Todashev, now deceased, could not be a witness at such a mini-trial, making his statements legally immaterial.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal No. 13-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: Nov. 4, 2014

---

**REPLY TO GOVERNMENT’S OPPOSITION TO**  
**MOTION TO COMPEL DISCOVERY**

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\* \* \* \* \*

**Waltham Murders**

The government states that “nothing has changed to warrant reconsideration of the Court’s earlier ruling,” that the Middlesex investigation “remains active and ongoing,” that Tamerlan’s “actual participation in the Waltham homicides” would not be relevant, and that “the government has no evidence that Tamerlan Tsarnaev actually participated in the Waltham murders.” Opp. at 6-8.

What has changed are (1) the passage of time in which the Middlesex investigation has proceeded, and (2) the rapid approach of the trial date. The need for the government to withhold information based on the theoretical risk that its disclosure (subject to a stringent protective order) could jeopardize an investigation shrinks as

time passes and the defense need for the information becomes more critical. The Court should reassess the considerations surrounding the government's assertion of an investigative privilege.

The government is simply mistaken to think that actual participation of Tamerlan in the Waltham homicides is not relevant. Part of the jury's assessment in a penalty phase would be the relative culpability and contrasting personal attributes of those implicated in the charged crimes. Evidence of Tamerlan's past participation in an unusually brutal triple homicide, in contrast to Dzhokhar's non-violent reputation and lack of a prior record of violence, is mitigating with respect to Dzhokhar's relative role.

The government's assertion that it "has no evidence" of Tamerlan's participation in the Waltham murders is puzzling given its earlier assertions, set forth in defendant's motion. Presumably this means that it has no evidence other than Todashev's alleged confession. Whatever it means, the statement begs the question of whether local law enforcement, which undeniably is part of the "prosecution team" for the Marathon investigation, has forensic or any other evidence of Tamerlan's participation in the murders that federal prosecutors don't physically possess. In any event, evidence concerning the murders, in particular their singular brutality, nevertheless would be relevant when coupled with Todashev's supposed statement implicating Tamerlan.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
**FILED UNDER SEAL**

---

Criminal No. 13-10200-GAO  
UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: Apr. 14, 2014

---

**OPPOSITION TO GOVERNMENT'S MOTION IN  
LIMINE TO PRECLUDE ANY REFERENCE TO  
WALTHAM TRIPLE HOMICIDE OR OTHER  
ALLEGED BAD ACTS OF TAMLERAN TSARNAEV**

---

Defendant, Dzhokhar Tsarnaev, by and through counsel, respectfully submits this opposition to the government's Motion in Limine to Preclude Any Reference to Waltham Triple Homicide or Other Alleged Bad Acts of Tamerlan Tsarnaev. [DE 867 (filed under seal).] The government's motion should be denied because Tamerlan's participation in the Waltham murders and evidence of his other "bad acts" support multiple aspects of the defense mitigation case regardless of whether or not Dzhokhar had specific awareness of any particular instance of Tamerlan's conduct.

The defense seeks to establish that "[b]ut for the influence of his older brother Tamerlan, the defendant would not have committed any of the crimes of which he was convicted." The government concedes that "the

jury may consider as a mitigating factor the Tsarnaev brothers' relative responsibility" for those offenses. Mtn. at 4. The defense therefore already has started to elicit and will continue to elicit evidence that Tamerlan played the lead role in planning and carrying out the offenses of conviction and that he exercised dominating influence over Dzhokhar for reasons including age, size, culture, character, and behavior. In addition, the defense is entitled to counter the government's "motive" evidence purportedly suggesting Dzhokhar's "self-radicalization" by showing instead that Tamerlan was the first to adopt violent "jihadist" beliefs and then sought to draw his younger brother into that belief system. Evidence of the Waltham murders, specifically, and other "bad acts" of Tamerlan, more generally, strongly support all of these facets of the defense case.

**I. EVIDENCE OF THE WALTHAM MURDERS IS RELEVANT AND POSES NO RISK OF UNFAIR PREJUDICE.**

The government contends that evidence concerning Tamerlan's participation in the Waltham murders should be excluded because "the jury may not spare the defendant merely because his brother was a 'worse criminal' or more reprehensible person based on other criminal acts." Mtn. at 4. But that is not the purpose for which the evidence would be offered. Evidence tending to show that Tamerlan committed the Waltham murders, and information depicting the brutality of those murders, would tend to corroborate Tamerlan's dominant role in planning and carrying out the *charged offenses*. Evidence that Tamerlan planned and committed the Waltham murders makes it more plausible to believe that he planned and played the lead role in the offenses of conviction. It reinforces other evidence concerning Tamerlan's violent character and supports the proposition



that he exercised coercive control over his brother. [REDACTED]. Simply put, Tamerlan's participation in the Waltham murders is probative of multiple issues even assuming, *arguendo*, that Dzhokhar was unaware of it at the time.

Notably, even if the Rules of Evidence applied in the penalty phase (they do not), [REDACTED] If the government wishes to disprove or impeach the statement with other evidence it may certainly try to do so. [REDACTED]. [REDACTED]

The Waltham homicides also provide important evidence of the apparent nature and depth of Tamerlan's extremist Islamist beliefs as early as September 2011. [REDACTED]

**II. OTHER EVIDENCE OF "BAD ACTS" BY TAMERLAN TSARNAEV IS RELEVANT AND POSES NO RISK OF UNFAIR PREJUDICE.**

The government also seeks to bar "mention of any other bad acts by Tamerlan" without identifying specific any particular evidence or acts that it seeks to bar. Mtn. at 5. Lacking any trial context, the government's blanket request should be denied as too abstract. Generally speaking, the defense should be permitted to elicit evidence concerning Tamerlan's extremist beliefs and behavior as well as his proclivity for violence generally, and his use of violence and intimidation as a means of exercising coercive control over others, specifically. Such evidence provides direct support for the mitigating factors that the defense is entitled to prove.

**Conclusion**

For the foregoing reasons, the government's motion should be denied.

Respectfully submitted,

DZHOKHAR TSARNAEV  
by his attorneys

/s/ WILLIAM FICK  
WILLIAM FICK

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MIRIAM\_CONRAD@FD.ORG  
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WILLIAM\_FICK@FD.ORG

**Certificate of Service**

I hereby certify that I have caused this document to be served upon counsel for the United States by e-mail PDF on April 11, 2015.

/s/ WILLIAM FICK  
WILLIAM FICK

**[Photo of Tsarnaev showing middle finger to camera while in federal-court holding cell]**



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Mar. 17, 2015  
9:35 a.m.

---

**JURY TRIAL—DAY THIRTY-FOUR**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

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By: JUDY CLARKE, ESQ.  
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- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, ESQ.  
220 Sydney Lewis Hall  
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On Behalf of the Defendant

\* \* \* \* \*

[34-52]

Q. Who else was there?

A. Nicholas, my twin brother, and my friend Abdul.

Q. And what did you guys do?

A. We just hung out, chilled, smoked weed. Same thing we usually do.

Q. At some point did the conversation turn to the gun?

A. Yes.

Q. What did you do?

A. I took the gun out the ceiling panel and showed it to the defendant and Dias.

Q. What was the gun stored in?

A. It was stored in a sock.

Q. Just a regular tube sock?

A. Yes.

Q. Did you hand the defendant the gun?

A. Yes.

Q. What did he do with it?

A. Handled it, acknowledged it, tried to pass it to Dias. Dias didn't want to touch it. And he gave it back to me and I put it away.

Q. Did you talk about ammunition?

A. Yes.

Q. Did you have ammunition?

A. Yes.

Q. Where was that?

\* \* \* \* \*

[34-73]

A. Yes.

MR. CHAKRAVARTY: I'd move into evidence 1178.

MS. CONRAD: No objection.

(Government Exhibit No. 1178 received into evidence.)

MR. CHAKRAVARTY: Thank you, your Honor.

BY MR. CHAKRAVARTY:

Q. For the jury, can you just circle Aza and Dias again?

A. This is Aza, Dias.

Q. Do you know how often the defendant would go to New York?

A. No, I do not. I know he went there a few times.

Q. Did you ever go with him?

A. No.

Q. Do you know whether he went with his Kazakh friends aside from this occasion?

MS. CONRAD: Object, your Honor. Foundation.

MR. CHAKRAVARTY: I'll ask another question, your Honor.

BY MR. CHAKRAVARTY:

Q. Do you know whether he went in February of 2013?

A. No, I do not.

Q. When's the last time you saw the defendant?

A. About a day or two after my 20th birthday.

Q. When was that?

A. April 2013.



Q. Was it early April?

[34-74]

A. Yes.

Q. And where did you see him?

A. I met with him inside the parking lot of my mother's apartment complex.

MR. CHAKRAVARTY: Go to Exhibit 743, please. I think this is in evidence, your Honor.

I'm sorry. 744.

Your Honor, I believe this is in evidence. I don't know if it's been published.

THE COURT: It is.

MR. CHAKRAVARTY: Thank you.

BY MR. CHAKRAVARTY:

Q. So do you recognize this intersection?

A. Yes, I do.

Q. Is this the intersection where the Shell Gas Station is on one side and the Mobil Gas Station is on the other?

A. Yes, it is.

Q. And where on this picture is your mother's apartment?

A. (Witness indicates.)

Q. That building? And that's a tower?

And where is the parking lot in which you met the defendant?

A. (Witness indicates.)

Q. Okay. You've circled what appears to be a parking structure. That's the second main building on the right?

[34-75]

A. Yes.

Q. Why were you meeting with the defendant after your birthday?

A. He was meeting with me to purchase some marijuana.

Q. And was he with anyone?

A. Yes.

Q. Who?

A. Dias.

Q. What happened when you guys met?

A. He was in—I believe that day he was in Dias's BMW. I went downstairs, I met up with him inside the car. I was with my twin brother, Steven.

I got in the car. The defendant was driving, Dias was in the passenger seat. We had talked very shortly. The defendant handed me some money, and then I left the car to go grab the marijuana.

Q. And you went to somebody else's car to do that?

A. Yes.

Q. Did you get the marijuana?

A. Yes.

Q. Did you come back?

A. Yes.

Q. What happened?

A. Can you repeat that?

Q. What happened when you got back?

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Mon., Apr. 27, 2015  
9:05 a.m.

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**JURY TRIAL—DAY FIFTY**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
NADINE PELLEGRINI, Assistant U.S. Attorneys  
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UNITED STATES DEPARTMENT OF JUSTICE

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On Behalf of the Government

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- and -

CLARKE & RICE, APC

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- and -

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On Behalf of the Defendant

\* \* \* \* \*

[50-93]

Q. And tell us about that conversation. How did it begin?

A. You know, just sort of regular, you know, "Hey, what's up? And how are you doing?" I asked, you

know, how Jahar was doing. And, you know, [Tamerlan] told me a little bit about Jahar. And I asked him about whether he hung out with Sebastian and those—that group of friends, and he said he hadn’t been recently.

Q. And did he say why he hadn’t been?

A. Yeah, he said something along the lines of they need to drink or smoke to socialize, and “I don’t really do that stuff” or “I can’t do that stuff anymore.”

Q. Do you remember whether it was “I don’t do that stuff” or “I can’t do that stuff”?

A. I don’t.

Q. Describe physically what he was wearing. Was anything notable about that?

A. Yeah. He was wearing—he was wearing some longer garments, I don’t know what to call it. I guess a robe. And he was wearing a beard at that point.

Q. Had you ever seen him in a beard before?

A. I don’t think so.

Q. And generally, was his appearance different from when you had seen him at the Fredduras’?

A. Yeah.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Apr. 28, 2015  
9:15 a.m.

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**JURY TRIAL—DAY FIFTY-ONE**

---

APPEARANCES

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On Behalf of the Defendant

\* \* \* \* \*

[51-9]

\* \* \* \* \*

A. It was one year and a half; one year, seven months.



Q. During that time there, did you also meet a Russian by the name of Tamerlan Tsarnaev?

A. Not in that first location.

Q. But sometime during your stay in Allston and Brighton living there, did you meet Tamerlan Tsarnaev?

A. Yes, I did.

Q. And what were the circumstances of meeting Tamerlan Tsarnaev?

A. For me was kind of like became another friend like the others.

Q. Was he friends with the Russians that you met?

A. Yes.

Q. What kinds of things would you and the Russians do socially?

A. Well, having fun, go outside, talking, sometimes go to the party.

Q. Now, the Russians, did they like to drink alcohol?

A. Yes, usually they used to drink.

Q. Did they sometimes like to smoke marijuana?

A. Yes, they do.

Q. And was that true of all of them?

A. No.

Q. Was it true of Tamerlan Tsarnaev?

[51-10]

A. Yes.

Q. Now, you were living at a different apartment than the Russians while you were in Allston and Brighton?

A. Yes.

Q. At some point did you move to Cambridge?

A. Yes.

Q. What street in Cambridge did you move to?

A. Cambridge Street.

Q. Actually, in Cambridge, Massachusetts, what street did you move there?

A. I don't understand your question. Can you make your question again, please?

Q. You mentioned that you had moved to Cambridge Street. Was that Cambridge Street in Allston or Cambridge Street in Cambridge?

A. Brighton.

Q. In Brighton?

A. Brighton.

Q. And then after you lived on Cambridge Street in Brighton, did you move to Cambridge, Massachusetts?

A. Yes, I did.

Q. And what street was that?

A. 20 Harding Street.

Q. And when was that that you moved to Cambridge, as best you can recall?

\* \* \* \* \*

[51-147]

\* \* \* \* \*

Q. And please continue reading the next paragraph.

A. (As read:) Vakhabov and Tamerlan Tsarnaev used to go out and have fun. They would smoke, drink and go to clubs. Tamerlan Tsarnaev introduced Vakhabov to some of his “weed” smoking friends in Cambridge.

Many years ago, Tamerlan Tsarnaev gave Vakhabov a “moderate” version of the Qur’an. However, as of approximately two years ago, Vakhabov noticed a change in Tamerlan Tsarnaev’s behavior. Tamerlan Tsarnaev told Vakhabov that a true Muslim would not go out and smoke and chill out. Tamerlan Tsarnaev told him that just because you say you are a Muslim, it does not mean that you really are.

Q. Would you go to the last line, please, of that page.

A. (As read:) Approximately one year ago, Tamerlan Tsarnaev traveled from the United States to Dagestan. Tamerlan Tsarnaev telephonically contacted Vakhabov one time from Dagestan. Vakhabov does not know the purpose of Tamerlan Tsarnaev’s travel to Dagestan. Tamerlan Tsarnaev’s father was residing in the United States during the time period Tamerlan Tsarnaev traveled to Dagestan. Tamerlan Tsarnaev’s father told Vakhabov that Tamerlan Tsarnaev was in Chechnya, and that Tamerlan Tsarnaev had not been there since he was a little baby. Dzhokhar Tsarnaev was at UMass Dartmouth during the time period that Tamerlan Tsarnaev was traveling overseas.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Apr. 29, 2015  
10:20 a.m.

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**JURY TRIAL—DAY FIFTY-TWO**

---

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\* \* \* \* \*

[52-136]

A. We had been drinking. It was a fun time. I was excited to see him because I didn't expect him to be there. I didn't know he was going to be there. And so

when I seen him, I was like, “Jahar, let’s take a picture,” and we did.

Q. So did you and your group of friends continue to be close over the freshman year, get together for bro nights?

A. Yes.

Q. Did you also do other things together?

A. Yes. Sometimes Jahar would take us to Target just to grab a few things. Even picked my boyfriend up at the terminal once. And—

Q. Did you have a car down at UMass Dartmouth?

A. No.

Q. Did Jahar have a car there?

A. Yes.

Q. Would he offer, then, to take you places—

A. Yes.

Q. —you needed to go?

A. Yes.

Q. Did you know that Jahar was Muslim as his faith?

A. No.

Q. Did he ever talk about that at all?

A. No.

Q. Did he try to push any kind of belief system on you?

A. No.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Mon., May 4, 2015  
9:17 a.m.

---

**JURY TRIAL—DAY FIFTY-FOUR**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
NADINE PELLEGRINI, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
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- and -

UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
Capital Case Section

1331 F Street, N.W.  
Washington, D.C. 20530  
On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE

By: MIRIAM CONRAD, WILLIAM W. FICK and TIMOTHY  
G. WATKINS, Federal Public Defenders  
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Fifth Floor  
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CLARKE & RICE, APC

By: JUDY CLARKE, ESQ.  
1010 Second Avenue  
Suite 1800  
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On Behalf of the Defendant

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, ESQ.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[54-100]

\* \* \* \* \*

THE COURT: Okay. It can go too far, but I'll  
permit some of it in.



(In open court:)

BY MS. PELLEGRINI:

Q. Ms. Guevara, do you know if Jahar Tsarnaev got extra money from selling drugs?

A. Yes.

Q. And how do you know that?

A. I just heard that he sold—

MS. CONRAD: Objection. Move to strike. No personal knowledge.

THE COURT: Yes, I'll strike it on that answer.

BY MS. PELLEGRINI:

Q. Ms. Guevara, you smoked marijuana with Dzhokhar Tsarnaev, correct?

THE COURT: Let me just remind the jury that if it's stricken evidence, it's no longer evidence, and you can disregard it.

BY MS. PELLEGRINI:

Q. Correct?

A. Correct.

Q. All right. In fact, when you were talking with Ms. Conrad about that the last time, on spring break when you and the [54-101] defendant, Dzhokhar Tsarnaev, and others went out for dinner, isn't it true that all of you were looking to buy marijuana?

A. Eventually by the end of the night.

Q. Right. And did you do so?

A. Yes.

Q. And, in fact, when you—you indicated that you played a game with your phone with the defendant. Is that correct? A Scrabble game?

A. Yes.

Q. But you also used your phone to communicate with him about doing drugs. Isn't that correct?

A. No, it's not correct.

Q. Do you recall testifying in the summer of 2014?

MS. CONRAD: Objection, your Honor.

THE COURT: Let me see you.

(Discussion at sidebar and out of the hearing of the jury:)

MS. CONRAD: She acknowledged that they did drugs together, so I don't know what the relevance of the text is because she's not really impeaching her because she already acknowledged it.

THE COURT: Yeah. Where are you heading?

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Mar. 11, 2015  
9:14 a.m.

---

**JURY TRIAL—DAY THIRTY-ONE**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

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UNITED STATES DEPARTMENT OF JUSTICE

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1010 Second Avenue  
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San Diego, California 92101  
On Behalf of the Defendant

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, ESQ.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[31-65]

\* \* \* \* \*

MR. CHAKRAVARTY: I would move into evidence Exhibit 1485 which for all intents and purposes is just another page to the presentation that he had just done.

MS. CONRAD: Your Honor—

THE COURT: The same situation?

MS. CONRAD: Well, yes, and also the underlying data.

THE COURT: Yeah. That objection's overruled.

This was so far—you may use it—we're deferring the exhibit/chalk question, but it may be used as a chalk and I'll expose it now to the jury.

MR. CHAKRAVARTY: Thank you, your Honor.

BY MR. CHAKRAVARTY:

Q. Agent Fitzgerald, is this also, as with the phone records that you described, about the phone activity on the Tsarnaev brothers' phones the week of the marathon bombing—does this show the use of the Jahar Tsarnaev AT&T phone on December 25th and 26th of 2012?

A. Yes.

Q. And can you go through and explain what the phone activity shows you?

A. So there were several text messages—mostly text messaging, if not all—utilizing, what—one, two, three, four—five different sectors in the Cambridge area over that time period.

[31-66]

Q. And, again, as with some of the previous plots, you showed where the Tsarnaev family residence was at 410 Norfolk Street?

A. Yes.

Q. And this was that Prospect Street cell tower that you were talking about—or actually, this is an AT&T cell tower also in the vicinity of Prospect Street?

A. Right. It might be at the same location. I don't recall. Like I say, sometimes they co-locate on the same structure, the same building, and sometimes they are just nearby each other. I can't remember if exactly—if this was in the same exact location, but it's definitely near that.

Q. And does this show that this phone, the one that ends in 5112, was using cell towers in the Cambridge area from December 25th in through December 26th, at least through 12:35 of that day?

A. Right. I believe that—I think this one over here might be 12—yeah, 12:31. So, yeah, through 12:35, noon. And it starts as early as a little after—well, there's actually—on 12:26 there's another one up here, 5:55. So all the way through 5:55. And then it starts as early as—let's see, a little after noon on Christmas Day.

Q. So if that's when Christmas break was for—or the holiday break, I should say, for UMass Dartmouth, then it's possible that the phone was being used back at home on Norfolk Street?

[31-67]

A. I mean, my kids were on break those same two days. I mean, as far as the university, I assume that they're also on break Christmastime. But, yes, the phone was being utilized in Cambridge, and it definitely could have been 410 Norfolk Street. In that area for sure. That

tower and sector to the north is providing service to that address.

MR. CHAKRAVARTY: Just a moment, your Honor.

(Counsel confer off the record.)

MR. CHAKRAVARTY: No further questions.

MS. CONRAD: Your Honor, I do have cross-examination, but there's a discovery issue that I would like to discuss with your Honor, and perhaps if we could take a break and discuss that.

THE COURT: All right. A different one, I presume?

MS. CONRAD: I'm sorry?

THE COURT: A different one?

MS. CONRAD: Yes.

THE COURT: All right. We'll take the morning recess.

THE CLERK: All rise for the Court and the jury. And we'll take the morning recess.

(The Court and jury exit the courtroom at there is a recess at 10:57 a.m.)

THE CLERK: All rise for the Court.

(The Court enters the courtroom at 11:21 a.m.)

THE CLERK: Be seated.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Mar. 17, 2015  
9:35 a.m.

---

**JURY TRIAL—DAY THIRTY-FOUR**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
NADINE PELLEGRINI, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
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UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
Capital Case Section



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Washington, D.C. 20530  
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FEDERAL PUBLIC DEFENDER OFFICE

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1010 Second Avenue  
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On Behalf of the Defendant

- and -

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By: DAVID I. BRUCK, ESQ.  
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On Behalf of the Defendant

\* \* \* \* \*

[34-45]

A. My brother and my cousin, my friend Nick.

Q. And what was that conversation?

A. After my brother was robbed, we just started talking about maybe obtaining a gun, you know, for protection.

Q. And near the end of 2012 did an opportunity arise to obtain—

A. Yes.

Q. Explain that opportunity.

A. Well, like I said, me and my brother and my friend had been talking about obtaining a gun, and around the same time a friend of mine from my neighborhood, he had asked me if I could do him a favor and hold down a firearm for him because he needed to get it out of his house.

Q. What was his name?

A. Howie.

Q. And did you agree to take the gun?

A. Yes.

Q. Did he get you the gun?

A. Excuse me. Repeat that?

Q. Did he get you the gun?

A. Yes.

Q. What kind of gun was it?

A. It was a P95 Ruger.

Q. After you got the gun, what did you do with it?

\* \* \* \* \*

[34-49]

A. He laughed.

Q. Did you take the gun out of your residence again?

A. Yes, one more time.

Q. When was that?

A. New Year's Eve 2012.

Q. And where did you take it?

A. To a friend's apartment in Medford, Massachusetts.

Q. What was happening there?

A. Nothing. We were just throwing a New Year's Eve party.

Q. Why did you take it there?

A. I was just being stupid. I wanted to show it off.

Q. And did you?

A. Yes.

Q. Did the defendant come to that house?

A. Yes.

Q. Did you bring it back ultimately to your apartment at some point?

A. Yes, I did.

Q. You say you did. Who else knew about the gun?

A. Me, my twin brother, the defendant and a few close associates.

Q. And how about Nicholas?

A. Yes.

Q. Now, after that early January trip with the gun, did you talk to the defendant again about the gun?

[34-50]

A. Yes.

Q. About when was that?

A. Sometime in January.

Q. How did you have that conversation?

A. It started over the phone and then talked about it with him in person.

Q. When you talked to him about the gun, did he ask you for anything?

A. Yes.

Q. What did he ask you for?

A. He asked me to potentially borrow the gun.

Q. Why did he ask you to borrow the gun?

MS. CONRAD: Objection to that in that form.

THE COURT: Sustained to the form of the question.

BY MR. CHAKRAVARTY:

Q. For what purpose did he ask for the gun?

MS. CONRAD: Objection. Same objection.

THE COURT: Yeah, rephrase it.

BY MR. CHAKRAVARTY:

Q. Did he tell you why he needed the gun?

A. Yes.

Q. What did he tell you?

A. He said he wanted to rip some kids from URI.

Q. When you say "rip," what does that mean?

A. Rob.

[34-51]

Q. Is that what you did with Nicholas a few months earlier?

A. Yes.

Q. Did he make arrangements to come by your apartment?

A. Yes.

Q. Approximately when did he come by your apartment?

A. Within the next couple of weeks after we started talking about the gun.

Q. And was he regularly coming to your apartment around this time?

A. Yes, about a few times a month when he could.

Q. And did he actually come to talk about the gun?

A. Yes.

Q. Was he with anyone?

A. Yes, he was.

Q. Who was he with?

A. Dias. I can't pronounce his last name.

Q. Is it Dias Kadyrbayev?

A. Yes.

Q. Was he a friend of the defendant's?

A. Yes.

Q. Did you know him as well?

A. Yes, I did.

Q. Where did you know him from?

A. He was a good friend of my brother and the defendant's from UMass Dartmouth.

[34-52]

Q. Who else was there?

A. Nicholas, my twin brother, and my friend Abdul.

Q. And what did you guys do?

A. We just hung out, chilled, smoked weed. Same thing we usually do.

Q. At some point did the conversation turn to the gun?

A. Yes.

Q. What did you do?

A. I took the gun out the ceiling panel and showed it to the defendant and Dias.

Q. What was the gun stored in?

A. It was stored in a sock.

Q. Just a regular tube sock?

A. Yes.

Q. Did you hand the defendant the gun?

A. Yes.

Q. What did he do with it?

A. Handled it, acknowledged it, tried to pass it to Dias. Dias didn't want to touch it. And he gave it back to me and I put it away.

Q. Did you talk about ammunition?

A. Yes.

Q. Did you have ammunition?

A. Yes.

Q. Where was that?

[34-53]

A. It was in another sock inside the ceiling panel.

Q. Did you show him that?

A. Yes.

Q. About how much ammunition did you have?

A. About ten rounds.

Q. Is ten rounds ten bullets?

A. Yes.

Q. Was there a magazine as well?

A. Yes.

Q. Did the defendant say anything when you handed him the gun or the ammunition?

A. He just took the gun, looked at it, acknowledged it, didn't really say much.

Q. Describe the gun.

A. The gun's black. It was kind of—looked a little rusty. The top slat part had kind of like a little red-

dish-orange hue to it. The serial number was obliterated on a silver panel. And it said "P95" on the top slide, and it also says "Ruger" on the side of the gun.

Q. Now, do you know much about guns?

A. No, not really.

Q. You said the serial number was obliterated. What does that mean?

A. Scratched off, or made to appear so that you can't read it.

\* \* \* \* \*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Mar. 24, 2015  
9:10 a.m.

---

**JURY TRIAL—DAY THIRTY-EIGHT**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
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John Joseph Moakley Federal Courthouse  
Suite 9200  
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- and -

UNITED STATES DEPARTMENT OF JUSTICE

By: STEVEN D. MELLIN, Assistant U.S. Attorney  
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1010 Second Avenue  
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San Diego, California 92101  
On Behalf of the Defendant

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, ESQ.  
220 Sydney Lewis Hall  
Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[38-109]

BY MR. WEINREB:

Q. Good afternoon.

A. Good afternoon.

Q. Where do you work?

A. At the FBI in Boston.

Q. How long have you worked there?

A. Approximately two and a half years.

Q. What's your current assignment there?

A. I'm on the FBI Boston Organized Crime Task Force.

Q. What kind of training have you received as an FBI agent?

A. I had 21 weeks of training at the FBI Academy in Quantico.

Q. Despite being assigned to the organized crime unit at the FBI, did you participate in the Boston Marathon bombing investigation in the weeks after it occurred?

A. I did.

Q. And in the course of that investigation, on April 24th of 2013, did you go to the Manchester firing range in New Hampshire to obtain some records?

A. I did, but on a different date. April 23rd.

Q. I'm sorry. April 23rd.

And what is the Manchester firing range?

A. It is a gun supply store as well as a firing range that's open to the public that they can practice their fire-arm skills.

Q. What does that mean? What's a firing range?

A. A range where you can go and have a target, and you can [38-110] shoot a gun at a target.

Q. Do you have to bring your own gun?

- A. No, you do not; you can rent guns.
- Q. Do they have a variety of guns that you can rent?
- A. Yes, I believe they do.
- Q. Do you have to bring your own ammo?
- A. No.
- Q. How do you shoot if you don't have ammo?
- A. You can buy ammo from the place as well.
- Q. And do they have the ammo necessary for the variety of guns that they rent out?
- A. Yes.
- Q. When you got to the Manchester firing range, did you talk to the owner?
- A. I did.
- Q. What was his name?
- A. Jim McCloud.
- Q. What, if anything, did you ask him to do?
- A. I asked him if we could have permission to look through video and paperwork that he had related to Dzhokhar and/or Tamerlan Tsarnaev.
- Q. And in response to that, did he give you some records?
- A. He did.
- MR. WEINREB: Mr. Bruemmer—
- Q. Did you review those records in my office the other day?

[38-111]

A. Yes, I did.

Q. Did you also ask Mr. McCloud if there was surveillance video?

A. I did.

Q. For that date and time?

A. Yes.

Q. And as a result of that request, did you obtain some video?

A. Yes, I did.

Q. Did you also review that video in my office the other day?

A. Yes, I did.

Q. So the records are Exhibit 1164 and the video is Exhibit 1165. Were the records that you obtained, fair and accurate copy—the ones you viewed, were they fair and accurate copies of the records that you obtained that day?

A. Yes, they were.

Q. And the video that you viewed, is that a fair and accurate excerpt of the surveillance camera video that you obtained that day?

A. Yes, it was.

MR. WEINREB: The government offers 1164 and 1165.

MR. WATKINS: No objection.

THE COURT: Okay.

(Government Exhibit Nos. 1164 and 1165 received into evidence.)

[38-112]

MR. WEINREB: Can we have 1164 on the screen, please.

BY MR. WEINREB:

Q. Do you see that?

A. Yes.

Q. I'm just going to wait for it to come up on the big screen.

So is this one of the records you received?

A. Yes, it is.

Q. I'm going to enlarge the top portion of it. Actually, this is a record, and stapled to the front there appears to be a receipt?

A. Yes.

Q. All right.

MR. WEINREB: Can we have the next page of that exhibit, please?

Q. So is this the same record but without the receipt on top?

A. Yes, that's correct.

Q. Let me—so what does it say up here at the very top? What kind of document is this?

A. This is the check-in card.

Q. And who's the customer?

A. Dzhokhar Tsarnaev.

Q. Does it give an address for him?

A. 410 Norfolk Street, Number 3, Cambridge, Massachusetts.

Q. And does it give a date of birth?

[38-113]

A. Dated 7/22/93.

Q. Phone number?

A. (857) 247-5112.

Q. So over here next to "firearm," what's the description that's given here?

A. A Glock 17.

Q. And what's the next one?

A. The second one I originally thought said Glock 39, but now I actually believe it's a Glock 34. That's a four, not a nine.

Q. Are you familiar with what is the caliber of those two weapons?

A. I am.

Q. What are they?

A. 9 mm.

Q. Does this indicate the rental of two 9 mm weapons?

A. Yes.

Q. And what's next to the word "ammunition"? What's indicated here?

A. 9 mm.

Q. And what do these marks mean?

A. Four dashes, which I was told meant four boxes of 9 mm ammo.

Q. Do you see the boxes that say “in” and “out”?

A. Yes.

Q. What do they indicate?

[38-114]

A. The time in the range and then the time out of the range.

Q. So roughly an hour?

A. Roughly an hour, yes.

Q. The grand total cost for renting these two weapons and buying the four boxes of ammunition?

A. \$170.75.

MR. WEINREB: Can we have the next page?

Q. So this actually—

MR. WEINREB: I’m sorry, can you go back to the

. . .

Q. So this says “firearms experience,” “range safety” and “release”?

A. Yes.

Q. And here, the person is asked to check certain boxes?

A. That’s correct.

Q. Okay. What did Dzhokhar Tsarnaev say his experience was with a handgun?

A. Intermediate.



Q. And in response to the question of whether he had a history of mental illness, what did he say?

A. No.

Q. And when he was asked if he was a user or addicted to marijuana or any other drug, what did he say?

A. No.

Q. And that's dated and then there's a signature?

A. That's correct.

[38-115]

MR. WEINREB: Can we have the next page.

Q. Is this the same kind of check-in card we saw before?

A. Yes.

Q. And it gives the name of Tamerlan Tsarnaev?

A. That's correct.

Q. And the same address?

A. That's correct.

Q. And what's the phone number given?

A. (857) 928-4634.

Q. But he didn't rent or buy anything or pay for anything?

A. Based off of that, no.

MR. WEINREB: Can we have the next page, please?

Q. So when it came to his experience with a handgun, what did he say?

A. That he was an intermediate.

Q. The same as his brother?

A. Correct.

Q. And when asked whether he had any history of mental illness, he also said no?

A. That's correct.

MR. WEINREB: Can we now have Exhibit 1165, please.

Q. Do you recognize what's in this frame that I've frozen here?

A. I do.

Q. What is it?

[38-116]

A. It's part of the security video that we obtained from the Manchester firing range.

Q. You actually went there?

A. I did.

Q. So is this what you see outside the door of the Manchester firing range?

A. Yes.

(Video played.)

Q. Is that the door?

A. Yes.

Q. This indicates March 20th at—it's clipped off the right-hand side of the screen, but a time around two o'clock. Is that during the—is that at one end of the period when the receipt indicated that Dzhokhar Tsarnaev and his brother had been in the range practicing?

A. Yes, shortly after.

Q. All right. I'm going to finish running it at this size and then I think we're going to make it smaller and I'll run it again. There we go.

(Video played.)

Q. Have you seen those two individuals before, or images of them before?

A. I've seen images of them before.

Q. Okay. And who's the one on the left?

A. Would be Dzhokhar Tsarnaev.

[38-117]

Q. And the one on the right?

A. I believe that to be Tamerlan Tsarnaev.

MR. WEINREB: I have no further questions.

MR. WATKINS: No questions.

THE COURT: No questions? All right, sir. Thank you. You may step down.

THE WITNESS: Thank you.

(The witness is excused.)

MR. WEINREB: The United States calls Timothy Dowd.

TIMOTHY E. DOWD, duly sworn

THE CLERK: State your name, spell your last name for the record, keep your voice up and speak into the mic.

THE WITNESS: Timothy E. Dowd, D-O-W-D.

DIRECT EXAMINATION

BY MR. WEINREB:

Q. Good afternoon.

A. Good afternoon.

Q. Where do you work?

A. I work for the Massachusetts State Police.

Q. How long have you worked there?

A. Twenty years.

Q. What is your official title?

A. Sergeant.

Q. What are your job responsibilities?

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

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John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Mar. 25, 2015  
9:13 a.m.

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**JURY TRIAL—DAY THIRTY-NINE**

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On Behalf of the Defendant

\* \* \* \* \*

[39-175]

\* \* \* \* \*

Q. “Oxford or are all those schools too easy for you?”

A. "Nah, not ivy."

Q. "Ivy schools are a force. Oh, shit. He's going to Harvard. That's crazy. None other reason than this. No point in going there other than to look good."

A. "Something manageable. Not for working, slaving myself and crying myself to sleep."

Q. N word "need to understand you don't ivy school to be successful."

A. "I'm trying to go to an ivy for masters though. Not going to lie."

Q. "What do you want to be? Sniper? Pyro? Engineer? Knowledge to become imam? Biologist? That shit crazy. WTF." Is that a phrase for, what, the F word?

A. Yes.

Q. "Imam Tsarnaev then? Spy?"

A. "I wanna bring justice for my people."

MR. CHAKRAVARTY: Go to Exhibit 1388, please.

Q. Now, is this later that evening at about 11:43 p.m. and two seconds, again on Christmas Day, December 25, 2012?

A. Yes.

Q. And these are texts from the defendant?

A. Yes.

Q. And do you know if they were to the same person?

[39-176]

A. Yes, they are.

Q. And what did the defendant say?

A. “Doing something with Tamerlan. I’ll hit you up in a bit, bro.”

MR. CHAKRAVARTY: Could we go to Exhibit 1395, please.

Q. Now, is this another exchange between the defendant and the same person?

A. Yes, it is.

Q. And was this about a month later, on January 28th, 2013, beginning at about 11:36 p.m. and 12 seconds?

A. Yes.

Q. Okay. If you could begin with reading the defendant’s part?

A. “Come May I’m out.”

Q. “Oh, yeah. You’re getting yourself a wifey?”

“You getting yourself a wifey? Good shit.”

A. Well, IDK,” I believe to be I don’t know “about that, but we’ll see.”

Q. “I think it’s a little too early. I don’t even know if I want I get married, bro.”

A. “LOL. Yea, I know. I’m just trying to finish school.”

Q. “To?.”

A. “I mean, there’s one other option, bro. The highest level of Jannah.”

\* \* \* \* \*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Apr. 21, 2015  
10:08 a.m.

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**JURY TRIAL—DAY FORTY-SEVEN**

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\* \* \* \* \*

[47-19]

\* \* \* \* \*

I will repeat and elaborate on these points after you  
have heard all the evidence and before you begin your

deliberations. As in the prior proceedings, you'll have a special verdict form to assist you and guide you in your deliberations. But because these procedures are unique to capital cases and so fundamentally important to your decision-making, I thought it advisable for you to have this preliminary explanation.

So thank you for your attention. We're now ready for the government's opening statement.

Ms. Pellegrini.

MR. WEINREB: Your Honor, we'd ask the jurors to lift their screens.

THE COURT: Okay. I guess there will be use of the screens.

MS. PELLEGRINI: Good morning.

THE JURORS: Good morning.

MS. PELLEGRINI: Unbearable, indescribable, inexcusable and senseless. All of those words have been used to describe the murders committed by Dzhokhar Tsarnaev. Yes, the deaths of Krystle Campbell, of Lingzi Lu, of Martin Richard and of Officer Sean Collier have been all of those things for [47-20] their families and for their friends.

But don't let those descriptions make you think that you'll never really understand what Dzhokhar Tsarnaev did to those victims and don't think that you won't know the full impact of his crimes, or that you won't be able to comprehend what those murders did to their families, their friends and their colleagues. You will know the story of those four families.

The deaths committed by Dzhokhar Tsarnaev were deliberate, intentional and cruel. You know how Krystle, Lingzi, Martin and Sean died. Now you need to know how they lived. You need to know and understand why their lives mattered. You will begin to know Krystle Campbell and understand what it meant to lose the young woman that her father, Bill Campbell, nicknamed “Princess.” You’ll hear more about Lingzi, and you will understand what it meant to lose the young woman that her father, Jun Lu, remembered as a jolly girl.

You’ll see Martin Richard who so resembles his dad, and see him in photos that will remind you of what an eight-year-old boy’s life is like. Should be like. And you will know Sean Collier, the officer who inspired these words spoken to those who mourned him: “Live long, like he would. Big hearts, big smiles, big service. All love.”

These young women, this young man and this little boy, [47-21] all of them were loved and they loved in return. This is how we should know them, because they weren’t always just the victims of Dzhokhar Tsarnaev. Before he murdered them in some of the cruellest ways imaginable, they were sons, they were daughters, they were grandchildren, they were brothers and they were sisters. And all of them had rich and fulfilling lives even at their young age.

But now these beautiful faces are memories and memorials. They’re symbols, even, of loss, when all their families would want is to have them back one more time to be their son, their daughter, their best friend. When all they want is to have them come home one more time. For Lingzi, that would mean home to China, as she’s pictured here, so that her parents could tell her that they

kept their promise, they kept her beloved music collection safe when she left China to travel halfway around the world to come to Boston to study.

One more time just to see them laugh and joke, like Krystle here celebrating after a wedding that she had successfully planned and pulled off on Spectacle Island. Just to watch them smile proudly, like Sean here at a family wedding. And just to see Martin decked out in green beads one more time for one more St. Patrick's Day.

Their families had every right to expect they would live out their lives and realize the potential of these young lives, but Dzhokhar Tsarnaev took them all away, in the most [47-22] painful and brutal ways possible. They were all beautiful, and they're all now gone.

And there are others who, while they survived, found their lives dramatically, irrevocably changed in an instant by Dzhokhar Tsarnaev: Jessica Kensky, Roseann Sdoia, Karen McWatters, Jeff Bauman, Rebekah Gregory. They're just a few of the victim survivors. Roseann, Karen and Rebekah each suffered the amputation of one leg; Jessica and Jeff have now lost both legs. You heard and you saw what they went through, what they suffered through and the terrible injuries inflicted by Dzhokhar Tsarnaev.

And, yes, when they testified, they were brave, they were resilient and they were open. They faced you, as they still face life, with great humor and good grace. But now you need to know the full story of all of them, of all of the survivors. You need to know how close they came to death as a result of the actions of Dzhokhar

Tsarnaev; how close they came and others came, and how close others still might be.

The question of guilt has been answered, and the question of sentence remains. You have heard testimony and you've seen photos and videos; you've heard the graphic descriptions and the wrenching testimony of the victims and the witnesses. You needed to know all of that evidence because you needed to know what happened on Boylston Street, in Cambridge and in Watertown.

[47-23]

The verdicts don't supply you the answer to the next question that you must answer, but the evidence will assist you. And you could consider everything that you have heard in the guilt phase and everything that you are about to hear in this phase; you'll just look at it in a slightly different way. Because now all of the evidence and all of the information will help to assist you in answering one more question. And we phrase the question as this: Why? Why? After weighing all of the aggravating factors and mitigating factors, why is the death penalty the appropriate and just sentence for Dzhokhar Tsarnaev?

The answer, we suggest, will be found in the entire sum of Dzhokhar Tsarnaev's own character and his own actions. Every gateway factor that the Court mentioned and every aggravating factor will be proven to you beyond a reasonable doubt. Why is the death penalty the appropriate and just sentence? Because Dzhokhar Tsarnaev planned and he plotted to kill. Because when Dzhokhar Tsarnaev sauntered down Boylston Street and took a pressure cooker bomb into the crowds,

he created a grave risk of death for every person within a radius of that bomb. And later he created that same risk for every officer and every person in the radius of the bombs that he threw down Laurel Street, and every officer in the range of the car that he gunned down Laurel Street.

Why? Because Dzhokhar Tsarnaev created grave risk of [47-24] death for every single one of the 17 victims who had to undergo amputations, many undergoing multiple operations, some undergoing multiple amputations, all of them being put at risk and some still, I'd suggest.

Because in the course of four days he took the lives of these four young, beautiful people. Three died on the streets of Boston, killed by pressure cooker bombs that exploded with such lethal force that pieces of them were embedded in the concrete buildings across the street. Dzhokhar Tsarnaev murdered each one of them in a way that they had time to feel pain, they had time to be scared and frightened, but they had no time to say good-bye. And that is the very essence of terror.

Why? Because Dzhokhar Tsarnaev executed a police officer targeted simply because he was an officer and Dzhokhar Tsarnaev wanted his gun, an officer who sat in his cruiser on that quiet Cambridge campus and died after he was shot between the eyes.

The ultimate question requires you to make a determination, but as the Court just instructed you, you cannot make that final determination until you have made certain gateway findings. So let's look at what you already know and what you will know.

Dzhokhar Tsarnaev was 19 and a half years old when he walked down Boylston Street, just three months shy of his 20th [47-25] birthday. He carried a backpack stuffed with a heavy took time to build pressure cooker, itself lined with nails and BBs that would become embedded in the bodies of his victims. He carried a weapon of mass destruction; not simply a random and quick means, an opportunity to commit a crime. It took time to build the bombs. It took time and planning to get Dzhokhar Tsarnaev and the bombs into his hands. It took planning and it took coordination to get him and the bombs to Boylston Street. And quite obviously, his detonation of the bomb seconds after the first blast was carefully coordinated and calculated. You saw the images of Dzhokhar Tsarnaev on his phone at the Forum site. You saw the phone records.

As Dzhokhar Tsarnaev walked with his partner, his coconspirator, his brother, he could see what the Boston Marathon represented in those few blocks, and how could he not see or know the vulnerability of each and every one of those spectators? There he is, a 26.2-mile road race that culminates in the heart of Boston, surrounded—the course surrounded by well-wishers, celebrants, avid fans and casual observers. The finish line just ahead beckoning thousands of runners. And people stood cheering and ringing bells and clapping and laughing.

And after Tamerlan Tsarnaev walked toward the finish line, Dzhokhar Tsarnaev stood alone at the site of the Forum. He stood alone, but he was in a crowd. His lethal bomb at his [47-26] feet represented a grave risk of death and, of course, death for those who died. He stood, he looked, he called his brother and he acted.



After both bombs exploded, three people lay dying, and many people were so badly injured that their limbs were already amputated or shortly would be. And among the deceased was a small eight-year-old boy. Three days later Dzhokhar Tsarnaev shot and killed a police officer. After the carjacking that followed that murder, he tried to murder police officers in Watertown. He threw bombs, and he was the one who drove the car directly at those same officers. Four deaths in four days.

In just that short retelling, you already have evidence of age: 18 years or older; intentional killing of four victims, because every death was intended. There was no mistake or accident about any one of these. And you have and will have evidence of the following factors: the death of individuals during the commission of other crimes; the grave risk of death to people other than the victims; the heinous, cruel and depraved method of committing these crimes; substantial planning and premeditation; multiple killings and a vulnerable victim.

You have that information, but there will be more. Keep asking the question: Why is the death penalty the appropriate and just sentence for Dzhokhar Tsarnaev? Because the evidence has shown and will show that Dzhokhar Tsarnaev [47-27] deliberately selected a glorious and famous international sporting event for its fame and for the vulnerability of its spectators; because he twisted the marathon into something cruel and ugly for his own purposes, and because he took the marathon and turned it into a political statement to bring attention to himself, to his own beliefs, and to others who would share those beliefs.

But the horror and the death of the victims, that told you what Dzhokhar Tsarnaev did and how he did it, but that horror is now joined with the impact of the never-ending loss upon the families of the victims. Only when all of those facts come together will you know the full effect of Dzhokhar Tsarnaev's acts upon the families left behind, and only then can you carefully weigh the factor of victim impact.

Your sentencing decision will be a consideration of Dzhokhar Tsarnaev's character and his actions, and it is not an exercise in comparison. Each and every time you hear Tamerlan Tsarnaev's name or any other person's name, you can ask yourselves why. Why are you hearing that? Tamerlan Tsarnaev, he's an easy target. Easy target while he lived, certainly an easy target when he's dead. He's not a substitute for his brother.

But it's much more than that. Because ask yourselves if there's anything about Tamerlan Tsarnaev or any other person that will explain to you how Dzhokhar Tsarnaev could take a [47-28] bomb, leave it behind a row of children, walk away, down the street, and detonate it. Is there anything that will explain how he could walk away from that happy and crowded scene, look back over his shoulder, knowing that he just left death there to go off, and he kept on going?

You may hear about family dynamics, family history, family dysfunction. But many people—millions of people, one would venture—face troubles throughout their lives. Who among them murders a child with a bomb?

You may see photos of Dzhokhar Tsarnaev at family gatherings, school events, dances, at camp, playing the drums. That might tell you he had the advantages of a

good education at schools; that he led others, like those on his wrestling team; that he was taken care of, and that he was educated.

But nothing will explain his cruelty and his indifference. Nothing will, other than his own character. And everything you know and will know about Dzhokhar Tsarnaev and the crimes that he committed will reinforce he simply is callous and indifferent to human life. These personal characteristics are what set him apart, and it's his character that makes the death penalty appropriate and just.

It's not that hate and callous indifference to human life are anything new. Sadly, they're not. But neither are the notions of jihad or radicalization. Those didn't start with Dzhokhar Tsarnaev, and they certainly didn't start with [47-29] Tamerlan Tsarnaev, and it is tempting to look elsewhere when one's beliefs and actions are so fundamentally different than what you would expect from another human being.

So when Shakespeare wrote that "The fault, dear Brutus, is not in our stars but in ourselves," he was reminding us that we have to look inward. We have to look towards the person in whom the fault lies. No alignment of the heavens will explain or excuse Dzhokhar Tsarnaev.

The evidence presented and to be presented will show a person whose cruel character can be found in the way that he murdered and in his own reactions to those murders, his own beliefs, and his own motivations. It's the lines that he was so willing to cross that make him fundamentally different. And it may have been hard to imagine that an individual would have such feelings and

then act upon them in such a way, but you no longer have to imagine. You've seen it.

If you want to understand Dzhokhar Tsarnaev and what he did, you don't have to look to the heavens for an answer. You can look for the man who walked alone down Boylston Street, knowing that his brother had taken up his own place at another location. You can look for the man who stood alone behind the Richard family for almost four minutes. You can look for the man who then walked off alone, leaving behind a bomb that would kill Lingzi and Martin; who, without his brother, got back to the UMass Dartmouth campus and three days later came back.

[47-30]

Look for the man who alone got the gun that killed Sean Collier; who alone went into the bank and used the debit card of a terrified carjacking victim to get money; and who drove alone down Laurel Street trying to mow down Watertown police officers; who escaped alone; and who then, alone with his own thoughts, wrote in his own words—wrote and carved his manifesto into the inside of that boat on Franklin Street, declaring his beliefs and righteousness of his own actions.

All of that evidence, and that which will follow, will tell you that Dzhokhar Tsarnaev was and is unrepentant, uncaring, and untouched by the havoc and the sorrow that he has created. Remember Dr. Levitt said a small number of people cross the line into radicalization. But in reality, Dzhokhar Tsarnaev was willing to cross every line for personal glory and for reward. Kill innocents with a bomb: Done. Kill a police officer: Done. Kill a child: Done. All of those lines were

crossed. They were erased. All those boundaries were shattered. It was done by Dzhokhar Tsarnaev.

You've seen the milk-buying video. You've seen the gym video. You've seen the Shell gas station video where he shops for snacks less than two hours after Officer Collier had been executed. And you know he was in Officer Collier's car. And he shops while a terrified carjacking victim sits outside.

You've also seen the Bank of America video. And while it hasn't received the attention of the others, it may be just [47-31] as telling. Dun Meng has been carjacked. He's been forced to give up his car and his PIN number. You watch Dzhokhar Tsarnaev as he enters that bank. He calmly examines the card in his hand. During the course of the next three minutes, he first punches in the number, and it's wrong. Does he panic? Does he run outside and seek the assistance of his brother? No. He calmly reenters that number. He gets into the account, and he steals money. And then, as if he had all the time in the world, he tries to get more money.

Dzhokhar Tsarnaev was as successful as only he and *Inspire* magazine could have hoped. "Successful means," *Inspire* magazine wrote, "are through explosive devices and sacrificing souls." These—these are the souls that he sacrificed.

You're considering Dzhokhar Tsarnaev's character. And you're free to ask, does it really matter who came first in the long line of radicalization? As I said, Dzhokhar Tsarnaev wasn't the first to radicalize. Neither was Tamerlan. And whether Dzhokhar Tsarnaev was radicalized by his brother, by Anwar al-Awlaki, by some

Internet lecture, by a song, or by a terrorist-to-go magazine, the origin and the lineage of terrorism don't matter. What matters are his beliefs in terrorism, his actions of terror, and the consequences of his actions upon others.

He believed, because terrorism sang to him, and then he acted. He killed. Nothing was forced upon him. He simply [47-32] shared. He shared his belief in terrorism, and he shared it with his brother and others.

These people, they were the enemy to Dzhokhar Tsarnaev. He knew they were innocents. He even called them that. But it didn't stop him from murdering them. Two young women and a young man that won't ever reach the age of 30. And a little boy who will never reach the third grade. This will be their story. The impact that each of these young people had in their lives and the impact of their death far exceeds the scant number of years of life that they were given.

You know, some milestones in life are easy to spot, easy to prepare yourself for: birthdays and anniversaries, graduations. And then there are the little things: teaching your child how to ride a bike, drive a car, taking him to dancing lessons or watching him go off to the prom, going to ball games with him or watching them play baseball, going to visit the grandparents or just hiking a trail.

But it's the very smallest of details woven together that make up a life, and that's where grief resides. It's every minute of every day, grief and loss, and it is incapable. It's the laugh that no one will ever hear again. It's the talented fingers that won't ever touch the keyboard again. It's the selfies that won't be shared or

laughed over. It's the phone calls and texts that won't be sent or received. It's even the little irritations of life. Who drives you crazy [47-33] when they leave their sports equipment in the hallway? Who doesn't put away the laundry? Who ate the last piece of cake?

Things that make you laugh and make you cry at the same time. And even in moments of happiness, sadness will remain. And the thoughts of the future will bring no peace. Every time someone thinks, Oh, he really would have enjoyed that game. Or, Look at that, she would have looked great in that dress. Or, Remember that grandpa was so proud of him? It will come with a wrenching ache.

All of this loss is senseless, and it will remain so because there's no sense to be made of it. And these deaths are inexplicable because there are no explanations. And these crimes are inexcusable because there should be no excuses.

The Boston-born poet and philosopher, Ralph Waldo Emerson, wrote, "The only person you are destined to become is the person you decide to be." Destiny: It's the sum of one's decisions and actions and beliefs. It's as personal and individual as a fingerprint. And for Dzhokhar Tsarnaev, his decisions and his actions and his beliefs made up who he was and who he is. His destiny was determined by him, and he was determined and destined to be America's worst nightmare.

You can keep your hearts and minds open, and you'll find a man whose heart was full of rage and whose mind was dead set on the path that he took.

On July 10th, 2013, almost three months after Dzhokhar [47-34] Tsarnaev had murdered Krystle Marie

Campbell, Lingzi Lu, Martin Richard, and Officer Sean Collier, he was here in this courthouse. He knew the United States had charged him for his crimes. In the room that he was in, there was a video camera. Dzhokhar Tsarnaev was alone. There was no brother with him. And once more, just as he had done with the boat on Franklin Street, he had one more message to send.

(Photograph displayed.)

MS. PELLEGRINI: This should be on the screens.

This is Dzhokhar Tsarnaev, unconcerned, unrepentant, and unchanged. Without remorse, he remains untouched by the grief and the loss that he caused. And without assistance, he remains the unrepentant killer that he is. It is because of who Dzhokhar Tsarnaev is that the United States will return and ask you to find that the just and appropriate sentence for Dzhokhar Tsarnaev is death.

Thank you.

THE COURT: All right, Mr. Mellin.

MR. MELLIN: Thank you, your Honor.

Your Honor, the United States calls Celeste Corcoran.

CELESTE CORCORAN, duly sworn

THE CLERK: Have a seat. State your name and spell your last name for the record, if you would, please.

\* \* \* \* \*



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

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John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Mon., Apr. 27, 2015  
9:05 a.m.

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**JURY TRIAL—DAY FIFTY**

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\* \* \* \* \*

[50-32]

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THE COURT: Is it the CART feed as opposed to  
the table?

MR. WATKINS: Yes.

THE COURT: Okay.

MR. BRUCK: Everybody ready?

THE COURT: No notes during the opening statement. That's because? You know the answer. Because it's not part of the evidence.

MR. WATKINS: Judge, it's not yet feeding into any of our monitors.

THE COURT: I don't have it yet here myself. Try again.

There. I'm getting it now.

MR. WATKINS: Thank you, your Honor.

MR. BRUCK: Good morning.

THE JURY: Good morning.

MR. BRUCK: We've now seen more pain and more horror and more grief in this courtroom than any of you would have thought possible. And we have heard from so many survivors who have testified with such courage and such dignity. And it now falls to you to decide what is the best, what is the most appropriate, response, not just to the crime but to the person who is being sentenced for committing it. As you know, there are only two punishments for you to choose from: death and [50-33] life imprisonment without any possibility of release or parole.

Judge O'Toole has already told you the law never requires you to vote for death. That is different than the first phase of the trial. When you took an oath to well and truly try this case, with respect to the issue of guilt

or innocence, that oath meant that when the government proved the defendant's guilt beyond a reasonable doubt as to any count in the Indictment, it was your duty to vote guilty. You were required to vote guilty when the evidence reached the point of proof beyond a reasonable doubt.

But the death penalty doesn't work that way. Whether you vote for death is up to each one of you. The law doesn't tell you what to do. Each one of you has to decide that for yourself and only after you take everything into account.

We are asking you to punish Jahar by imprisoning him for the rest of his life. And for the next few minutes, I'd like to tell you some of the reasons why and about some of the evidence that you will be hearing in this phase of the case. The choice might be easier if you only had to consider the evidence of these awful crimes. But the man who conceived, planned, and led this crime is beyond our power to punish. Only the 19-year-old younger brother who helped is left. So the question of what makes most sense, death or a lifetime of unrelenting punishment, is more complicated than just the crimes themselves.

[50-34]

Now, you've all probably realized by now that no punishment, no punishment, could ever be equal to the terrible effects of these crimes on the innocent people who were killed and hurt or on their families. There is no evening the scales. There's no point in trying to hurt him as he hurt because it can't be done. All we can do, all you can do, is to make the best choice. And if there's one thing to remember through all of this, it is that

Jahar will be severely punished either way. Your guilty verdicts have already guaranteed that. One punishment is over quickly, although after more media attention and fame and notoriety. The other will last for years and decades while he is locked away and forgotten.

As you'll soon learn, if you sentence him to life, this is where he will be. Administrative Maximum Facility in Florence, Colorado, also known as ADMAX or ADX. The ADX facility is on the left here. A little more about that later.

But for now, I just want to make the point that this hearing is not about whether to punish Jahar Tsarnaev. It's only about how. No matter what Jahar does now, no matter what regrets he feels, no matter how much he matures, no matter what amends he may wish to make, his last chance came when he was 19, and he will never be given another. We'll bring you evidence about that, and we'll let you see how the government will ensure that Jahar will be securely locked away, safely and securely, where he can never hurt anyone or even be heard from [50-35] ever again if any of you choose to punish him with life imprisonment.

Now, maybe we could have shown you this and stopped. He goes here and he's forgotten. No more spotlight like the death penalty brings. His legal case will be over for good. And no martyrdom. Just years and years of punishment, day after day, while he grows up to face the lonely struggle of dealing with what he did. And all the while society is protected. That might be—that should be—enough to vote for life for Tamerlan Tsarnaev's younger brother. But each of you said that you'd want to know everything about Jahar as well as

about the crime before you made this decision. Whether you realized it or not, each of you persuaded Judge O'Toole that you meant it, and that is why you were found to be qualified to sit on this jury.

Miss Pellegrini said in her opening statement last week that all you need to know about Jahar Tsarnaev is what he did on Boylston Street because, she said, that's who he is. That's his character. Simple as that. You think about it for a moment what that really means, if it were true, is that Jahar is someone who would have conceived and committed these crimes on his own. And that's the question—there's the question—you'll need to answer. Miss Pellegrini said that Tamerlan doesn't matter. He's just an easy target. But if Tamerlan hadn't been in the picture, would Jahar have done this on his [50-36] own or anything even remotely like it? So we're going to bring you more evidence to help you answer that question.

Now, let me be clear about something. No one is going to claim that Tamerlan forced Jahar to help him commit these terrible crimes. Miss Clarke told you that at the very beginning of this trial. But it bears repeating. When Tamerlan decided that it was time, his little brother went with him. And once he did, he was all in. But the evidence will show that, if Tamerlan hadn't led the way, Jahar would never have done any of this no matter what was on his computer and no matter what kinds of songs he listened to. How do we know that? First, because Tamerlan's motivation to commit this attack was so much stronger and had existed for much longer; secondly, because their personalities were so different; and, third, because Tamerlan had power over Jahar.

Our case is going to start today with some of the people who encountered Tamerlan in the last months before the bombings and can describe a little about what sort of person he was, at least near the end. Now, it's probably going to be hard for some of these people to testify. They may be scared, and they may show it. But they should be able to shed some light.

We'll start at the Islamic Society of Boston, which is a mosque on Prospect Street in Cambridge where Tamerlan used to go. And you'll hear about how, six months before the bombing [50-37] and four months before the bombing, Tamerlan had come to the point where he had interrupted Friday sermon, the most sacred service of the week, screaming and yelling at the Imam, the minister, in the middle of the ceremony because Tamerlan had got to the point where he was so sure that he knew what was true and everyone else did not that he could take that extreme step. And he did, not once but twice, and you'll hear that described by people who were there.

You'll get a little bit of a picture of what Tamerlan was like on the street, picking fights with people sort of randomly about religion, aggressive, extreme, and walking around dressed in flowing white robes like a Saudi sheikh, not the clothes of the Chechen people, where he originated from, but something very, very different.

You'll learn that about 15 months before the bombing, in January 2012, Tamerlan left his wife and his one-year-old daughter to travel to Russia with plans to go into the forest. That means to join radical jihadi fighters, insurgents there. And relatives who have come here from Russia will describe, with the help of a translator, how fanatical and unreasoning Tamerlan seemed to them when they saw him in 2012 during that visit.

You'll also learn that Tamerlan was a very tough guy, a good boxer, who was suspended from high school for assaulting another student and who was later arrested for assaulting his [50-38] own girlfriend. Tamerlan turned a lot of people off, as you'll hear, from his angry aggressive preaching. But he also clearly had a kind of magnetism because he was able to pull a young college student from Rhode Island into his gravitational field. And she became his wife, the mother of his child, and took on the role of a conservative Muslim mother and wife, swathed in a traditional head covering, a hijab, and working long hours as a home healthcare aid for people with disabilities while he stayed home and obsessively cruised the internet for scenes of massacred women and children in the Middle East, jihadi warfare in Russia, and fundamentalist preaching about the fires of hell that awaited any Muslim man who did not step up and fight. That was his world.

We'll have to reconstruct who Tamerlan was from people who knew him, from FBI reports, and other evidence about his attempts to join the jihadi insurgents in Russia in 2012. And we'll see that he had already been planning to wage jihad in Russia back when Jahar was still a 17-year-old high school senior. Some of the evidence about Tamerlan will come from documents, not witnesses, because the witnesses aren't available. So part of our case is unavoidably going to have to involve reading the important parts of FBI interviews and email. That will not be as gripping as some of the unforgettable testimony that you have heard from the witness stand in the last few weeks. But it will be important because [50-39] it will shed some light on why Tamerlan set himself and his brother on this terrible course.



In this part of the trial, we'll also be able to show you the rest of what was on Tamerlan's Samsung computer. Remember Mark Spencer, the forensic computer analyst? He will come back and unpack what we were not able to show you at the first part of the trial. The first phase, you were mostly limited to what was on Jahar's computer. In isolation, his computer created the impression that he had "self-radicalized," and that was the way the government presented it. It looked horrible because the computer had documents on it which you could, if you wanted to, sort of match up to the facts of the crime. And so it looked like Jahar was taking his direction directly from things he was getting online or downloading from the internet or wherever, that he was the one, he was the motivating force, that it had started with him. That was the impression that was created because you were not seeing him in context.

But the picture looks very different once you open up Tamerlan's computer and compare because not only was the radical material on Jahar's computer, mostly dumped there by Tamerlan, as you began to hear a little bit of in the first phase of the trial, but because Jahar's radical internet activity was just a faint echo of Tamerlan's. What Tamerlan's computer shows is obsession. He was consumed by jihad. It had [50-40] become almost all he did and all he thought about.

Comparing Tamerlan's computer to Jahar's leaves no doubt as to where the impulse for the Boston Marathon bombing came from, who drove this plot, and who just followed, not just who bought the parts, not just who built the bombs, not just who led the way, but where the fuel for this came from, the fanatical emotions and ideology that propelled this crime.

We all know that younger brothers tend to look up to older brothers, especially when there is an almost seven-year difference between them. But the evidence here will show that this was especially true here for two reasons: one was the culture into which Tamerlan and Jahar were born and in which they were raised, and the other has to do with their own particular family. So when the older brother went off the rails in this family, there was every reason to expect that he would pull the younger brother with him.

To get oriented, we'll call a historian called Michael Reynolds probably tomorrow. Professor Reynolds teaches at Princeton, and he studies the part of the world where Russia meets the Middle East, the Islamic Southern Caucasus Region of Russia. Let's get oriented. Let's go back out for a minute. This is the map that shows the great distances involved. There's us. There's Chechnya and Dagestan, the South Caucasus, and here, as you'll learn, is where Jahar spent the first six years of his life. And Professor Reynolds will explain the [50-41] history behind that. This is the country of Kyrgyzstan, which is actually on the border of China. Want to bring it up? Expand.

So here is the region of Southern Russia and Central Asia in which our family's story begins. Professor Reynolds will just give you some background. His testimony is not going to explain why this happened. It's just going to give you some background, some sense, of who this family was, where they came from, what their story is, so that you can have a fuller understanding of who they are, of who Tamerlan is, was, and who Jahar is.

Professor Reynolds will tell you who the Chechen people are, a people who have lived independently in the mountains of Southern Russia for thousands of years. He'll tell you a little about their culture. It is a patriarchal culture. He'll explain the reasons why it developed the way it did. Importantly for our story, what that means is that it is a culture in which in each family the father is all powerful, and the eldest brother has tremendous power. And when the father can no longer fulfill his role, the elder brother rules the family.

While he's here, Professor Reynolds will also tell us a little bit about the fate of Chechnya in the modern world. It's a small country, still about only a million people. He'll tell you about what has happened in Chechnya over the last 20 [50-42] years in the course of two appalling wars, two invasions by Russia, in which countless thousands of people have died, and much of the country has been laid waste. He'll explain that the Chechen wars began as a nationalist uprising, not a religious war at all but just—by people who wanted to be free of Russia. But after unimaginable death and destruction, violent Islamist jihadis have effectively hijacked the struggling Chechnya so that when a young Chechen overseas goes online to find out about his roots and his origin, what pops up is sophisticated extremist propaganda. You'll see some examples of that.

Professor Reynolds will give you a very small sample of things Tamerlan was doing online. He speaks fluent Russian, by the way, and a great deal of this material is in the Russian language. And that was why we thought it was important to get his help in explaining what was there, what Tamerlan's online world had begun. And we hope that some of this material will give you some

little sense of the deadly allure of this stuff. And he'll point you to some of the clues on Tamerlan's computer that shows quite precisely, with recordings of his own voice, what he was thinking and doing in Russia when he was there in 2012.

Now, let me be clear about something. To say that Tamerlan had power over Jahar does not mean that Jahar had no freewill. Jahar could and did try to get around Tamerlan. He [50-43] hid his own pot smoking from him all the time. Around his own friends, Jahar is somebody who seemed independent and cool or chill. And the government, I'm sure, will point that out before we're done.

But the idea the younger brother follows and supports the older brother is part of who they both were. Culture is what's bred in the bone. And a family like Jahar's, turn your back on your older brother and you are no one. So Jahar did not defy Tamerlan to his face, not ever. And when Tamerlan made a decision, Jahar's role was to support him.

Now, of course, the cultural rules that I've mentioned and the historical experiences apply to a lot of people who never become violent. So we'll need to widen the frame and let you know a little bit about Jahar's family of origin because part of the reason why Tamerlan had such power, why he became so extreme, and why he was left in charge of Jahar when the parents both left for Russia for the last time in mid-2012, has to do with his particular family. It's a long and complicated story, but I'll try to outline the bare bones of it right now for you.

I told you that Jahar was born in Kyrgyzstan, which is a country almost to China. It used to be part of the Soviet Union, very, very far from Chechnya, very far from the North Caucasus. Professor Reynolds will explain, the historical reason for that is that the entire Chechen people were loaded [50-44] onto cattle cars and deported en masse, in the third week of February 1944, in the middle of World War II, by Joseph Stalin, and dumped in Central Asia, 2,200, 2,400 miles away, a third to a half of the Chechen people died during that, what was one of the great crimes of the 20th Century, something that very few people know anything about. I mention that only because it explains why Jahar, in a Chechen family, grew up thousands of miles from Chechnya and has never set foot there.

Jahar's father, Anzor Tsarnaev, was born in Kyrgyzstan, in the Chechen exile there, of parents who were both child survivors of those cattle cars. And Jahar's mother, Zubeidat Tsarnaeva, was born back in the Caucasus. She is not Chechen. She is a member of the Avar ethnic group in a region called Dagestan, which is right next to Chechnya. And they might never have met but for the fact that she was living with a brother in Siberia. Anzor was in the Soviet Army in Siberia. They're teenagers. She's 18; he's 19. They meet. They marry. He brings her back to meet his family in Kyrgyzstan.

And immediately his family realized that something is very seriously wrong. Chechen culture puts great emphasis—it insists upon modesty, self-effacement. And Zubeidat was everything that Chechen culture does not permit. She was loud. She was over the top.

She was self-aggrandizing. And Anzor's family rejected her, said she cannot be part of our family. Send her back. But he didn't. He stayed with her.

[50-45]

And thus began 15 years of wandering, of intermittent traveling and trips in which, for thousands and thousands of miles across Central Asia, Siberia, back to Chechnya and Dagestan, while the couple had four children, starting with Tamerlan in 1986 and ending with Jahar in 1993. These are the moves, the relocations, that this couple, and eventually their four children, made between 1985 and when they left for America in 2002. And this gives you some sense of the instability, the turmoil, in which these children first entered the world.

The pattern of this nomadic life was always the same. Anzor and Zubeidat would head off to some new place with great, unrealistic hopes and ended up having to go back to Anzor's family in Kyrgyzstan to bail them out, give them a place to live, put them back on their feet. They tried to return to Chechnya in the early 1990s but had to go back to Anzor's relatives in Central Asia just before the first Chechen war began, just before Russia attacked, to such devastating effect, 1994. In 2000, they thought it would be a good time to move back to Dagestan just as the second Chechen war was getting underway and as war broke out in the region, a terribly dangerous time for them to be going where they went.

Finally, Anzor's relatives saw what desperate shape this family was in and helped them emigrate to the United States. And they arrived in Cambridge, Massachusetts, in 2002, with higher hopes than ever. But

nothing worked out. They [50-46] worked hard and they tried everything, but within a couple of years both parents were diagnosed with serious mental illness, and their family's disintegration had begun. Anzor especially was badly damaged. He worked as a self-employed auto mechanic, fixing cars outdoors in empty lots and in parking spaces on the street. He worked hard, but he never learned English well enough to get a regular job, and his physical and mental illnesses were soon severe enough that he was placed on S.S.I., although he continued to work as much as he could.

Later on in this hearing, you'll see some of his medical and psychiatric records, and you'll see how afflicted he was with Post-Traumatic Stress Disorder, with organic delusional disorder, with panic attacks over the ten years in which he—that he spent in Cambridge. Anzor, the man in the family, was supposed to lay down the law, make sure everyone did what was expected of him, but he was too sick to fulfill that role. And eventually, as you'll see, that would leave Tamerlan in charge.

Zubeidat also worked hard, but she had wildly unrealistic dreams that went nowhere. She took what she wanted. She got in trouble with the law. She alienated much of the small Chechen community in Boston. She proved a destructive force in the lives of everyone around her. She was desperate for praise and validation, and her children existed to reflect glory back on her. As her dreams in America began [50-47] to crumble, Zubeidat began to turn to fundamentalist religion, and she made sure that Tamerlan learned about it, too.

Although the family had not been very religious in Russia and nor when they first lived in Cambridge, after

several years in Boston, Zubeidat began to dress all in black and in the—with a hijab, a head covering, like a devout Muslim woman in the Middle East, and she was becoming more and more radical in her thinking. Her own family in Russia was, and still is, as you'll hear, mystified by the changes.

But throughout all this, the oldest son, Tamerlan, was the answer to all the family's mounting problems. He was going to be a boxing champion and compete for the United States in the Olympics. He was going to go to Harvard. He was going to become a famous musician. He was going to become a lawyer. He was going to become a dentist. He could do anything. Tamerlan was the reason the family existed. Only great things lay ahead. What made this so wonderful for Zubeidat was that Tamerlan loved and adored his mother so much. That was the atmosphere of maternal delusion in which Jahar grew up. He not only had an older brother to look up to obey, but his older brother was Superman.

But the evidence will show that Tamerlan failed at everything. After a mediocre high school career, he made three tries at community college and music school and dropped out or never even attended all three times. He had almost no [50-48] legitimate work history, just a handful of occasional low-paying jobs. Despite his deepening interest in Islam, he spent most of his time drinking, chasing women in clubs, partying, smoking pot. His boxing career petered out partly because he never obtained his U.S. citizenship, as you'll learn, but also for what looks like lack of motivation. After he married and fathered a child, his wife went to work, as I've told you, as a home healthcare aid, to support the little family while Tamerlan stayed home becoming



steadily more focused on extremist ideas that he was absorbing online. By the end of 2012, Tamerlan had received an eviction notice. He was about to lose the only home that the family had ever had in America. But Tamerlan was ready to step into an alternate reality where none of this would matter, where he would be important, where he would be remembered; and in all the world, there was one person he could take with him.

In 2009, Anzor is badly beaten in a parking lot outside a restaurant where he had gotten into some kind of argument. His skull is bashed in. His brain is damaged. And his psychiatric problems become even worse than they already were. In 2012, in January, as I've told you, Tamerlan leaves his wife and his one-year-old daughter to go to Russia to wage jihad. Anzor leaves for Southern Russia for Dagestan in May, telling people he is going home to die. Tamerlan comes back from Russia in July 2012 having failed to find a holy war to [50-49] fight in. His mother Zubeidat leaves for Russia in September.

Jahar has just turned 19. He's a sophomore in college. He's drifting and he's failing. Now Tamerlan is in charge. He has always been the most important member of the family, and now he's the last adult family member in Jahar's life. The evidence about Jahar will look very, very different in what I've just described to you. Through all of the family chaos and that tiny, two-bedroom apartment that you've already seen, he was the quiet, helpful kid who did his homework, cared for his relatives' children, was loved by his teachers and appreciated by his friends. He didn't beat anyone up. He didn't take advantage of people. He did well in school.

You'll hear from a few of his friends in high school and college. It's hard for them to come forward now. But some of them will. Even Stephan Silva, remember him? The government's witness who was hoping for a good deal on his own charges. He didn't have a lot of running room to say anything nice about Jahar, but he still did. One of the realist and coolest kids he knew, he said. Never seen him violent. Never picked on anybody. But no one said—no one says anything like that about Tamerlan. When people who knew Tamerlan heard that he'd bombed the Marathon, it kind of fit. But people who knew Jahar were stunned.

Now, I'm sure there are people now who don't want to hear what Jahar was like all through elementary and high [50-50] school. That's understandable, at least for people who don't sit where you do. But it's all true. He was a good kid. Now, the government will tell you that the good kid was a fake and that only the Jahar that followed his brother down Boylston Street was real. But does that really make sense? When did this fake self start? College? Twelfth grade? Eleventh? Tenth? Was he fake when he was eight? What about when he started that Al-Firdaus Islamic Twitter account a month before the bombings, the Twitter feed that the government made such a big deal about during the first phase of the trial? Was he faking when he lost interest after seven tweets? It doesn't really make sense. I think, when you look at all the evidence, you'll find that Jahar really was what he appeared to be: a lost teenager with very little motivation to do anything much on his own, who had been raised all his life to take direction from the most powerful adult, by 2013, the only powerful adult in his world.

When you look at all the evidence—that reminds me of something that happened last week: the still photo of Jahar with his middle finger out. I could almost hear you gasp when Miss Pellegrini put that still up on the easel. And she did it between those four photographs of the victims, those beautiful photos of those people so young and full of promise. And it took us a whole day before you found out what you had and hadn't seen because, when you finally got to see the 30-second [50-51] clip, it turned out that that shocking gesture wasn't quite as advertised.

What you saw was that Jahar had just been unchained after who knows how many hours, and he starts looking and walking around his cell. He finally has use of his hands. He starts to fiddle with his hair and starts using the plastic housing of the security camera as a mirror. Then he stands up close to it. He flashes a peace sign and, for just a split second, sticks out his middle finger. To who? To himself? What did it mean? It meant that he was acting like an immature 19-year-old is what it meant.

Then there's his facial expression which looks like a sneer until you know—and there will be evidence about this later on—that he had been shot in the face on April 19th, and his face was slightly twisted to one side by the wound. You can still see some of the effects of that wound on the left side of his face and his closed left eye. You also found out that the deputy marshal who saw whatever it was didn't think anything of it until the order came from higher-ups two days later to write a little report. Enough said about that, more than enough.

But it's worth remembering for this reason: because it's an example of how you can't ever accurately

evaluate anything, not even a picture, until you know the context. Whether it's a grainy still from a surveillance camera or a [50-52] young man's life, you have to know the context.

You'll also hear a little bit in this trial about where Jahar will go if you punish him with life in prison. This is another photograph of ADX. Can you see it on your monitors? This is where the government keeps other terrorists who used to be famous but aren't anymore. It's a place so secure that he won't even be able to glimpse the outside world. All you can see from the narrow cell windows or from the small, one-man exercise cages is a patch of sky. It's right near the Rocky Mountains, but no one in the prison can see that.

Importantly, communications are strictly limited, and the few that are allowed are monitored in real time. There is no privacy. There is a video camera trained on the inside of his cell and on him every minute of the day. There are no interviews with the news media. There will be no autobiography. There will be no messages relayed from Jahar onto the internet. There will be no nothing. There will be no media spotlight coming back on him as an execution date approaches. And one important thing you'll learn is that the FBI and the U.S. Attorney's Office here in Boston are in a position to help ensure that Jahar is cut off from the outside world forever if they think it best.

So the evidence will show that if you sentence Jahar to a lifetime of thinking about what he did, you'll both punish him and protect society at the same time.

[50-53]

The government has called a number of expert witnesses, and we expect to call some experts, too, to shed light on particular issues or items of evidence. I'm not going to tell you about them all now, but I do want to mention one. Dr. Jay Giedd is one of the country's top researchers on how the human brain matures and what that means for adolescent behavior.

Everyone who's ever been or raised a teenager knows that they don't have the same judgment and maturity as adults. The death penalty law recognizes that by drawing an absolute line at age 18. Under 18, even by a single day, no one can even be considered for the death penalty no matter how horrible the crime that he commits. Well, in April 2013, Jahar was 19. He was 21 months past his 18th birthday. But he was still at an age too young to legally buy a beer, at which many, many people make horribly bad self-destructive decisions, the sort of decision that leave the people who know them and care about them thinking, asking, What was he thinking?

And one of the things you'll each have to decide for yourself is how to weigh his young age as an mitigating factor, that is, as a factor against imposing death. In the last few years, modern science has begun to understand why it is that adolescents so—it's such a characteristic of adolescents to make such terrible decisions.

As Dr. Giedd will explain, the answer has to do with [50-54] the way the different parts of the brain mature at different rates. The impulse, risk-taking parts of our brain mature before the parts that regulate our actions, our judgment, and help us weigh consequences.

So adolescence is a time when we're like cars with very powerful engines and faulty brakes. It's a time to be more stirred by powerful emotions, rage at supposed injustice, love for a charismatic older brother, and less by logic and good judgment.

Now, Dr. Giedd will make clear that no one can say where a particular individual is on the path to maturation, and he certainly will not suggest, and neither will we, that Jahar could not have controlled his behavior because of his age or for any other reason. Let me say that again. Nothing you're going to hear from the defense in the coming days is going to suggest that Jahar couldn't control himself. No one is going to say that he didn't know what he was doing. No one is going to say that his brother actually forced him to commit these horrible crimes. And no one is going to tell you that you should feel sorry for him.

But when all is said and done, the evidence will still show that Jahar was the 19-year-old little brother. And considered with everything else, we think it will show that, as awful as this crime was, a lifetime in prison to face what he has done is the better choice for everyone. Thank you.

THE COURT: Mr. Fick.

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[50-58]

Q. From your prior encounters with Mr. Tsarnaev in the store over the years, how would you describe him physically, his demeanor? What do you mean by him?

A. Well, he's a big guy. He's a muscly guy. And to be honest, the conversation between me and him, it was

only, like, normal chatting, like, Hi, how are you? How is everything? How is your daughter? Because he has a daughter same age as my daughter. So most of the conversation was about how is the girl and does she speak? Does she walk? That's it. No more.

Q. Did you have any observations of how he sort of—how he carried himself, how he shook hands with you?

A. He's a big guy, so when he shake your hand, he just—he's—what you can say—is proud of his muscles. Like, he show off that I'm a big guy, and I can squeeze your hand.

Q. Now, in addition to seeing him at the store—first of all, let me ask you: Do you sometimes yourself attend the Islamic Society mosque on Prospect Street?

A. Yes, I do. Every Friday in the Jumu'ah prayer, I work in the store, and we close during the prayer time, and I go to pray and come back to work.

Q. And did you observe an incident involving Tamerlan Tsarnaev at the mosque in the fall of 2012?

A. I did, yes.

Q. Can you describe what you observed?

A. Well, I think it was before the election. And to be [50-59] honest, I can't remember which election, the presidential election or the governor of the city. And Imam, during the speech, the lecture, at prayer, he was saying that—he was encouraging everybody to go and elect and choose one of the guys. And then we have—by participating in the election, we can be a full-time citizen and so on and so on. He didn't like that. So he stood up, and he told him we shouldn't do that.

Q. Do you remember any of the words he used?

A. He called the Imam, You are monafiq. Monafiq means, like, hypocrite.

Q. What was his demeanor like? What did his voice sound like?

A. He always—as I said, he’s full of—he’s proud of his muscles and his voice. When he talks, he’s loud. He doesn’t speak—he has loud voice, yeah.

Q. Did he make any gestures or anything like that?

A. Say it again, please.

Q. Did he make any gestures with his hands as he did this?

A. Yeah. He said to Imam—when he was talking to the Imam, he was using his hand.

Q. How long did the interruption last?

A. A few seconds, maybe ten, twenty seconds, and he—then he sat down.

Q. Okay. Now, were you there for a second incident involving Tamerlan a few months later?

[50-60]

A. Yes, I was there.

Q. Can you describe what happened that time?

A. That week, it was Martin Luther King week or holiday, and also it was the Prophet Mohamed’s, Sallah Allah alihe wa Salam, birthday. So, as Muslims, we celebrate the birthday of the prophet, Sallah Allah alihe wa Salam. So the Imam was saying that this week we have Martin Luther King and he was a great guy, and he did



so and so for human rights and for—the history of Martin Luther King as everybody knows. Also in the same week we have the Prophet Mohamed, Sallah Allah alihe wa Salam. He did that for mankind. He was doing comparison between Martin Luther King and the Prophet Mohamed, Sallah Allah alihe wa Salam.

The first part of the speech was in Arabic, so I think he didn't understand what was going on.

Q. When you say "he," who do you mean? Are you referring to Tamerlan?

A. Yes, yes, sorry.

And then when the second half Imam say in English. And when he start to do it to compare between Martin Luther King and what he did and the Prophet Mohamed, Sallah Allah Alihe wa Salam, he didn't like it. And he stood up and he said, Imam, you are monafiq. He didn't like it, and he was shouting at him.

Q. He was shouting this time?

[50-61]

A. Yeah. He was saying that he shouldn't do this. This is—you cannot compare the prophet with kafir person. Kafir is infidel. So he was saying that. You cannot compare the prophet himself and a kafir person.

Q. How long did this incident last?

A. Again, maybe 30 seconds or something like that. I can't remember to be honest.

Q. How did it end? What happened?

A. He look at everybody in the masjid and he said, You guys, you should kick him out or he should go. People tell him, No, you go out. And then he left.

Q. Thank you, Mr. Albehacy. I have nothing further for you.

A. Thank you.

CROSS-EXAMINATION BY MR. CHAKRAVARTY:

Q. Good morning.

A. Good morning, sir.

Q. I'm one of the prosecuting attorneys.

Mr. Albehacy, when Tamerlan came to the—your store, the Al-barra, on April 15th—

A. I don't own the store. I work there.

Q. I'm sorry. You don't own the store. You're just an employee?

A. Yes.

Q. Do you still work there?

A. Yes, I do.

\* \* \* \* \*

[50-69]

\* \* \* \* \*

Q. Okay. Do you recall an incident at the Cambridge mosque in 2012 when you were preaching involving a person you later learned was named Tamerlan Tsarnaev?

A. Yes.

Q. Can you please describe what happened on that occasion in the fall of 2012?

A. Sure. So during that period of time, there was an event in the Muslim calendar called the Ashura, which is—kind of commemorate the time when Prophet Muhammad, peace be upon him, migrated from Mecca to Medina, and he interacted with the Jewish community there and learned that they're celebrating a particular celebration.

So he asked them about this celebration and said this is the time when Prophet Moses, peace be upon him, and the Israelites were rescued from Pharaoh. That's why we're celebrating it. So the Prophet, peace be upon him, he ordered the believers then to celebrate and join the society by fasting.

So I wanted to take advantage of this incident, especially that this is kind of the right time frame for it, everybody's celebrating the Ashura, they—to take a lesson so [50-70] people can learn about, you know, how the Prophet did it, integrate in this society, especially that many of those who attend the prayers there and the ISB, the Islamic Society of Boston, are mostly immigrants. So that was my message to them.

So during this sermon, I mentioned, you know, the idea of, you know, we're here, many of us come, so nothing wrong for us to be part of this society and, you know, celebrate Thanksgiving is coming and—because it was also around that time. And Fourth of July, there are so many events that we should, you know, celebrate.

At that moment, the older brother—I didn't know his name at that time; I didn't recognize him—stood up, and he was shouting at me and so angry and fired up that

“This is not Islamic. This is wrong. You should not say that,” and he would just keep repeating this. I kept quiet, silent, give him the room to say whatever he want. I felt that awkward, honestly, because usually people don’t do this in such ceremonies.

Later on he—within a couple of minutes or so he left the room and I continued the sermon. After we’re done with the service, he came back. And many people came kind of to support me, and they say, you know, “This is wrong,” and they’re trying, kind of, to calm me down. I was not so angry to begin with. But he came, and people surrounded us.

I was hoping to kind of understand his point of view, [50-71] where he’s coming from, so I had a dialogue with him explaining to him my kind of basis, my—the principles from which I’m bringing my thoughts and asking him, you know, “Show me why you’re saying this is wrong, what—on what basis?” And he kept repeating the same thing, “This is wrong. This is not Islamic. You should not say that,” without giving me any proof or any reference to, you know, events in the holy Qur’an or a saying of the Prophet or any reference material that can be used.

Then I think there were so many people around us, and I cannot remember exactly how he left, but he left, and I then left after that.

Q. Okay. And is it unusual for someone to interrupt a sermon during the Friday prayers?

A. Oh, yes. The—so in the tradition, the Friday prayer sermon is like once a week. It starts by a sermon and then followed by a prayer service. During the

sermon, people are not allowed to be distracted. Distraction means voiding the whole prayer service.

And there is different saying of the Prophet, peace be upon him, describing what distraction means. So in one of these sayings he said if you turn to the person next to you and say “hush,” that’s a distraction, and your prayer is voided. Another saying he was describing that—at the time they were sitting on pillows because there were no carpets, and if you [50-72] touch and play with these pillows, that’s a distraction and you will void your prayer.

So imagine a person standing and shouting and putting a whole act like this. That was my main concern, that he was voiding his prayer. And people don’t usually do this. I haven’t seen that happening before that time. That was my first experience.

Q. So in other words, across all of the times you’ve given sermons, this was the first time anybody interrupted like that?

A. Yes.

Q. Was there another incident involving Tamerlan Tsarnaev in January 2013?

A. That’s correct. Yeah.

Q. Can you describe that for us, please?

A. Sure. So again, January, third Friday, I come again. At that time, it was the kind of the time we’re celebrating Martin Luther King Day. It was like within the week or so. So I take advantage of this opportunity, try to highlight that Martin Luther King is a great man, done a lot for his community. He had the

cause, and he fought for this just cause, and we can see the fruits of his efforts.

So, again, as a Muslim community, we—many of us think and feel that a lot of our rights are not served. Again, there are so many analogies there. So I want to kind of entice people to be part of this society and speak up for their civic [50-703] rights and be part of the whole civic engagement movement.

So I was kind of approaching this from an angle that it's not just Martin Luther King who's done that; it's many, and pretty much all of the great people, including the prophets in the past. And great people always had a mission to serve the society. They cared less about themselves personally. They were not selfish. They faced some opposition, and they overcame that opposition by being persistent on the true path.

So I was mentioning different names, including Prophet Muhammad, peace be upon him, as a role model for the Muslims, and I also mentioned Martin Luther King. And when I mentioned that, again, the older brother stood up, and he was fired up, very hot. And you can see his face like tomato red. And he was shouting that, "This is wrong. I remember you from last time," and even his stance was fighting stance.

I later on, actually after the bombing incident, learned that he was a boxer because he was doing something like this (indicating). "I know you from last time. I remember you," and he kept saying this—"This is not Islamic. This is not right, and you are hypocrite," kind of insulting me with this.

And the people at the time was—were shouting at him, asking him to shut up and to sit down. That incident took longer than the first one in terms of time. Then he left the room.

\* \* \* \* \*

[50-77]

Q. And what is your educational background?

A. Okay. I finish my college in Morocco back home, in law, public law.

Q. And, I'm sorry. You said Morocco?

A. Yes.

Q. Okay. And that's where you're from originally?

A. Yes.

Q. Do you live in the Boston area now?

A. Yeah. I live in Cambridge, Massachusetts.

Q. And how long have you lived in the Boston area?

A. Okay. I'm here close to six years.

Q. And do you have a family here?

A. Yes.

Q. How are you currently employed?

A. Say again?

Q. How are you currently employed?

A. Now I work in Al-Bara, on 304 Prospect Street, Cambridge, Massachusetts.

Q. And is that a sort of Middle Eastern food and halal meat store in Cambridge?

A. Yes. Yes. Yes.

Q. How long have you been working there?

A. So I work in there—it's almost five years, but sometimes I left and I came back, so almost five years, yeah.

Q. Now, while you were working in that store, did you [50-78] occasionally see a person who you later learned was named Tamerlan Tsarnaev?

(The interpreter translates the question.)

A. Yes.

Q. Do you recall a particular incident with Tamerlan Tsarnaev in the fall of 2012 where he—well, do you recall an incident from the fall of 2012?

(The interpreter translates the question.)

A. Yes, an important event.

Q. And can you describe, please, what was that important event?

A. Okay. I'm going to try with English. If not, I'm going to—okay.

So he's a customer of the store, so I see him over there in the store. So probably three or four, five time. Okay? But the time that I can remember 100 percent, so a time when it's Thanksgiving. So we—and we have a sign in the show, so we put a sign that we sell halal turkey for Thanksgiving. Okay? So when he's come in the store, so he was try to buy some stuff, and he see the sign, so he ask me, "Why you sell the turkey?" So I told him because this is at Thanksgiving.

I'm going to use him. Sorry.

Q. That's fine.



(The interpreter translates the question.)

[50-79]

A. He yelled at me, and he said, “This is haram, which is not right to sell turkeys.” And he was so nervous and spoken very loudly using hand gestures too.

Q. I’m sorry. Hand gesture?

THE INTERPRETER: Hand gestures.

(The interpreter translates the question.)

A. And he said, “You shouldn’t be selling this. That’s not right.”

Q. Can you sort of demonstrate the hand gestures he used and what his face looked like?

(The interpreter translates the question.)

A. So he’s standing like that, and the show, it’s in the front of him, and he use his hand exactly—he show me, for example, the paper, why you put the sign here, so like that. He’s using his hands like that. (Indicating.)

Q. And what kind of expression is on his face?

A. He’s angry.

Q. And just so everyone understands, can you explain, what is halal meat?

A. Halal meat? So the halal meat, it’s—for example, the—it’s the Islamic way to slaughter the animal. So we have to use the knife—okay. For example, there’s another way here, for example, you use the gun, and the only one—it’s gun, so you going to skin the animals and serve it to eat.

[50-80]

But for our way, for the Islamic way, so you have to use the knife, and you have—before you slice the animal, you have to say “Allahu Akbar,” name of God. That’s halal meat.

Q. So these were halal turkeys that you were selling?

A. Yes.

Q. And, nevertheless, Tamerlan Tsarnaev did what you just described?

A. Yeah. So it’s—in America, it’s—Islamic society, so even—they live in America, so they want to celebrate turkey [*sic*], so automatically we try to provide halal turkey for them.

MR. FICK: Thank you, Mr. Razak. I have nothing further.

#### CROSS-EXAMINATION

BY MR. WEINREB:

Q. Good morning, Mr. Razak.

A. Good morning.

Q. In all the time you were working at the store, you only saw Tamerlan Tsarnaev three or four times, correct?

A. Yeah. Or four times.

Q. And you only saw him because he was shopping for food at your store?

A. Yes.

Q. You didn't know him personally?

(The interpreter translates the question.)

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Apr. 28, 2015  
9:15 a.m.

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**JURY TRIAL—DAY FIFTY-ONE**

---

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On Behalf of the Defendant

\* \* \* \* \*

[51-116]

\* \* \* \* \*

MR. MELLIN: Objection.

THE COURT: Sustained.

Q. Over time, did you begin to see changes in Tamerlan Tsarnaev's demeanor?

A. Yes, sir.

Q. Describe those changes.

A. There were physical changes. His dress changed. The beard obviously was a pretty drastic departure.

Q. Well, let me unpack that a little bit. The dress, when he first started coming to Wai Kru, what kind of clothing would he wear?

A. He was a very flashy dresser, you know, shiny, alligator shoes, and things of that nature.

Q. Was he clean shaven?

A. Yes, sir.

Q. And then later when you saw him, how did those two things change?

A. He was dressed much more conservatively, and he had a large, bushy beard.

Q. Did you talk about politics and religion over time?

A. After that point, no.

Q. Was there always a certain amount of friction between the staff at Wai Kru and Tamerlan?

A. Always?

[51-117]

Q. Yes.

A. No.

Q. Over time, did there become friction between the staff at Wai Kru and Tamerlan?

A. Yes.

Q. Explain how that friction got started.

A. I'm not sure how it started. I can tell you how it manifested.

Q. Why don't you tell us how it manifested itself.

A. There were instances where Tamerlan would wear street shoes on the mats and in the rest of the gym downstairs, which is highly frowned upon in that community. He would use people's equipment without asking. He could be loud and disruptive to classes. In addition, he would do his own thing, which wasn't entirely frowned upon, but when you're trying to run an organized program, having individuals there being loud and disruptive was definitely damaging to class to a point and that created friction, yes.

Q. Was he ever approached and asked to stop those behaviors?

A. Yes. There was one incident that I can recall where that happened, yes.

Q. Did he stop?

A. Not that I'm aware of, no.

Q. I want to turn now to April 14 of 2013. By that time, you were training less at Wai Kru?

[51-118]

A. I mean, define "less."

Q. Well, how much would you be at Wai Kru?

A. Two to three days a week.

Q. Friday, April 14th, you were in the Wai Kru gym?

A. That evening, yes.

Q. I'm sorry. That's not correct. Friday, April 12th, which is three days before the Marathon bombing?

A. That Friday evening, yes.

Q. On that day, did you see Tamerlan Tsarnaev in the gym?

A. No, sir, I didn't.

Q. Who else did you see in the gym with Tamerlan Tsarnaev?

A. I didn't see Tamerlan in the gym.

Q. I'm sorry?

A. I didn't see him in the gym that evening. I was there after he had already left.

Q. Right. You knew that Tamerlan Tsarnaev had been in the gym?

MR. MELLIN: Objection.

THE COURT: Overruled. You may answer.

A. Yes. I was aware that he had been in the gym earlier that day.

Q. And as a—were you still working for Wai Kru gym on April 12 of 2013?

A. Part time, yes.

Q. So you knew other employees there?

[51-119]

A. I knew all the employees there.



Q. Do you also know that Wai Kru gym has a number of surveillance cameras?

A. I do. I'm aware.

MR. WATKINS: Your Honor, I'd like to show Mr. Douglas a video from April 12 of 2013.

THE COURT: I'll allow it.

MR. MELLIN: Thank you. I know better than to ask, your Honor.

THE COURT: What number is it?

MR. WATKINS: Exhibit 3273.

THE COURT: All right.

Q. I'm going to stop it here and ask if you recognize anybody in this video.

A. Yes.

Q. If you tap on the screen, you can identify. Who's that?

A. That's Tamerlan.

Q. And do you see Jahar Tsarnaev?

A. (Indicating.)

Q. And there's a third man in this video. Are you able to identify him?

A. No, sir. I don't know who that is.

Q. What do you recognize this—where is this video clip from?

A. That's in the boxing ring at Wai Kru.

[51-120]

Q. I'm going to play the remainder of the video.

(Video recording played.)

Q. Now, I'm going to stop it there. We just saw Tamerlan Tsarnaev throw a piece of equipment at Jahar Tsarnaev?

A. Yes.

Q. What is that?

A. Those are hand wraps.

Q. Did you later learn that your gloves had been used at Wai Kru gym?

A. Yes, sir.

Q. What did you learn about that?

A. I learned that Tamerlan had gone in the back and took two pairs of gloves, one for himself and one for his brother.

Q. Was that from your own property?

A. One of those was, yes.

Q. Was that something he'd ask for permission from you for?

A. No, not from me or the other instructor involved.

Q. Was that something that you would condone?

A. No, not at all.

Q. You mention that you were not present at that time but came into the gym shortly after that?

A. Sometime later that evening, yes, after I got out of work.

Q. And did you actually see Tamerlan Tsarnaev there? Did you cross paths?

A. Not that I recall.

[51-121]

Q. Did you speak with an employee at the—at Wai Kru gym about what had happened that day?

MR. MELLIN: Objection.

THE COURT: Yeah, sustained.

MR. WATKINS: Your Honor, may we—this will be the last thing. Perhaps we could—

THE COURT: I know what you have in mind. I would exclude it at this point because he's testified to the subject.

MR. WATKINS: I'm sorry?

THE COURT: He's testified to the subject or he can if he hasn't completed it.

Q. So in speaking—so what did you learn about Tamerlan's behavior that day?

MR. MELLIN: Objection.

THE COURT: Sustained, at least to that question.

MR. WATKINS: May I have just a moment, your Honor?

(Discussion held off the record.)

Q. Do you know of any action that was taken after Tamerlan's behavior that day?

MR. MELLIN: Objection.

THE COURT: You may answer that.

A. Yes, sir.

Q. What action was taken?

A. The general manager of the gym emailed the owner to express his displeasure with Tamerlan's behavior that evening.

[51-122]

MR. WATKINS: Your Honor, for the record, I'd move in Exhibit 3230.

MR. MELLIN: Objection.

THE COURT: I'll exclude it as cumulative.

MR. WATKINS: I have nothing further, your Honor.

MR. MELLIN: Very short.

CROSS-EXAMINATION BY MR. MELLIN:

Q. Good afternoon, sir.

A. Good afternoon.

Q. The last time that you talked to Tamerlan Tsarnaev was in January or February of 2013, is that right?

A. Yes.

Q. Okay. And that's the last time you actually saw him, too, correct?

A. Yes.

Q. And you pointed out the defendant in the video. Had you ever met the defendant?

A. No, sir.

Q. Never seen him boxing or doing anything at Wai Kru?

A. No, sir.

MR. MELLIN: Thank you. Nothing further, your Honor.

MR. WATKINS: Nothing, your Honor.

THE COURT: All right, sir. Thank you. You may step down. We will take the lunch recess.

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., May 5, 2015  
9:12 a.m.

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**JURY TRIAL—DAY FIFTY-FIVE**

---

APPEARANCES

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On Behalf of the Defendant

\* \* \* \* \*

[55-17]

Q. And what changes did you notice in—if any, did you notice in Katherine at that point?

A. Besides not really being involved in her daily life that much anymore, she started to change her dress at that point, and she was wearing a hijab.

Q. And what were some of the other changes that you noticed?

A. I don't remember what month, but she had started to dress fully—she had started to fully cover herself, and she just became very quiet and, obviously, alienated from myself and Stephanie.

Q. I'm sorry. I missed the word.

A. Alienated from Stephanie and myself.

Q. "Alienated"?

Did you try during that summer and fall to maintain what had been a very close friendship?

A. Yes.

Q. And how would she respond?

A. I don't recall exactly what was said, but it was unsuccessful.

Q. Did something happen at the end of 2009 that caused you to move out of that apartment?

A. Yes.

Q. What was it?

A. I had—I had heard an argument between them, and I attempted to help Katherine and—

[55-18]

Q. What did you do?



A. I went downstairs to her room, and I banged on the door. And I knew that she needed help because I could hear her asking for it earlier, before I ran downstairs. And she said it was none of my business and wanted me to go away. And—

Q. Let me just stop you right there. Do you remember what time of day or night this was?

A. It was, I think, about one o'clock in the morning, two o'clock in the morning.

Q. And what exactly did you hear, as best you recall and as best you can describe it?

A. I could hear—I was sleeping with my TV on, and I was woken up by how loud they were fighting, and I could hear banging, and I don't know what the noises were, but it was screaming as well as throwing things or . . .

Q. Did you think it was just a verbal argument?

A. No.

MS. PELLEGRINI: Objection.

THE COURT: Overruled.

You may answer it.

BY MS. CONRAD:

Q. What did you hear that made you think that it might be a physical fight?

A. I could hear things being physically either thrown or moved or . . .

[55-19]

Q. When you went downstairs, how did Katherine sound?

A. She sounded frantic, but when I spoke to her, she was very calm and stern with me.

Q. So when you—after she told you it was none of your business, what did you do?

A. I said that he needed to get out of our house.

Q. And this was still—you were outside the bedroom door?

A. Yes.

Q. And did either of them respond?

A. She repeated that it was none of my business.

Q. So what did you do?

A. I went back upstairs to go talk to Stephanie.

Q. And what happened after you went upstairs?

A. Their door opened, and he, I think, came out. I didn't see because when I heard their door open, I had gone in my room. And he was speaking to me from the bottom of the stairwell.

Q. So let me just stop you there. So you're in your room. Did you have a lock on the door of your room?

A. No.

Q. Did you do anything to secure the door?

A. Yes. After he spoke to me, I moved my desk to barricade my door.

Q. What did he say?

A. He—it was repeating, very angrily, “Get down here right [55-20] now.”

Q. And did he say anything after that?

A. When I said no, he said, “If I ever see you again.”

Q. And how did you interpret that?

A. I was very scared.

Q. Did you take it as a threat?

A. Yes.

Q. And is that when you barricaded the door?

A. It was when he was asking me to come downstairs.

Q. So what did you do at that point? This is now, what, one-thirty, two in the morning?

A. Uh-huh.

Q. So what did you do?

A. When I heard their door shut again, I ran into Stephanie’s room to ask if she had heard everything that had happened, and she was also wide awake with her light on, and she was scared. And we packed bags, and we left.

Q. Now, you say you left. Where did you go?

A. We went to a friend from high school that I knew who lived in Boston’s house, apartment.

Q. Why did you leave?

A. We were scared.

Q. Did you take time to change clothes?

A. I’m sorry?

Q. Did you take time to change clothes?

[55-21]

A. No.

Q. So you left in your pajamas?

A. Yes.

Q. And did you call the police?

A. No.

Q. Why not?

A. I was thinking that she would deny anything ever having happened and he wouldn't be put in jail, and therefore he would be more agitated with me.

Q. Did you take some action, though?

A. I had asked a lawyer for advice on how to get out of our lease.

Q. And did you actually send the lawyer an email that night?

A. Yes.

Q. At about three in the morning?

A. Yes.

MS. CONRAD: I'd offer, at this time, Exhibit 3238, your Honor.

MS. PELLEGRINI: Objection, your Honor.

THE COURT: Sustained.

MS. CONRAD: May I show it just to the witness, please?

THE COURT: Yes.

MS. CONRAD: Thank you.

Just for the witness. Do you have 3238?

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

---

Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., May 13, 2015  
9:36 a.m.

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**JURY TRIAL—DAY FIFTY-NINE**

---

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\* \* \* \* \*

[59-61]

\* \* \* \* \*

MR. MELLIN: Thank you, your Honor.  
Good morning.

THE JURORS: Good morning.

MR. MELLIN: There's a certain clarity that comes to you when you are close to death. Remember the testimony of Jeff Bauman and Sydney Corcoran. Even as they lay bleeding on that sidewalk on Boylston Street, they made peace with death.

As the defendant lay bleeding in that boat, he too made peace with death. In his moment of clarity, he wrote what he thought would be his lasting testament. He wrote, "Now, I don't like killing innocent people, but in this case it is allowed because Americans need to be punished." No remorse, no apology. Those are the words of a terrorist convinced that he has done the right thing. He felt justified in killing and maiming and seriously injuring innocent men, women and children.

I want to start back on Boylston Street, back where the carnage began. Picture the scene on Boylston just before the first blast. It's a beautiful, sunny Patriots' Day. It's 2:45 p.m. And the defendant walks up. He walks up past the Forum restaurant, sees how crowded it is, and decides that's the place to put his bomb. He placed it there because his goal was to murder and mutilate. He wanted to murder as many people as possible.

[59-62]

When he looked up, what did he see? He saw that he had placed that bomb approximately four feet behind a row of children. Six-year-old Jane Richard, eight-year-old Martin Richard, 11-year-old Aaron Hern, 12-year-old Henry Richard. He was right here. The children were right there (indicating).



But seeing them didn't deter him. He didn't pick up that backpack, and he didn't move it. He didn't care if he killed them along with everyone else because he had already decided that killing innocents was justified. In fact, killing innocents was the whole point. It's the way you terrorize an entire population. The more vulnerable and unsuspecting the victim, the more terrifying the murder. The defendant picked the Boston Marathon. He picked the Forum restaurant. And he chose to remain there right by that tree because it was the best way he could punish his perceived enemies.

The defendant put the backpack down behind those children, and he waited.

(Pause.)

MR. MELLIN: That was 20 seconds. He waited almost 12 times that long before giving his brother the go-ahead and then detonating his own bomb. Remember what Alan Hern said, the father of 11-year-old Aaron Hern. He said he was helpless trying to save Aaron. Remember what Steve Woolfenden said. He was terrified and helpless as little Leo was carried away, little Leo screaming for mommy and daddy, being handed off to [59-63] strangers. Steve Woolfenden didn't know if he would live or die, and he didn't know if he would live to ever see Leo again. These fathers were helpless. They were helpless in saving the lives of their own children because of that defendant.

This is what terrorism looks like. It's Martin Richard bleeding on the ground in agony while his mother bends over him, injured in one eye, and begs him to stay alive, saying, "Please, Martin. Please, Martin."

It's Lingzi Lu screaming in pain as she dies on that street while her friend Danling tries to hold her abdominal organs inside.

It's Krystle Campbell, burned all over her body, filled with shrapnel, with smoke coming out of her mouth.

And it's Sean Collier, a loving son and dedicated public servant, sitting in his cruiser with three bullet holes in his head, dying as his own blood pools in that car seat.

And it's nearly 20 other people staring in shock at their mangled and ruined limbs when just moments before they were fine.

It's not just the dead and the wounded who were injured by the defendant's crimes. Others suffered unspeakable pain and will do so for the rest of their lives. Bill Richard told you that he had to choose between saving Jane, who was near certain death, or going back and seeing Martin in his last moments of life. Do you think that memory ever goes away? that [59-64] pain ever goes away?

The defense will ask you to value the defendant's life, but he did not value the lives of his victims, not even the lives of children. He killed indiscriminately to make a political statement, and he placed no value on the lives and didn't care for a second what impact his actions and his killings would have on so many other innocent family members and friends. His actions have earned him a sentence of death.

There is so much death and loss and devastation in this case, it's hard to know where to begin. The defendant planted a bomb that led to painful eulogies and terrifying memories. Surviving family members were left to attend to funerals and live lives with bittersweet

memories of those lost forever and painful reminders of what could have been.

You heard how Krystle Campbell was her dad's princess. She was the light in his life. He told you that she would call him every day. Now that light is out, and no phone call will ever come.

Krystle's brother told you how the family got word that Krystle was still alive and at the hospital. Finally, some good news on that awful day. Only it turned out it was Karen McWatters who was alive. Krystle was dead. You heard that Krystle's dad fainted when he heard that news. Two years later, Bill still feels the loss, the loss of his sister, and his son feels the loss of an amazing aunt.

[59-65]

Sean Collier was the moral compass in the family. Now he is gone forever. His brother told you that Sean loved helping people, and as Andrew said, there will always be a cloud over family events, forever. Or a cloud over the family tailgates at the Patriots' games. Joe Rogers will never be able to go to another game with Sean.

This is Sean's graduation. Mr. Rogers told you the happiest day of Sean's life. He was murdered while performing that job.

Even to this date, the pain and suffering and loss is too much to bear for that family. Sean Collier's murder caused his family a new world of pain. Joe Rogers told you how his wife can no longer go to work after seeing Sean murdered. She suffers from PTSD and could not even get out of bed for two months after Sean's murder.

Sean's mother cried the entire weekend of the second anniversary of his death, and Easter will never be the same for that family. If you remember, that was the last time the family got together before April 18th, 2013.

Chief DiFava told you that one word described Sean Collier: character. Now that character is gone. And two years later, the grief still remains.

Lingzi Lu's aunt, Aunt Helen, told you that her parents were too devastated to come to the United States initially when they got the news. Lingzi was their only child, [59-66] their future. That future ended on April 15th, 2013. She was her father's jolly elf. She was the beautiful nerd.

Lingzi's father read a poem at her memorial service. You heard it here in court: "There will be no bombs or terrorist attacks in its path. In tears, we hear you say, the forever young, 'Dear Mom and Dad, don't cry. I love you. If there is an afterlife, I will be your daughter again.'" Her dad.

Her father said, "She's gone. How can our living go on?" So unbelievably sad, and yet so true. Their pain will never go away.

Bill Richard knew immediately that there was no chance for Martin. He saw his little boy's severely damaged body. He embraced his son Henry for a moment and then told Henry, "You have to help me find Jane." After finding Jane, Bill Richard made sure she got the help she needed. Denise Richard was left with Martin for the final moments of his life. Martin's body was ultimately covered by a tablecloth on Boylston Street. Those are the lasting images Denise Richard has for the rest of her life.

And think back to what Bill Richard said about telling Jane about her brother's death. Jane was still in surgery, coming in and out of consciousness, and each time she was awake she would ask, "How is Martin?" And each time they had to tell her Martin was dead. That's another lasting memory for that [59-67] family.

Bill Richard did tell you that he can "still hear the beautiful voices of my family." Unfortunately, because of this defendant, he will never hear Martin's voice again. So much loss and suffering for one family to bear. It's too much.

Martin will never get to play high school sports or attend college or form lifelong friendships. Life for the Richard parents and their children will never be the same. Every race is an awful reminder that Martin is not running and Martin is not there.

The defendant took all of that away from four lovely, loving, caring, positive people. This defendant blinded the mother, maimed their six-year-old daughter, ripping off her leg, and blew apart eight-year-old Martin right in front of their son and the father. There is no just punishment just for that other than death.

All of this loss is overwhelming in scope and impact, yet after causing all of this pain and suffering, this defendant bought a half gallon of milk without shedding a tear or expressing a care for the lives of the people that were forever altered or destroyed. He acted like it was any other day. He was stress free and remorse free.

He didn't care because the death and misery was what he sought that day. His actions destroyed so many families. And he, and he alone, is responsible for

his actions in causing [59-68] so much sadness, death and fear.

I want to turn briefly to the verdict form. We just went over it in detail. Your decision in this case will be assisted by kind of a record-keeping process. As Judge O'Toole has instructed you, the United States has to prove three elements before you reach the larger task, which is an assessment of a just punishment in this case. It's a lengthy form, but it will guide you through all of the steps.

And once you go through this form and this process and the weighing of the factors, you will see how the aggravating factors so clearly point to only one result: a sentence of death.

First, the government must prove the defendant was at least 18 in April of 2013. You know from his school records and from his naturalization documents that he was born on July 22nd, 1993. He was almost 20 years old in April 2013.

Second, we must prove at least one of the intent factors. As to the intent factors, the same evidence that supported your finding of intent in the guilt phase is the same evidence that will assist you in finding the intent in this phase.

Remember also a passage from the *Inspire* magazine, 2010. Page 33, it educates the defendant, right at the bottom, "In one or two days, the bomb could be ready to kill at least ten people. In a month, you may make a bigger and more lethal [59-69] bomb that could kill tens of people."

The defendant knew what kind of hell was going to happen and be unleashed, and he intended to kill people.

How many did he think would die? You have heard throughout this case so much evidence of his intent, but just be mindful that there are four intent factors in this phase. You need only find one applies, but you should consider all four. And if you find all four factors apply, you should indicate that.

Now, why do these murders deserve the death penalty when other murders do not? The aggravating factors are circumstances that by law—that the law says makes some murders worse than others. You need only find one statutory aggravating factor to justify a sentence of death, but in this case we have six.

First, the defendant didn't simply kill people; he killed them using a weapon of mass destruction. It's obvious why the law considers murders committed in that way to be worse than other murders. A weapon of mass destruction is a tool of terrorists. Its purpose is not to kill a particular victim; its purpose is to kill indiscriminately. And not just kill, but destroy.

Remember the massive fireball, the deafening explosion, the acrid smoke, the searing heat, the broken glass of the windows, the chaos and the noise, and the river of blood running down that sidewalk? All those things make weapons of [59-70] mass destruction terrifying and make the deaths that they cause worse than others.

Second, the defendant killed multiple people in a single criminal episode. The number of deaths is seen by the law, understandably, as a reason to distinguish between murder cases. A case involving multiple killings should carry a greater punishment than a case involving a single killing. It's clear the defendant killed more

than one person by using a weapon of mass destruction in this case.

Third, the defendant engaged in substantial planning and premeditation. The law punishes more harshly those like the defendant who take considerable time to deliberate, plan and carry out their murderous attacks. Between the time this whole conspiracy started and the time he finished carrying it out, the defendant had plenty of time to reflect, to reconsider and think better of this plan.

He didn't set out to commit acts of terrorism on an impulse. The whole plan was well thought out and a long time in the making. It began for him with reading terrorist writings and listening to terrorist lectures, adopting the beliefs that would enable him to kill without remorse. He read the *Inspire* article, "Make a bomb in the kitchen of your mom." It's a recipe book for the bombs that were used in this case. Little Christmas lights, pipe bombs like the ones used in this case, and the pressure cookers.

[59-71]

The defendant acquired the 9-millimeter semiautomatic weapon. Remember the 9-millimeter gun? That's an essential ingredient in this plan as well. He got that from Stephen Silva in January or February 2013. He bought ammunition and practiced shooting the 9-millimeter at that firing range in Manchester. That was March 20th. On the very same day, he tweeted, "Evil triumphs when good men do nothing." "Evil triumphs."

On April 7th, the defendant tweeted, "If you have the knowledge and the inspiration, all that's left is to take



action.” April 7th. Within eight days they took action.

On April 14th, the day before, he purchased that SIM card, the SIM card he used to call his brother to give him the go-ahead to detonate the bomb. And he waited to commit these murders and these attacks on Patriots’ Day, a school holiday and the day of the marathon. He did that so the bombings would be as terrifying and devastating as possible. And all of this is proof of substantial planning and premeditation.

Also consider how the defendant and his brother killed Officer Sean Collier. That was not impulsive or reflexive; it was an ambush. You saw how they deliberately walked together across the campus, and they went straight to the door of his car. They knew he was parked there. And once they got there, they did not hesitate because they knew exactly what they were going to do. They needed another gun, and they were going to [59-72] murder him and take his service weapon.

At any point along this long journey to committing terrorism, the defendant could have reflected, reconsidered, and stood down. The fact that he marched resolutely on towards his goal makes him more culpable and his crimes worse.

The fourth aggravating factor is that the defendant knowingly created a grave risk of death to additional persons other than the dead victims. Judge O’Toole instructed you that “a grave risk of death” means significant and considerable possibility that another person might be killed. In other words, putting others at risk in addition to those who died.

The defendant killed and helped kill four people. How many others did he nearly kill? Jim Hooley, the head of Boston EMS, he told you that he and other EMS workers sorted the wounded into three categories. Thirty of the wounded were given red tags—30—meaning that if they did not get to the hospital within 60 minutes, there was a high likelihood that they would die. But 60 minutes would have been an eternity to some who were wounded.

Sydney Corcoran told you that she felt her whole body go cold as blood flowed from her severed femoral artery on that sidewalk. Celeste Corcoran told you she remembered every detail of the blast. She suffered excruciating pain as both of her legs were destroyed. She said she just wanted to die because the pain was too much. When she finally had enough [59-73] breath to breathe, she said she screamed in agony. She was left to try to recover in the same hospital room as her daughter Sydney, another family blown apart by this defendant and his brother.

Exhibit 20. Look at all of the mayhem. In the middle sits Jeff Bauman. Jeff Bauman described for you how he could see his bone, and all he could say was, “This is really messed up.” He told you to this day he doesn’t know how he stayed conscious throughout. All he said—or as he said, “I knew my legs were gone. I knew it instantly.”

You saw video of Marc Fucarile lying on the street on fire with a severed leg gushing blood. There’s Marc Fucarile in the middle (indicating). Marc Fucarile had to endure more than 60 operations in the months after the bombings. Over 60. As Dr. King told you, every surgery is dangerous and can itself be life threatening.

And after all of those surgeries, Marc Fucarile still isn't out of the woods. His body is still filled with shrapnel. It's too dangerous to remove. And one of those pieces of shrapnel is lodged in his heart. At any time that could travel to his lungs, and he might die.

It's a miracle that Marc Fucarile, Jeff Bauman, Sydney Corcoran, Celeste Corcoran or so many others survived.

And none of this was by accident. Just the opposite. Remember what *Inspire* magazine says? Page 40 of the same [59-74] volume. It recommends using a pressure cooker and placing it in a crowded area. In fact, what it says is, "With that said, here are some important steps to take for an effective explosive device: One, place the device in a crowded area; two, camouflage the device with something that would not hinder the shrapnel, such as cardboard."

You place it in a crowded area because that pressure cooker will be more effective in that crowded area. The grave risk of death to others is part of the reason why a pressure cooker bomb is so effective.

The fifth statutory aggravating factor is the cruel, heinous and depraved manner of committing the offense in that it involved serious physical abuse to the victims. Judge O'Toole just instructed you that "serious physical abuse" means a considerable amount of injury and damage to the body. "Cruel" means the defendant intended to inflict the high degree of pain by physical abuse to the victim in addition to just killing them.

The evidence that the defendant caused injury and damage to the victims' bodies could not be clearer. You

saw the autopsy photos of Martin Richard, Krystle Campbell and Lingzi Lu. The bombs burned their skin, shattered their bones and ripped their flesh. It disfigured their bodies, twisted their limbs and punched gaping holes into their legs and torsos.

[59-75]

And none of that was accidental. It's what the defendant intended to do to them. That's the entire reason for filling the bombs with little nails and BBs and other tiny pieces of shrapnel, because merely killing a person isn't nearly as terrifying as shredding them apart.

Remember what was said in the *Inspire* magazine, again on page 40: "However, in order to fill, for example, a pressure cooker with a substance from matches, it may take a lot of matches to do so, and therefore you may want to use gunpowder or the powder from fireworks." Sound familiar?

It goes on to say, "You need to also include shrapnel. The best shrapnel are the spherical-shaped ones. As you can see in the figures below, you need to glue them to the surface of your canister. (If steel pellets are not available, you may use nails instead.)"

That's exactly what the defendant did. You recall the testimony of those victims outside the Forum? They were full of nails and BBs.

The defendant wasn't out just to kill innocents in order to punish America. He wanted to torment them to make a political statement. He knew these bombs would make people suffer because murders are more terrifying and they make a better political statement this way. It's a better political statement if you force

the victims to suffer, suffer excruciating pain in front of their parents and their friends. [59-76] That's what the defendant did to Martin Richard.

Dr. King told you that Martin did not die right away and that the shattering of his arm and the twisting of his internal organs were excruciatingly painful.

Dr. Jennifer Hammers told you the same thing about Krystle's broken leg. You know that Krystle lived to experience that excruciating pain because you can see her here screaming on the sidewalk before she dies. And this, this is how Karen McWatters, her best friend, will have to remember her.

The same, of course, is true for Lingzi Lu. You saw the photos of her screaming as she lay dying, and you heard Danling tell you how it pained her that she couldn't help her, that she was of no use to her friend at that time.

The sixth statutory aggravating factor is the vulnerability of Martin Richard due to his youth. No one deserves to be killed by a terrorist bomb, but some people are more vulnerable, more vulnerable to the harm done. Can there be anyone more vulnerable than a little boy next to a weapon of mass destruction? In this case, an eight-year-old boy named Martin Richard. There isn't a part of his body that was not affected.

Both the chief medical examiner and Dr. King explained to you that Martin was more vulnerable because he was a little boy and his abdomen and key organs were closer to the ground. [59-77] The defendant placed that bomb on the ground, so the smaller the victims were, the more exposed they were to the shrapnel. Martin, he was 53 inches, just over four feet tall, and he weighed 69 pounds.

Where the shrapnel from that bomb ripped apart the top of Lingzi Lu's legs, that same shrapnel headed right for the middle of Martin's midsection. Also because of Martin's youth, his body would not be able to sustain those injuries as long as an adult. The evidence shows you that there can be no doubt that Martin Richard was a vulnerable victim.

There are five other aggravating factors in this case. One is the impact of these crimes on the victims and their surviving family members. I already talked a little bit about the impact of the crimes on the families, and I won't say more at this point because I suspect you remember quite well what those family members had to say.

Another aggravating factor is the selection of the Boston Marathon as a targeted site for terrorism. Committing murder during an act of terrorism is enough by itself to make that murder worse than others, but choosing the Boston Marathon as the site for the terrorist attack makes it even worse.

That's in part because the Boston Marathon is a family event. It takes place on a school holiday. As Stephen Silva had told you, the defendant had gone to the marathon the year before, 2012. He knew that the marathon attracted families and [59-78] that people go there with their friends, so he knew that his bomb was likely to kill and mutilate parents in front of their children or children in front of their parents or both.

He also knew that the last stretch down Boylston Street, all the way to the finish line, drew huge crowds. He knew that by placing his bomb there, he had a good

chance of killing and injuring hundreds of people, which is exactly what happened.

He knew that the marathon draws an international crowd so that the news of his bombing would be of interest in every corner of the world. And he knew that the marathon is televised. His bombing would be played and replayed over and over again, allowing him to terrorize people not just in Boston, but all over the country and all over the world.

And of course the marathon takes place on Patriots' Day, a day when we celebrate an important milestone in the birth of American independence. It's hard to think of a better place to murder people than the Boston Marathon if you want to make a political statement, if you want to make Americans—or if you believe Americans are in need of punishment.

Another aggravating factor is that the defendant and his brother chose to murder Sean Collier precisely because he was a police officer, a police officer with a gun. Police officers carry guns because it is their job to protect us, and they put their lives at risk doing so. To kill a police [59-79] officer makes all of us more vulnerable.

Sean Collier was a compassionate soul, a dedicated young man who had devoted himself to protecting everyone on that MIT campus, from the students to the homeless men who wandered onto campus. He was everything a police officer should be. The fact that the defendant and his brother targeted him because he was a police officer is another aggravating factor for you to consider.

Another factor is the defendant's participation in additional uncharged crimes of violence, like Judge O'Toole

just talked about, like assault with a deadly weapon, or attempted murder on others. You heard plenty of evidence about how the defendant attempted to murder as many people as possible on Boylston Street and how close he came to murdering dozens.

I want to talk for just a minute about how hard he tried to kill other police officers, the officers in Watertown. Officer Reynolds told you that after he learned the police were looking for the Mercedes SUV, he saw it. He saw the defendant and his brother driving down in his direction. The defendant was in front.

When he passed them and made a U-turn to follow, the defendant turned down Laurel Street and his brother followed. And the defendant stopped in the middle of Laurel Street and his brother stopped behind him. Both got out.

[59-80]

What was the defendant planning when he stopped his car in the middle of Laurel Street and got out? You know what he was planning because you know what he did next. While his brother provided cover and shot at the officers, the defendant lit bombs, the pipe bombs, and a pressure cooker bomb, and hurdled them at the officers. His goal was to kill them.

His brother was also trying to kill them, and the defendant shared in that goal. You know that was exactly what he was trying to do because when his brother was on the ground and the officers were trying to arrest him, the defendant made one last attempt to kill police officers. He got back into that Mercedes, and instead of driving away from the officers where he had a clear route of escape, he turned around that SUV and drove it



at top speed right at them. He didn't care that his brother was on the ground. He saw an opportunity to inflict even more pain, even more punishment on America, and he wasn't going to pass it up. Once again, he nearly succeeded.

Sergeant Pugliese rolled out of the way just in time, or he, like Tamerlan Tsarnaev, would likely have been run over and killed.

The last aggravator I want to discuss is the defendant's demonstrated and disturbing lack of remorse, his lack of remorse during the commission of the crime and on the date of the arraignment.

20 minutes—20 minutes—after exploding his bomb, [59-81] while his victims lay dead and dying and bleeding—20 minutes—that's a lot less than 60 minutes that some of them had—20 minutes later, there's the defendant. He strolled into Whole Foods like it was an ordinary day and shopped for milk.

That same evening, at 8 p.m., he got on the Internet and tweeted to his friends, "Ain't no love in the heart of the city." "Ain't no love in the heart of the city."

Hours after he fled the carnage that he had unleashed in Boston, he had the gall to tweet, "Ain't no love in the heart of the city." As to that, he couldn't have been more wrong. As the defendant sat at home drinking his milk and tweeting his glib commentary, the heart-breaking love of a mother comforting her dying child played out in the heart of Boston. Also on display were the bravery, the strength, the efforts of strangers trying to help those who had been injured, injured by the bomb planted by this defendant. He failed miserably in try-

ing to blow apart the fabric of society. Make no mistake: Love prevailed in the heart of Boston on April 15th. But his true character was on display that night. It was on display in his words, in his callousness in that tweet.

The next day, April 16th, while victims awoke in cold, antiseptic hospitals to the new reality that they were amputees, the defendant went to the gym and worked out. An hour later, he tweeted this: “I’m a stress-free kind of guy.” [59-82] He’s stress free, April 16th.

Then on April 18th, while Dun Meng, terrified, sits in the SUV with Tamerlan Tsarnaev, the defendant walks into that ATM and coolly withdraws money from Meng’s account like it’s any other day. Later at the gas station, he slowly takes his time buying snacks for that trip to New York where he wants to unleash even more havoc.

And then finally, on July 10th, 2013, three months after the bombings, the defendant comes into court to be formally charged with murdering a little boy, murdering two women and a police officer. He has had months to reflect on the pain and suffering that he has caused. But when he’s put in that holding cell, you cannot see a trace of remorse on his face. He paces, he fluffs his hair, and he makes obscene gestures at the marshals watching over him and watching over the surveillance cameras.

Who is capable of being so stress free after committing the crimes he committed? Who is capable of showing so little remorse? Only a terrorist, someone who had no reason for remorse because he believed that he

had done something brave and something good. Someone who had set out to make a political statement, to commit a political crime and then firmly believed in the righteousness of what he had done.

Alone, and certainly together, these aggravating factors sufficiently outweigh any mitigating factors to justify [59-83] your imposition of a sentence of death. Frankly, it's not even close. The magnitude and the gravity of the aggravating factors overwhelmingly tilt the scales of justice in only one direction.

The defense has proposed a number of mitigating factors. A number of them are unsurprisingly focused on the defendant's family life and his age. I want to discuss a few of those factors very briefly right now, and Mr. Weinreb will discuss them in greater detail during the government's rebuttal.

Many of these mitigating factors concern issues we all deal with in our daily lives every single day. These factors are deserving of little weight in your analysis. None of the factors about the defendant's age or childhood meaningfully mitigate the terrorist attacks in this case.

His age: The defendant was almost 20 years old when he committed these crimes, old enough to know right from wrong. At 18, young men and women leave home. They join the military, start families, and they can vote. The law states that a defendant must be at least 18 before a sentence of death may be imposed. Because when you are 18 or older, you are responsible for your actions. Dr. Giedd's observations regarding the development of the brain are in line with the law, and the law was informed by these understandings.

Now, you heard an enormous amount of evidence in this [59-84] case about Tamerlan Tsarnaev, but Tamerlan Tsarnaev was not the defendant's master. They were partners in crime and brothers in arms. Each had a role to play, and each played it. Both came to believe in the teachings of Anwar al-Awlaki and the other terrorists. Both decided that they wanted to punish America in a way that would win them glory and win them a place in paradise.

The defendant would like to focus all of your attention on something you can never know, namely, what influence, if any, did Tamerlan Tsarnaev have on the defendant's decision to commit these crimes? You can't know it because there's no evidence of it in this case. What you do know from the evidence is what things the defendant actually did and what he wrote. Those are the things that really matter in deciding what his punishment should be.

The defendant independently got the gun used to murder Officer Sean Collier. He independently chose the Forum restaurant as a bombing site, and he stayed there in spite of the children. He called his brother to initiate the attack. And because of his actions and role in this conspiracy, he maimed Jeff Bauman, Erika Brannock, Celeste Corcoran, Mery Daniel, Rebekah Gregory, Patrick Downes, Jessica Kensky, Karen McWatters, William White, Heather Abbott, Roseann Sdoia, Marc Fucarile, Paul Norden, JP Norden, Adrienne Haslet-Davis, Steve Woolfenden, and little Jane Richard, whose leg looked like it [59-85] went through a meat grinder, as Matt Patterson described it.

The defendant murdered Krystle Campbell, Martin Richard and Lingzi Lu. He returned to UMass Dartmouth in secret triumph and posted tweets that reflected his satisfaction with his own work. Not once in those tweets does he say, “Tamerlan made me do it.”

He independently returned to Cambridge when he saw his face on the news to rejoin his brother for their final acts of terror. He murdered Sean Collier. He tried to steal his gun. He robbed Dun Meng. He loaded bombs in the Mercedes. He went to buy the Red Bull and snacks for the trip to New York. And when the police caught up with him, he led the way to the site of the last stand. He tried to kill the officers, first with bombs and then with an SUV, without any help from his brother or anyone else. He wrote a manifesto that explained their actions and took credit for what they had done.

As the defendant so clearly wrote, “I can’t stand to see such evil go unpunished.” That’s what he wrote. “I can’t stand.” “I,” not “we.” Not “my brother.” Nowhere in that manifesto does he write, “My brother made me do it.”

What deserves more weight: the things the defendant did in his written confession of guilt or the speculation about what Tamerlan might have said? You heard that the defendant learned the value of love and caring and support from his family and friends, yet he made a conscious decision to destroy [59-86] loving and caring families without any regard for the consequences. In total, the mitigating factors are essentially weightless when compared to the gravity of the terror, devastation and murder perpetrated by the defendant.

Now, some of you expressed the opinion during voir dire that a life sentence may be worse than death. You now know, after hearing from Warden John Oliver, the warden at ADX, his life will not be worse than death. He won't be put in a dungeon. He won't be in a black hole. He'll have his own cell with a window. He'll take separate showers. He'll have a toilet and a sink. He can view prison programming in his cell. He can take courses and get a college degree. He can write a book. He can exercise inside and outside of his cell. He'll be able to talk to other inmates and to the staff. And he won't need to deal with the fear of others hurting him because the staff will be there.

He will be able to visit with family and approved contacts. He gets to see them in person, speak with them on the phone and exchange an unlimited number of letters. Unlimited. He can ultimately step down and have more privileges.

He is a young man in good health. As you've heard, SAMs restrictions are not permanent. They must be renewed yearly. And they can only be renewed if they meet the requirements. If those restrictions are lifted, he will be [59-87] allowed more privileges and more contacts. Times change. No one can predict the future. But his life will not be worse than death, especially if he steps down during that process.

This defendant does not want to die. You know that because he had many opportunities to die on the streets of Boston and Watertown. But unlike his brother, he made a different choice. In the manifesto he wrote in the boat, he praises his brother for dying a martyr, but he did everything in his power to avoid becoming one himself. He didn't take on the officers after he ran out

of pipe bombs. The defendant managed to escape. He escaped in Dun Meng's SUV down Laurel Street, and then he hid—he ran, and then he hid in the boat.

A death sentence is not giving him what he wants. It is giving him what he deserves.

This is a solemn day. Nothing is ever going to bring back Krystle Campbell, Lingzi Lu, Martin Richard or Officer Sean Collier. No one will ever be able to put the amputees back in the position they were to run on their own two legs again. We understand this is a weighty decision, and we appreciate the need to be circumspect and thoughtful in making that decision, but you all said in the right case, if the government proved it was an extreme case, a heinous case, that you could vote to impose a sentence of death. This is that case.

Don't be swayed by the many cute photos you saw of the [59-88] defendant as a child. All murderers start out as cute children, but sometimes cute children grow up to be bad people. When the defendant became an adult, he changed into someone else. He found terrorist writings, he found terrorist lectures, and read and listened to them. He found them compelling and convincing, so much so that he became one of the extremely few people in the world who acted on those. He acted on the beliefs and the writings and the lectures, and he acted on it to carry out a terrorist attack.

He was an adult. He made an adult decision and the damage will last forever. Now he has to face the consequences. He struck at what citizens hold dear to cause the greatest amount of pain, fear and panic. He went after the core values of society: children, family, neighborhoods, public safety.

After all of the carnage and fear and terror that he has caused, the right decision is clear. It is your job to determine a just sentence. The only sentence that will do justice in this case is a sentence of death.

Thank you.

THE COURT: I think, because of the time, we'll take the lunch recess at this point and have the—but I propose to make it a little shorter than an hour. We'll come back at 1:15. All right, jurors? I'm told that lunch is available for you.

\* \* \* \* \*

[59-96]

MS. CLARKE: Thank you, your Honor.

May we have the screen?

Hello.

THE JURORS: Hello.

MS. CLARKE: Ten weeks ago, you took your oath as jurors in this trial, *United States versus Dzhokhar Tsarnaev*, and now the time's come for you to decide what to do with Dzhokhar.

It's—I'm sure it was clear from the beginning of the case that the prosecution would come to you and ask you to impose a sentence of death. That came as no surprise. And I'm sure it's no surprise to you that I come before you on behalf of all of his attorneys and ask you to choose life.

And now you have the unenviable task, each of you—each of you individually have the unenviable task of considering everything you've heard in court, considering



all of the instructions from Judge O'Toole, considering your life experiences, considering your wisdom, and considering your moral sense in deciding the answer to that question.

Miriam, David, Tim, Bill and I have stood with Dzhokhar Tsarnaev for many months. We've tried to bring you information to help you do your job. We've told you when we agreed with the evidence of the prosecution, and we've told you when we've disagreed about their theories and about why.

We brought witnesses to tell you about Dzhokhar's [59-97] background, his life, his life experience as a child, as a teenager, and now. And I need to talk with you about Dzhokhar.

But before I do, I want to make one thing very, very, very clear. The story of the Boston Marathon bombing is not about Tamerlan and Dzhokhar Tsarnaev. The story of the Boston Marathon bombing is one of tragedy of their making, but it is more than that. Family members of those who lost their loved ones came into this courtroom, either in the first phase or this phase, and testified from the depth of their grief and with great dignity and spoke to you about their heartbreaking loss. Those who were hurt beyond imagination came into this courtroom and testified about their pain and anguish. But every person—in each person, you saw a will and a determination to survive and thrive.

First responders told us about their—what can only be described as brave and heroic acts. They came in here and told us about their efforts to comfort the injured, to save the seriously injured and to protect others. The story of the Boston Marathon bombing is about

resilience and the strength of the spirit of those so deeply affected by these senseless and catastrophic acts.

But I'm going to spend some time talking with you about Dzhokhar and his life because he's the person you've got to sentence. He's the person you've got to make your individual decisions about. You're not just making a decision [59-98] about the horrific nature of the crimes. You did that in returning your verdict of guilty on every count in this indictment. You did that. You've done that. You're now to make a decision about who he is, who he was and who he might become.

I'm not asking you to excuse him. There are no excuses. I'm not asking you for sympathy. Our sympathies lie with those who were harmed and killed and their families.

What I am asking you to do when I talk with you about Dzhokhar is to listen. And I'm asking you to hold open your minds, as you promised that you would do, and I'm asking you to try to understand—it's a mighty big task for all of us to do—try to understand how the unimaginable occurred.

You heard from the witness stand a little bit about Dzhokhar's parents, very—sort of very young and very rocky beginning. Neither thought they should marry. One was a Chechen, one was an Avar, and they shouldn't marry.

You heard a little bit about Zubeidat. You heard the name pronounced a couple of times, Zubeidat or Zubeida, Dzhokhar's mom, and you heard about how she was fashionable and flashy and loud, and Anzor was a hard-working, quiet man. They moved a lot, often thousands of miles.

And from Kyrgyzstan—I think we’ve got a map. I think you saw this chalk during the testimony. And you heard about how they moved from Kyrgyzstan to Kazakhstan to Chechnya [59-99] to Dagestan, often thousands of miles, and required the help of Zubeidat’s sisters and their children to help the family make it. Zubeidat and Anzor had four kids in seven years. They often landed with relatives thousands of miles from where they had been living, uprooting the kids.

Now, the prosecution tried to make it sound like they were summering on the Caspian Sea. We know that’s not true. We heard from the women that came here from Russia that that wasn’t true. There was a two-bedroom apartment where they crammed in with several other relatives and stayed for months. Even the women that came here to talk with you from Russia told you how unsettling all of those moves were for that family.

The women who came here, two sisters of Zubeidat, and the cousins of Dzhokhar didn’t even know until coming here where Tamerlan had been born. They didn’t know that Dzhokhar’s birth certificate showed that he was born in Kyrgyzstan and were somewhat surprised to learn that because some of them were there when he was born in Dagestan, 2,000 miles away.

While most folks described Anzor as a quiet, hard-working dad, there were mixed reviews on Dzhokhar’s mom. She ranged from fashionable and flashy and loud. Her family was stunned, shocked when she began covering in dark. Her somewhat skeptical son-in-law, who we—former son-in-law who we saw coming to Boston by way of video from Kazakhstan, talked of her—

about her as controlling and didn't believe the [59-100] reasons for her covering up.

You heard her described as intense and intimidating and attending a baby shower and acting like the queen bee. A wide range of descriptions for Zubeida. The one thing we really got out of that is she was a force in the family.

So when—in 2002, when Dzhokhar—eight-year-old Dzhokhar came with his mom and dad to the United States, they came over here with one child, leaving 15- or 16-year-old Tamerlan in Kazakhstan with his two sisters, with family, and they tried to make their way in the United States. A year later, the whole family joined up in Cambridge and set on hopes and dreams and unrealistic expectations for Tamerlan.

Tamerlan would go on to do great things. Tamerlan would be a famous musician. Tamerlan would be an Olympic boxer. Tamerlan would be the savior of the family. Where was Dzhokhar in this entire time and this entire discussion? He was the quiet kid who kept his head down and did his homework. He was the shy, quiet, respectful, hard-working kid that the teachers and friends came in here and told you about.

Katie Charner-Laird, the third-grade teacher—she came in and said, “Look, he came in speaking Russian. He learned English. He learned it well. He worked hard. He wanted to do everything right.”

Tracey Gordon told you about the fifth-grader who enjoyed the farm club. He was hard-working. She recalled his [59-101] enthusiasm when he went to the farm school. We saw several pictures of that. She re-

calls him dancing in the classroom. She met his parents, and his parents wanted him to skip a grade and go ahead. And that happened.

Becki Norris taught Dzhokhar in middle school. You may remember Ms. Norris when she came in. She loved that kid. She spoke Russian. She became his advisor. She got to know him very well. Her husband got to know him. They saw great promise in this kid. Her husband was a soccer coach. They cared deeply for Dzhokhar then, and they care deeply for him now.

Becki Norris remembered Dzhokhar coming to school one day in the wrong color pants. Do you remember that testimony? And he got sent back home. And when he came back, he said his mother was pulling him out of school, and Becki Norris was devastated. She even remembers that feeling today. She was devastated by that and said, "I'll call your mom."

What did Dzhokhar say? "Don't. It won't do any good."

You heard Dzhokhar followed his big brother around the boxing gym, followed Tamerlan around the boxing gym like a puppy. So Dzhokhar was at the boxing gym, but unlike with Tamerlan—and I don't want to miss the picture that made Becki Norris almost tear up on us. She was pregnant the year she taught Dzhokhar, and one of the children that she was able [59-102] to let hold her infant was Dzhokhar. She still holds that memory.

But where was Dzhokhar's dad when he's taking pictures with Tamerlan? Where are the pictures of Dzhokhar? He was the invisible kid. But, you know, Dzhokhar tried. He still tried hard.

Eric Traub, remember him? He lives in Washington, D.C., now. He taught Dzhokhar in the ninth and the twelfth grade. And he remembers him very, very well and wrote a letter of recommendation in December 2010.

And I asked him to look at it, and he read it out loud to you, and I said to him, “Did you believe it then?”

“Yes.

“Do you believe it now?

“Yes.”

“Dzhokhar is a good student. He quickly absorbs new ideas. He’s amiable with peers and adults. His good nature and positive spirit have made Dzhokhar a pleasure to know over the last four years. He’s polite and respectful and enters class with a warm greeting.”

This was a man that fondly remembers Dzhokhar and remembers stepping into a photo—I think he called it a photo bomb. He stepped into the photo with Dzhokhar and another student.

Dzhokhar did the Model U.N. club. He did Best [59-103] Buddies. He was good with disabled kids. He seemed to do high school on his own, though. Even his wrestling coach, Roy Howard—remember the man who came in, and he was the volunteer wrestling coach. And he—because he had another job. And he came in and he said, “Yeah. I always liked to talk to the parents about the nutrition and all of the demands of wrestling. Wrestling has some of the most demanding, you know, practices to it and—you know, because the weight has to be managed and all of that. And I like to talk to

the parents about the demands on the kids, and I like to talk to them about nutrition.”

Did he ever meet Dzhokhar’s parents? No. They didn’t show up for senior day, the big day for the wrestlers when the wrestlers get their rose.

We now know that something was going on at home. Dzhokhar’s dad was becoming more disabled. His mother and older brother began to listen to an Armenian man named Misha who brought his own special version of Islam into the home and began to teach them about it. We know that Tamerlan began to have ideas and obsessions about conspiracy theories and about religious extremism.

We know that by 2010 Zubeidat, Dzhokhar’s mom, had changed in many ways. Zubeida, who had been a flashy dresser, described by many people that way, and who enjoyed a good party, and whose parenting skills were probably learned in the [59-104] chaotic shuttling that she went through as a young child in the villages of Dagestan—we know that she had changed to conservative dress and conservative religious views and was not a safe harbor for Dzhokhar.

You heard from Zubeida’s own family, her sisters and her nieces. What a shock it was, how scary it was to them to see her covered in dark. What did they say to you? “That is not how our family was raised.”

And you know from the government’s own intelligence committee report that Zubeida was radicalizing. Two years before the Boston Marathon bombings, Tamerlan and Zubeida came to the attention of the FBI based on information received from the Russian Federal

Security Service. In March 2011, the FBI received information from the FSB alleging that Tamerlan and Zubeidat were adherents of radical Islam and that Tamerlan was preparing to travel to Russia to join unspecified underground groups in Dagestan and Chechnya.

So that's what was happening to Dzhokhar's mom and Dzhokhar's older brother. And what was going on with his dad? Anzor was becoming more and more disabled. And you heard from Dr. Niss that when Anzor came to the United States, he came with a series of mental health problems. He began getting treatment when Dr. Niss was here in 2003, 2004 and 2005. And they only increased in intensity over time, and then he suffered that remarkably damaging head injury.

[59-105]

You heard about the medical records. And we read some of the records to you. They're in evidence. You can see the entirety of the records. In 2007, "Patient complains of attacks with flashbacks and out-of-body visions, of having some auditory hallucinations and his name being called, difficulty falling and staying asleep. And will go on for days without being asleep."

"Patient reports having auditory hallucinations"—later in 2009—"voices screaming his name or whispering and some visual hallucinations, little lizard-like creatures, for the past three to four weeks."

"Anzor reports severe frontal and left side headaches with decreased sensation on left side of face. Patient reports unsteady gait, visual changes, tremor, auditory hallucinations, multiple voices screaming his name." This was Dzhokhar's dad.



2011, “Anzor reports feeling quite overwhelmed, appears depressed, tearful, having difficulty functioning, upset with minor things. ‘If I’m not getting better, my wife would divorce me.’”

2014, shortly before he leaves the United States and returns to Russia for good, “To whom it may concern: Patient suffering from mental illness. Not able to work. Needs constant supervision and support.”

Sam Lipson came before you. He’s known the family for a long time. His mom was the landlady. Sam Lipson came and [59-106] told you about the changes in Anzor and changes in his friend. He viewed Anzor as his friend. He saw him losing weight. He saw him feeling burdened and unhappy. We know there were serious problems in the home.

But Dzhokhar still had friends. They didn’t know much about his family. They hadn’t been to his house. But they cared for him. You could see that when they came before you. He was loyal. He was laid back. He was funny. He was quiet. He was shy.

Rosa Booth, a young woman, came in and described him as sweet, shy and goofy. And she had a crush on him, but she was so shy she wouldn’t accept his invitation to go to the prom.

Bett Zamparelli knew him in Best Buddies. He made her laugh and feel good. He was respectful to the other girls. He treated them with respect. And when Bett saw the pictures of the Boston Marathon bombers, one looked like Dzhokhar, but she very quickly set that thought aside.

Dzhokhar had a bond with his wrestling buddies. Remember Henry Alvarez came in. He was kind of

funny about comparing the various sports. He said that Dzhokhar was kind and funny and would dance to a song to break the tension in a room. He asked Dzhokhar to come to his senior night and to be there when he got his rose. He couldn't imagine that Dzhokhar could do something like he did.

[59-107]

Coach Howard, who chose Dzhokhar to be co-captain of the wrestling team, described him as a quiet, hard worker and dedicated. He was a good wrestler.

One thing that was consistent in all of the family chaos and craziness was Dzhokhar remained the invisible child. His parents weren't there for his wrestling match. His parents never met his teachers in high school.

In the fall of 2011, Dzhokhar went off to UMass Dartmouth. On the surface, his college years started out sort of ordinary. He did okay in school. He had friends. He drank, although he was too young. He smoked and sold some pot. He was with his friends the first year. Remember Tiarrah Dottin describing the bro nights that they had, and she recalled that very fondly. She even recalled very fondly the selfie when they clearly are—having been done something that they shouldn't have been doing, but she remembered it, and she teared up over the memory of her good friend, Dzhokhar.

Alexa Guevara came before you and she described Dzhokhar as approachable, kind and accepting. He was more respectful than the others. Remember when she said, We played Ruzzle together, the Internet Scrabble game. Dzhokhar encouraged her to go to art school.

She cried when she told you she misses the guy she knew.

Even with his friends, 2012 was a fairly unsettling—“fairly” is a light word—a remarkably unsettling year for [59-108] Dzhokhar. His dad left the United States for Russia and never returned. His brother Tamerlan, who had changed dramatically, becoming very radical, left for Russia on a trip we now know was to wage jihad, to take up the fight in the mountains—or to take up the fight.

When Tamerlan returned from his unsuccessful join-up with the jihadi movement, he was frustrated and determined to find a new war to express his rage. Dzhokhar’s mom left and went to Russia for good. She wasn’t available, even with her limited parenting skills, to help this kid, to be there to provide any guidance or support that a parent does. Many of us have seen kids go off to college. They graduate from high school, and they go off to college. They’re not done. They need a tremendous amount of support from their parents. They still need guidance from their parents. And what little parental guidance and support Dzhokhar had by September of 2012 was gone.

And perhaps more significant than that was who he was left with. His sole source of family, of support, of strength by the fall of 2012 was his older brother, Tamerlan. Tamerlan had charisma. Tamerlan was bigger than him. Tamerlan was older than him. It’s not uncommon, in any of our experiences, whether you’re Chechen or Avar or—or us—it’s not uncommon in any experience that a younger brother will revere and adore an older brother and not really understand the logic of why.

[59-109]

But it's particularly significant in the culture of the Chechens and on both sides of Dzhokhar's family tree. You heard about the Avar—the women that came in from Russia: “Yes, it's very important. Our fathers and our older brothers make decisions for us.” In the Chechen culture, it goes back thousands of years.

But what Elmirza, who came in from Kazakhstan by video—I point over there because that's where I saw him. What did Elmirza tell us? He had a very interesting little quote that he said. And remember, Elmirza is in the picture as the Chechenian. But Elmirza came in and he said, “We have a funny quote in our culture. It's better to be a dog than the youngest of seven brothers.” And he explained that because you owe allegiance to so many people above you.

So we need to talk about Tamerlan. The government, from the attorney box to the witness stand, continue to try to minimize any interest in Tamerlan and has complained that we have focused on Tamerlan. Today for the first time we hear, “Well, Tamerlan didn't influence Dzhokhar.” At least they're recognizing that Tamerlan was there.

Tamerlan did influence Dzhokhar, and we need to talk about Tamerlan. Somebody needs to talk about Tamerlan. The story of Dzhokhar cannot be told without knowing the story of Tamerlan. The horrific events of the Boston Marathon bombing cannot be told or understood in any degree of reality without [59-110] talking about Tamerlan.

We know that Dzhokhar respected and loved his older brother. We know that his older brother was a

major influence in his life. We can see it in the pictures from very young what these kids meant to each other. We can see it in the size difference, in the age difference and just how they interacted. We can see it in this photo with the older brother and the much smaller younger brother.

He seemed deferential to his older brother. One witness came in and said he followed Tamerlan around like a puppy. Vishkan Vakhabov, who did not come before you but whose FBI 302 was read to you, talked about Dzhokhar being like a little boy. We know from a lot of evidence and witnesses that Tamerlan was charming. He was charismatic. He was a flashy dresser.

He thought of himself as the professor. Again, Elmirza made this—Elmirza, the Chechenian, Tamerlan, the professor. He was a skilled boxer. The boxers came in, and they said he was a skilled boxer, but he would listen to no one.

And something happened to Tamerlan. He tried, and he failed. He couldn't stay in school. He couldn't get a job. He couldn't stick with boxing. He couldn't go to the Olympics. Something happened.

And Misha turned up at the house, and Tamerlan began [59-111] to learn more about Islam, an unusual form of Islam, discussions of demons. And he got obsessions, and he got into conspiracy theories, and he got into politics, and he changed.

Elmirza saw the change in his friend and brother-in-law. Robbie Barnes, who came in and testified, saw the change in his dress and how he interacted with people. Roger Franca, who used to smoke pot and drink and

party and club with Tamerlan, saw the dramatic change in him, the man dressed in white and wearing the beard.

You may recall the chance meeting that Roger Franca said he had with Tamerlan walking down the street. I think Boylston Street. And Katherine stepped back behind as they greeted each other and would only nod and shake her head in greeting.

You recall the testimony of Mr. Assaf, the imam at the mosque where Tamerlan attended, where Tamerlan disrupted the mosque twice, the sermon. It's unheard of. It's inappropriate. It violates the prayer. It's not done. And Tamerlan did that twice. He told his friend, Vishkan Vakhabov, who, again, you heard from the 302, that extremist violent jihad was the proper path.

Tamerlan's power over those who he encountered is seen no better than in his relationship with Katherine. Katherine Russell, a beautiful, young college student, falls in love with Tamerlan. She was an attractive young woman. She enjoyed fun [59-112] with her friends. And she changed dramatically under Tamerlan's influence.

Judith Russell, her mom, you saw her. She came in. It's a difficult thing for her to do, to come in and talk to you. And she told you about her concerns with Tamerlan. She told you how she tried to work with her daughter about it. And she told you how she tried to be gentle so that she could keep her daughter and her granddaughter in her life. But her daughter changed.

Gina Crawford, Katherine's best friend from fifth grade on, saw the changes in her best friend and chose to be non-judgmental about it so that she could keep the

friendship. Amanda Ranson, the former roommate of Katherine, came in and told you that she feared for Katherine, she feared Tamerlan, and she was so afraid from a fight that they had that she moved out.

Yes, this strong-willed, independent, young college student, daughter of a doctor and a nurse from Rhode Island, fell to Tamerlan's sway. Judith Russell showed you the picture. He left her and he left her young daughter with her when he went to Russia in 2012. And this isn't just our guesswork about why he went. You heard about it from the Homeland Security report. It's in evidence. And you heard about it from the Intelligence Committee report.

And you heard about it through the—again, through [59-113] the 302 of a guy named Magomed Kartashov, who was a relative of Zubeida, and living in Dagestan in jail. And what he said to the FBI was: Tamerlan was under the impression there was jihad in the streets. Tamerlan's expectations of how it was going to be when he got to Dagestan came from Internet sites like Kavkaz Center. Tamerlan came to Russia with the intent to fight jihad in the forest. Kartashov told him to stop talking like that or he wouldn't make it to the next tree. Tamerlan told Kartashov, "I came here to get involved in jihad." Eventually Tamerlan told Kartashov, "You have convinced my head but my heart still wants to do something."

Tamerlan's decision to pursue jihad was not a decision he made yesterday. Tamerlan was on the radar. He was on the terrorist watch list. You saw pictures of him there. You heard about recordings on his computer where he is talking to other people involved in the

movement, and he talked about the rage he had and his call to action.

To say that Tamerlan did not influence Dzhokhar defies the reality of the series of email exchanges with Tamerlan and Dzhokhar when Tamerlan was over in Russia. Tamerlan was consistently sending materials, jihadi kinds of materials, radical extremism materials, to Dzhokhar.

And in a telling exchange of emails while Dzhokhar was over there [*sic*—well, this slide sort of popped up on me. But do you know what happened? Before he went, you can see [59-114] part of the purpose of his departure—Katherine was worried about it. These are searches on Katherine Russell’s computer: “If your husband becomes a shahid, what are the rewards for you?” “Can women become shahid?” “Wife of the mujahidin. Rewards for the wife.” Katherine was worried about what Tamerlan was doing.

You know from Tamerlan’s computer that he gave the radical materials to Dzhokhar. We looked at this in the first phase, and I’ll go through it quickly in this phase. But this was the complete *Inspire*. Remember the missing Patriot thumb drive? The missing Patriot thumb drive attaches on the day that Tamerlan leaves for Russia, attaches into the Samsung, Tamerlan’s computer, and then the file is created, the complete *Inspire* file is created, and then it is attached into the Sony, Dzhokhar’s computer.

The other *Inspire* magazines follow a similar path. The vast majority of the materials that you heard about all throughout this trial that landed on—and that Mr.



Mellin talked about in closing, that landed on Dzhokhar's computer, landed there from Tamerlan. Tamerlan spent a lot of his time focused on radical websites and radical ideas. And his desktop, you know, the background on his computer, the screen that you stare at when you don't have a document up, here it is. This is what Tamerlan looked at every day when he looked at his computer.

[59-115]

And the sticky notes—here's one of the translations. There's another translation for the other note in evidence—is jihad.

“If Allah had so willed, he would have taken revenge himself, but he wanted to test some of you by means of others.”

“And if they turn him away, it's enough for me to have Allah. There's no god. I trust in him. He is the lord of the great throne.”

“Truth has arrived and falsehood perished, for falsehood is bound to perish.”

“Allah says in the Qur'an fighting may be imposed on you, even though you dislike it. You may dislike something which is good for you, and you may like something which is bad for you. Allah knows what you do not know.”

This is what Tamerlan looked at every day. This is what he wrote. This is the sticky note on his computer.

Other notes were found in the Norfolk Street apartment. You may remember there were these composition notebooks, and his fingerprints were all over them. We brought you the translations of the notes. It's a

similar kind of writing. He was consumed with radical extreme ideas, and he pushed and pushed. Remember the little video of his daughter, Zahara, at the park, and she's climbing on the contraption there, and he's saying, "Al Akhbar, Al Akhbar." And she starts to repeat it back to him: "Al Akhbar." I mean, here's a [59-116] toddler playing in the park.

Naida, his cousin from Russia, was so undone by his radical change and radical extremism when she saw him in Russia in 2012 that she did not want her son to spend any time with him.

So that's Tamerlan.

What was going on with Dzhokhar while Tamerlan was in Russia? While he was in Russia, Dzhokhar was going to bro nights. He was posting on Instagram. He was posting on Facebook. He was hanging out with his friends. He was doing a little underaged drinking. He was spoking pot with his friends. He was missing some classes. He was flunking out of school. He was not engaged in radical jihad.

In a very telling set of emails, though, when Tamerlan kept sending stuff to Dzhokhar, Dzhokhar writes back, "Tamerlan, I miss you. I hope everything's all right. I can't get through to you, no matter how many times I try to call. Thanks for the video. Take care of yourself. I'll call today. Inshallah."

The only other response while Tamerlan was in Russia from Dzhokhar, when Tamerlan is sending him materials, is to send back to Tamerlan what Professor Reynolds told you about was a—sort of an anti-jihad site. It was a government-sponsored site with a text from a 13th century mystic. But the jihadis reject it.

So this wasn't Dzhokhar [59-117] weighing in and supporting and liking or encouraging Tamerlan.

Dzhokhar's other—and they're in evidence. His other emails to Tamerlan were about cars. That's who that kid was. Tamerlan left the United States wanting to wage war. He was rejected as a warrior. He left the United States for Russia as a jihadi wannabe. He couldn't make it. He came back to the United States as a jihadi wannabe. He couldn't fit into any movement. So he created his own.

It was not Dzhokhar at this point in his sophomore year in college that was like that. You know it; I know it; we all know it. And to say that Dzhokhar was a jihadi in his—the beginning of his sophomore year in college is just wrong.

After he came back to the United States, Tamerlan went on his search through the Internet. He found these extremist articles. He looked at violent YouTube sites. You saw some of the clips from YouTube sites, and you saw that chart that showed how much time you spent on YouTube. And Professor Reynolds told you he went in and looked at the kinds of YouTubes that Tamerlan was looking at, and they were either preaching about religious extremism or teaching or somehow encouraging that movement.

He also looked for a P95 Ruger. He looked for bomb-making parts. He ordered the materials that he built the bombs with. And as we talked about and showed you in the first [59-118] phase of this case, his fingerprints were all over the materials; not Dzhokhar's.

We've told you that Dzhokhar followed his brother down Boylston because that is the tragic truth. But if

not for Tamerlan, this wouldn't have happened. Dzhokhar would never have done this but for Tamerlan. The tragedy would never have occurred but for Tamerlan. None of it.

Dzhokhar became convinced of the fallacy of the cause of his brother's passion and became a participant. He carried a backpack, and he put it down in a crowd of people, believing that it would be detonated and people would be hurt and killed.

To replay for you today, after you've made your decisions in the first phase, the picture of Dzhokhar standing by the tree and to replay with the mockup of the grill, is misleading. We do not deny, and we have never denied, and we came to you at the very beginning of this case and acknowledged that Dzhokhar put that backpack down. But you saw the films, and we don't need to see them again, the Forum video films with the crowds going back and forth. And to take a clip and to show Dzhokhar standing behind the tree and to argue that there was nothing between him and the children makes more of something that was already horrible enough. Let's not make it worse.

He was foolish enough to get a gun for his brother. He was foolish enough to go with his brother. Do you really [59-119] think that he used that gun? Do you really think he got it for anybody other than his brother? The evidence would really tell us that that's who he got it for.

Tamerlan—at Watertown, who had the gun? Who was shooting at the police? Who shot Collier with the gun? Whose fingerprints are on the magazine inside

that gun? Tamerlan's. Who had the BB gun and the fingerprints on the BB gun? Dzhokhar.

Tamerlan was determined to die in a blaze of gunfire, and Tamerlan—and Dzhokhar panicked and got into the car and escaped. Hundreds of bullets went into that Mercedes and didn't kill this young man. He ran—how it didn't kill him, I don't know. He ran, and he hid in a boat, and he wrote. And you know what he wrote, words that had been introduced to him by his brother; words that he had listened to, that were sent to him by his brother; words that he had read that were sent to him by his brother until at least—he could at least recite them. But we're not sure with how much certainty he could recite them.

Remember he also wrote, "I am jealous of my brother who has gone to paradise"? What's the first thing he asked the EMTs when he was being taken to the hospital? "Where's my brother?"

The differences in Dzhokhar and Tamerlan can be seen in other ways, from how they reacted when they knew the police [59-120] had them. Tamerlan shoots straight at them, walks into the blaze of gunfire and throws the gun at them and resists, fights and yells and screams when the EMTs are trying to give him aid.

When Dzhokhar was spotted in the boat with no weapon and ordered out, he came out of the boat. You saw the boat. We all went out and saw the boat. You saw the hundreds of bullet holes in the boat. He wasn't, again, killed, but he was shot. He was hit in the head and the face, the hand. You see him coming out

of the boat. And what did he do? He followed the directions of the EMTs. He answered their questions, he accepted treatment, and he asked about his brother.

So how does all of this happen? How does this good kid, this youngster, this young man who was described as gentle by friends and family and teachers—how does he do it? How did this happen? If there were an easy—if only there were an easy and succinct answer to that question, that will haunt many of us for years to come, I would give it to you.

Sometimes star-crossed lovers whose families don't want them to marry, marry anyway, and their marriages work out. Sometimes people who have serious mental illnesses and get help can function. That didn't happen for Dzhokhar's parents.

Sometimes refugee families can come from difficult circumstances in war-torn countries and come to the United States and embody the American dream, despite their past. That didn't happen for the Tsarnaev family.

[59-121]

Sometimes children who are forgotten or neglected or raised in chaos and craziness are able to recognize that they don't have to protect their families and they can ask for help and get it and their hollowness does not get filled up by the darkness of the most dominant person in their lives, who they happen to love beyond their understanding. Not so with Dzhokhar.

If you're looking to me for a simple and clean answer as to why this young man, who had never been arrested, who had never sassed a teacher, who spent his free time in school working with disabled kids—if you ask me—if you expect me to have an answer, a simple, clean answer

as to how this could happen, I don't have it. I don't have it.

I can tell you this, and we've shown you, that Dzhokhar Tsarnaev is not the worst of the worst. And that's what the death penalty is reserved for, is the worst of the worst.

The prosecutors want you to believe that Dzhokhar is a bad seed, and they had everyone fooled, every teacher, every friend, every person who came before you and risked public exposure coming to you to testify—every one of those people were fooled. He committed a heinous crime and must be executed. That is the prosecution's theory.

The crime is heinous; that much is true. But you promised us when you took your oath as jurors that when the [59-122] time came for sentencing, you would look beyond—you would look beyond the crime, you would look at the person, and you would look at all of the reasons that the law allows you to consider life without the possibility of release could be the appropriate sentence.

And when you deliberate—when you get the case, when you deliberate, you'll have the aggravating and mitigating factors that the judge has gone through and the prosecutor has gone through and hear the aggravating—and you'll get to consider them and hear the aggravating factors are primarily focused on the crime. There are no aggravating factors that the government alleges that focus on Dzhokhar being a danger, Dzhokhar leading a life of crime and violence, or that he will continue to be some lawless, violent person, unable to be housed in prison. The aggravating factors in this case you

pretty much have already decided by your verdict in the first phase.

The mitigating factors are going to ask you to look to Dzhokhar's past as well as who he is now and his future. They look to his background. They look to the circumstances of the crime, his role in the crime, and his future. Is his a life worth saving? Is there hope for him? Is there hope for redemption?

The law recognizes that all people convicted of the same crime don't get the same sentence. Whether it's murder or [59-123] murder by weapon of mass destruction, you've got to look at the person. So in a minute I'm going to talk to you about a couple of things in the verdict form that I want you to sort of untangle or figure out, but first let me talk a little bit about the categories of mitigation that you'll see. You've seen the list. The judge read you the list. You saw the list come down on your screens.

There will be factors that you consider about his family, about Dzhokhar's background, about the lack of parental support that he had. There are mitigating factors having to do with his role in the crimes. We brought you evidence that although both Tsarnaev brothers are responsible, they had very different roles. Those are things you need to consider.

What was Dzhokhar like in the life that he led before these crimes? Something to be considered. You know from his teachers, from his friends that he was a kind and gentle boy, that he cared for people and he sought to help others.

You know that in high school, just two years before the bombing, he took pride in his schoolwork and in his



athletic ability, and he was motivated to help other disabled schoolmates. He was in the Model U.N. He was in Best Buddies. He was a wrestler. He was well liked and well loved.

You've also heard that he's young. He was 19 at the time. Dr. Giedd came before you, Jay Giedd. You may remember his testimony. And Dr. Giedd has spent some decades studying [59-124] brain development, and he's been studying primarily the adolescent brain development.

And his bottom line of his testimony was something that we all know, if you've ever been a teenager, had a teenager, known a teenager. We all know it's not a finished product. And Dr. Giedd was able to show you from brain studies the reason why teenagers are the—the way they are, why that time in life is so topsy-turvy, why you can make some good decisions and make some bad decision. It's what's going on.

There's a biological reason that we have teenagers, and he's spent his life studying it. Sure, there are averages. Sure, you don't know from any brain scan how mature any individual was. Could you imagine that, as a parent? You'd like to have that.

There are categories of mitigation that look at who Dzhokhar was in the past. There are categories of mitigation that look at who he is now and who he's likely to be. There's nothing in the evidence, nothing at all, to suggest that Dzhokhar is likely to be difficult to supervise or manage or house in a prison. He's never tried to influence anybody about his beliefs. He's never tried to break the rules or disobey the law. And he's been incarcerated for two years.

And what does the government bring to you after over two years of incarceration? A video—not even a video, a picture, an instant, the one second of Dzhokhar shooting the [59-125] finger at the camera. Now, most—that’s probably a first. I doubt anybody has ever been written up for shooting a finger at the camera. It’s the kind of scrutiny this kid is under. And if there were more, believe me, you would have been hearing about it.

What surprises me the most about the government’s attempt to persuade you based on that evidence is that they took the instant clip and took it entirely out of context. Didn’t show you the sort of childish, silliness about it, stupidity about it. And what’s more important is what they didn’t tell you when he was called on it. What did he say? “I’m sorry.” He apologized.

Finally, we think that we have shown you that it’s not only possible but probable that Dzhokhar has potential for redemption. Sister Helen Prejean testified and told you about her visits with Dzhokhar. She’s spent five visits with him. She shared her insight into him and his potential for redemption. As you know, she’s a nun, and she runs a—part of her ministry is to work with prisoners who have committed horrible crimes.

She met Dzhokhar. They discussed religious beliefs. This young Muslim guy and this older Catholic nun discussed their religious beliefs. He was open. He was respectful. And what was the first thing she noticed about him? So young. And then what did she tell you? He’s genuinely sorry for what he’s [59-126] done. “When I asked him about the crimes, he lowered his head, he lowered his voice, and he said, ‘No one deserves to suffer like they did.’”

That just does not sound like the same boy who wrote in the boat, “I don’t like killing innocents unless it’s necessary.” “It’s necessary.” That is growth. That is maturity. Most of us hope that we have a chance to mature more from age 19 to age 21. And what Sister Helen gave you the opportunity to see is that this kid is on that path of growth and remorse.

The young man that Sister Helen sat with is not the angry, vengeful, uncaring, unrepentant, unchanged, untouched young man that the prosecution has described to you. What unrepentant, unchanged, untouched jihadi is going to meet with a Catholic nun, connect with her, talk with her and have her enjoy the conversation with him? What unrepentant, uncaring, untouched young jihadi is going to reveal his regret for the suffering that he caused?

I suppose the government’s going to argue that this young man pulled the wool over Sister Helen’s eyes. That is simply not going to happen. She’s been at this work since 1957.

THE COURT: Be careful of experience.

MS. CLARKE: She works—she is experienced. She may be against the death penalty, and that was the [59-127] cross-examination. Many religious figures are against the death penalty. She’s against the death penalty, but she’s not going to come in here and lie to you about her observations of this young man. And what unrepentant, hate-filled jihadi would even bother to try to get her to be fooled?

We ask you to reflect on her testimony. It was short. It was direct. It was to the point. And it

shows the potential—the great potential for redemption.

The verdict form. The judge went through it. It's 23 or 24 pages long. It begins with the threshold intent factors. Those are factors that you have to find—you've already found them in the first phase of this case. Those are factors that you have to find to make the case eligible for the death penalty. It is eligible for the death penalty. You can check them off.

The statutory aggravating factors are a similar narrowing so that you can have the decision about whether to impose death or life. You can check them off. You have found them in the first phase of this case. You have already discussed the facts that give rise to those statutory aggravating factors.

There are non-statutory aggravating factors that the prosecutor went over with you. You can check them off.

There are two, though, I would like for you to look at and think about because they just may not apply. "Dzhokhar [59-128] Tsarnaev demonstrated a lack of remorse." Now, the prosecution has come to you and said what that means is what he wrote in the boat and the fact that he was not remorseful during the time of the crime.

Well, that calls on a little bit much. The crime charged is conspiracy that lasted up through the 19th of April. And you don't know many people who are remorseful during the commission of the crime. It's okay if you make that finding. The critical thing is that Dzhokhar is remorseful today. He's grown in the last two years. He is sorry, and he is remorseful.

The other one that raised some concern is the—and that is on page 14. It's Number 4. The next one is the allegation that Dzhokhar murdered Officer Collier. Now, we know that you have found him legally responsible. He was charged as an aider and abetter. You found him legally responsible for the death of Officer Collier.

He didn't pull the trigger. He may be responsible for the death of Officer Collier, but in a sense of weighing that for punishment, consider who killed Officer Collier, who pulled the trigger. We talked long and hard during the guilt phase about that—that evidence. It didn't matter because of the legal responsibility that the aiding and abetting charge carries.

The verdict form also contains the list of mitigating [59-129] factors that the judge went over, and it includes blanks if those aren't all of the factors. The only thing I want to caution you about the mitigating factors, and the judge's instruction covers it, that if you find by a preponderance of the evidence, by 51 percent of the evidence, that the factor was proven, then you note that.

So if you find that Dzhokhar was 19 years old at the time of the offenses, which he was, you write in 12. If you find that Dzhokhar had no prior history of violent behavior, which is true, you write in 12.

Now, the 12 doesn't necessarily tell you what kind of weight you're going to give to that factor, but this is the factual finding that you write in.

Tamerlan—Dzhokhar acted under the influence of his brother, which is true. 12. And I believe you can go down the line of all the mitigating factors—

MR. WEINREB: Your Honor, I think this is—

THE COURT: No. Go ahead.

MS. CLARKE: —and make your finding.

And in the end, there are several blanks for other mitigating factors that any of you might find appropriate. In other words, it's not a finite list. If there are other reasons that you believe weigh in favor of a life sentence, you can write them in.

Then the last section, Section VI, is really where [59-130] your work is. Because I think you can check off these threshold factors, check off these statutory aggravating factors, check off most of the non-statutory aggravating factors, discuss and check off the mitigating factors. But where your work comes in is in the determination of the sentence.

The law that Judge O'Toole has given you and will finish up with tells you to make findings about aggravating and mitigating factors. You make the finding that they exist. And then it's not a numbers game. It isn't, "There are six factors here and 17 factors there." It isn't a numbers game. It isn't list and list and then the longest list wins. You don't make a list and look at the columns. You can find that one mitigating factor outweighs all the aggravating factors. You can find that there are no mitigating factors and that the aggravating factors do not justify the sentence of death.

Whether a sentence of death is justified is your own individual decision. The judge's instructions tell you that. And I know during voir dire we talked a lot about, you know, "Well, I'll follow the law, and I can follow the law and do what the law requires me to do." Well, the law requires you to make these findings. The law requires you to make findings as to aggravation, findings

as to mitigation, to weigh them, and then the law leaves it entirely up to you.

There is no law that ever requires that a sentence of [59-131] death be imposed. That is an individual decision for each of you to make. It is an individual reasoned judgment that you make. You have a duty to deliberate with each other. You have an obligation to discuss with each other. You have an obligation to hear each other's views. But the law values life, and you have no obligation to vote for death.

Each one of you individually, each one of you, is a safeguard against the death penalty. Each individual.

You've been through a lot together. We've all been through a lot together. But you've been through a lot together sitting here for the last ten weeks, and I'm sure you want to support each other. But that is not your job in this phase. You have a job to deliberate, listen, discuss and respect. Everyone respects everyone else's views. No one of you ever, ever has to vote for the death penalty.

A sentence of death is only imposed if it is unanimous. The questions on Section IV guide you through this.

"We, the jury, unanimously find all of the capital counts and that aggravation significantly outweighs mitigation." If you make that unanimous finding, it is death.

"We, the jury, unanimously find that a sentence of life in prison without the possibility of release for all of the counts." If you make that decision, it is life.

"We, the jury, unanimously find for some of the capital counts." If you make a finding as to any of the

[59-132] capital counts that—unanimously that death is appropriate, that is the sentence. It will override any life sentence.

The judge, in the instructions—and it’s really important to listen to this. You should understand that if you impose the death penalty as to any count or counts, the death sentence will control, regardless of any life sentences that may be imposed on other counts. A single count with a death sentence is death.

The judge also cautions you in the instructions, “The government was entitled to bring multiple charges with respect to each homicide, but the number of counts does not by itself mean that the defendant’s conduct is more blameworthy or he is worthy of greater punishment.”

A death sentence will not be imposed unless each one of you decides that it should be.

A sentence of life in prison without the possibility of release sends Dzhokhar Tsarnaev to ADX. Now, we use those initials rather freely, like we know what it is. Administrative maximum prison in Florence, Colorado. We flung those initials around, but that’s what ADX—it’s the administration maximum prison in Florence, Colorado. There was no dispute about that, that that’s where he’s going. And he will be under the SAM. He’s under—“the SAM,” special administrative measures—he will be under them. He’s under them now.

[59-133]

Warden Bezy and the prosecutor sort of scuffled over how long Dzhokhar may stay under the SAM and whether he’ll get to write or receive letters. And the prosecution spent a long time telling you that it doesn’t snow



that much in Colorado and that there will be heat control in the rooms.

There's a concrete bed with a mattress on it and heat control and a pillow. And for some reason, there was great discussion about this being at the foothills of the Rocky Mountains. It doesn't much matter because Dzhokhar Tsarnaev's not going to see the Rocky Mountains. He won't have a room with a view, and they know it.

Let's get real. This isn't a club. This isn't a resort. This is the most rigid, punitive prison in America. It's a place where 29 men—you heard the testimony about it—29 men vie for the privilege of cleaning the showers, and two get the job.

The same government that asked you to sentence Dzhokhar Tsarnaev to death has the power to cut him off from the world. The FBI and the U.S. Attorney in Boston will never be out of that loop. He is under the SAM. What is clear is that the FBI and the U.S. Attorney in Boston, the offices of the people sitting at this table, will decide how long he'll stay under SAM. I'm baffled by their argument.

Are they telling you that they—you shouldn't trust them to provide protection and security, but you should trust [59-134] them when they say that the justice that is required in this case is a sentence of death and execution?

No one's going to give you 100 percent guarantee that Dzhokhar will remain in the H unit at ADX forever. What is guaranteed is that the decision-makers, the offices of the folks sitting at this table, will be involved, and they are hardly softies on convicted terrorists.

They know what they need to do. They know what's necessary to do. And they're in a position to know what's necessary to do.

And if, for some reason, Dzhokhar Tsarnaev gets off of H unit, the SAM unit, he's still going to be in isolation for the rest of his life. His mail, his phones, any visits that he may have will be strictly controlled and monitored. There will be no book. There will be no coded messages. There will be nothing.

There's no disputing that both punishment options in this that are before you are harsh and severe. With either of the options Dzhokhar Tsarnaev dies in prison. The question is when and how. We're asking you to choose life. Yes, even for the Boston Marathon bomber.

You might say, how can I do that? How can I ask you to choose life after all of the pain that he's caused? If this crime doesn't require the death penalty, what crime does? The question could be, why should he have the opportunity to live when he didn't give it to others? Why shouldn't he suffer as [59-135] his victims did. Mercy? He didn't offer any mercy to his victims and to the people whose lives were ripped apart.

And all of those thoughts and those questions that I just ran through are completely understandable. They're driven by anger, emotion, disgust, fear, pain. Some of them might sound like they are based in vengeance. But really what they're based in is the search for fairness and justice.

There's nothing wrong with having those questions and searching in that way, but there is something wrong with thinking that the answer will be found in imposing

the sentence of death. There's no punishment—there's no punishment, not even a death sentence—that could balance the scales. There's no punishment, even a death sentence, that could equal the impact on these families. And as David Bruck said to you in the opening of our part of the penalty phase, there's no even-ing of the scales. It can't be done.

A sentence of life in prison without the possibility of release is not a lesser sentences than death; it is an other sentence than death. It ensures that Dzhokhar Tsarnaev will be locked away in a bleak environment, in bleak conditions. He will have no fame, no notoriety. He will have no media attention. And if there are those that wish to make him so, he'll have no glory and stature that martyrdom could bring. His name will fade from the headlines. It will fade from the front page. It will fade from the inside page. It will fade [59-136] from the news altogether. And those who so desperately no longer want to be reminded of him won't be.

A sentence of life in prison doesn't dishonor the victims in this case. It does not in any way minimize what happened and what was caused by his crimes.

In closing argument in the first phase of this case, the prosecutor stood in front of Dzhokhar and pointed at him and said, and asserted to you, "What motivated his actions was an eye for an eye. You kill us; we kill you."

Even if you believe that that's who Dzhokhar was, even if you believe that that's who Dzhokhar is, that is not who we are. We can think and reason and decide what is best for all involved, not just what fulfills the need for vengeance and retribution.

Finally, a sentence of life in prison without the possibility of release allows for hope. It allows for the possibility of redemption and a greater opportunity for healing for everyone involved. It's a sentence that reflects justice and mercy. Mercy's never earned; it's bestowed. And the law allows you to choose justice and mercy.

I ask you to make a decision of strength, a choice that demonstrates the resilience of this community. We ask you to choose life and impose a sentence of life in prison without the possibility of release.

Thank you.

[59-137]

THE COURT: Jurors, why don't we take another break. Everybody, if you want, stand and stretch and relax for a minute.

(Discussion off the record.)

THE COURT: Why don't we just take a five-minute break so everyone can use the restroom.

THE CLERK: The Court will take a five-minute recess. (The Court and jury exit the courtroom and there is a recess in the proceedings at 2:48 p.m.)

THE CLERK: All rise for the Court and the jury.

(The Court and jury enter the courtroom at 2:56 p.m.)

THE CLERK: Be seated.

THE COURT: The government has an opportunity for a rebuttal argument.

Mr. Weinreb?

MR. WEINREB: Good afternoon.

THE JURORS: Good afternoon.

MR. WEINREB: As you can see from the list of mitigating factors in this case, the bulk of the mitigation case comes down to a single proposition: “His brother made him do it.”

There are other mitigating factors, of course, related to his family and his upbringing. But as Ms. Clarke’s argument just made clear to you, they are there largely to explain to you how his brother made him do it. The defense may phrase it [59-138] in different ways, but that’s the basic idea, and that’s the idea they’ve been trying to sell you on since day one in this case. That was the defense in the guilt phase, and now it’s the heart of the mitigation case.

No matter how many times they say that the defendant takes responsibilities for his actions, they actually keep trying to pin the blame on his older brother. Our response is just as easily stated: It’s not true. His brother did not make him do it. And in any event, it doesn’t matter what his brother did. He’s the one on trial, not his brother. You need to sentence him for his actions.

When you consider the mitigation case, keep in mind that the defense bears the burden of proof. They have to convince you that these things are true. An argument isn’t evidence. Things aren’t true just because Ms. Clarke says they are. There has to be evidence that proves them to be true. It’s up to you to decide whether that evidence exists and, if it does, whether it’s enough to convince you.

Also keep in mind that even if a mitigating factor is proved, that doesn’t mean you have to give it any weight.

It's easy to phrase mitigating factors in a way that can be proved. Take the very first one on their list. The defendant was 19 years old when he committed these offenses. That's pretty easy to prove. But it's entirely up to you to decide if it makes a difference in this case. Some 19-year-olds act like they're [59-139] 14. Some 14-year-olds can be more mature than adults. Their own expert told you that. It's entirely up to you to decide whether the defendant deserves credit for his age or for any other mitigating factor.

Now, I agree with Ms. Clarke that the weighing of aggravating and mitigating factors is not a numbers game. You can't just total them both up and compare. You have to decide how weighty each one is.

For example, you might decide that a particular aggravating factor, say that Martin Richard was especially vulnerable to the effects of a shrapnel bomb because he was a little boy, is more important than a mitigating factor, say that the defendant's teachers had a high opinion of him when he was in elementary school.

You may even decide that a few aggravating factors, say that the defendant committed multiple murders in a heinous, cruel and depraved manner during an act of terrorism, outweigh all of the mitigating factors combined. That's entirely up to you.

You heard an awful lot about Tamerlan Tsarnaev during the mitigation case, and you heard Ms. Clarke refer to Tamerlan Tsarnaev or to the older brother well over 100 times just now. You also heard a lot about Chechnya. What did all that really tell you? At times it might have seemed to you as if Tamerlan Tsarnaev were the one on trial or the Chechens.

[59-140]

But since it's the defendant who's on trial, consider for a minute what all that evidence told you about the defendant. He was born in central Asia, not the mountains of Chechnya. He was born in the same area where his father and all of his paternal aunts and uncles had been born. He spent his early years in the bosom of a warm, extended family that included his parents, grandparents, aunts, uncles, a brother and two sisters. They loved him, supported him and doted on him.

He lived either in central Asia with—in Dagestan with his mother's family or with his cousins in a house near the Caspian Sea. He has never—

MR. BRUCK: Objection, your Honor.

THE COURT: No. Overruled.

MR. WEINREB: He has never set foot in Chechnya in his life.

When he was eight, he moved with his parents from one of the poorest parts of the world to the wealthiest. They were looking for a better life, and they found it. They got an apartment in Cambridge that was walking distance to Harvard Square. Anyone who knows Cambridge knows how a desirable place it is to live. The apartment was snug, but it was adequate. It had a bedroom for the parents, a separate bedroom for the girls, another bedroom for the boys, a kitchen and a living room with a TV.

[59-141]

Anzor and Zubeida were not well off, but they provided what kids need to thrive. The defendant and his siblings had food, clothing, school supplies and a warm

home to share, and they also had a lot of the extras American kids have come to take for granted in their lives: cars, television, computers, iPods, cell phones. The children had medical care and a free public education at excellent schools. They may not have been well off, but they were rich in many things that a lot of kids lack.

MS. CONRAD: Objection, your Honor. This is not rebuttal.

THE COURT: Overruled.

MR. WEINREB: Let's talk a minute about school because quite a number of the defense witnesses were people who knew the defendant through school. What did you learn from those witnesses?

One thing you learned is that the defendant was extremely lucky when it came to school. He had devoted teachers who got to know him, appreciated him and helped him succeed. He had dedicated coaches and mentors who promoted him. He was well liked. In short, everything you heard tells you that the defendant had everything he needed to grow into a strong, independent, mature, resilient adult.

And the evidence shows that is just what happened. Several of his teachers, coaches and mentors noted that he was [59-142] unusually mature. He was the only boy in elementary school who held the baby. He learned English so quickly, he skipped fourth grade. His high school friends made him captain of the wrestling team. His friend Tiarrah Dottin told you that he was not easily pushed around. He liked to say yes, but he knew how to say no. He was not a follower. He was able to



make up his own mind. He knew his own mind. He understood the difference between right and wrong.

Tamerlan, you heard, grew up in the same large family as the defendant. He was also loved, supported and doted on. He had the same advantages the defendant had when he came to the United States to live in Cambridge, and he also had a lot of strengths and successes. He wasn't as good in school as the defendant, but he was a skilled boxer. Elmirza, the defendant's brother-in-law, who testified via video link, told you that Tamerlan was handsome and could be charming, albeit it in a goofy kind of way.

Of course Tamerlan and the defendant had very different personalities. Tamerlan was loud, flashy, in your face. The defendant was quiet, polite and laid back. Tamerlan couldn't stop talking about his beliefs. The defendant kept his beliefs to himself. Tamerlan sometimes lost his temper. The defendant knew how to keep his cool.

But despite their differences, they were from the same stock, they grew up in the same family, in the same household, [59-143 and in many ways, they were very much alike. They were both physically strong, one a boxer, one a wrestler, capable of defeating much larger opponents. They were both emotionally strong. They took care of themselves and didn't need anyone's shoulder to cry on. And they were both men of action. When it was time to make a bomb, Tamerlan shopped for pressure cookers and got on the Internet and ordered the parts he needed. When the defendant decided that he needed a gun, he got one from his friend Stephen Silva by telling him he planned to rob some

drug dealers in Providence. Stephen Silva was surprised by that. He didn't bat an eye.

Despite what Ms. Clarke just told you, there's no evidence that Tamerlan told the defendant to get a gun. None. That's just something the defense wants you to believe. Tamerlan didn't search for "P95 Ruger" on the Internet until well after the defendant got the gun. Don't be misled by that argument.

Of course you know the defendant's strength of will, his presence of mind in many other ways. You know that even after his brother had been captured by police, he had the grit to get back into that SUV, make a three-point turn and try to run over three police officers, even if it meant driving through a hail of bullets and running over his own brother. How many people do you know who could pull off something like that?

[59-144]

(There is an interruption in the proceedings.)

MR. WEINREB: And after ditching the Mercedes, while whole police forces were searching for the defendant, he managed to pick his way through Watertown, blood dripping from his gunshot wounds, find a hiding place, smash his cell phones and pen a very coherent and powerful message on the inside of a boat while nearly evading capture altogether. That's the kind of person he is: strong and strong-willed, just like his brother, Tamerlan.

When you think back over all the evidence you heard during the mitigation case, ask yourself this: Did you hear any evidence that convinces you that Tamerlan Tsarnaev actually made Dzhokhar Tsarnaev commit these crimes? Not "made him" in the sense of put a

gun to his head. Even the defense doesn't claim that. But "made him" in the sense that the defendant was coerced or controlled. "Made him" in the sense that he was so vulnerable to Tamerlan's influence and so influenced by Tamerlan that he should be excused from bearing moral responsibility for what he did.

Let's look at some of the evidence. One of the main arguments the defense makes is that when the defendant's parents returned to Russia in the fall of 2012, they left him in Tamerlan's hands; that the defendant was already 19 years old in the fall of 2012. He hadn't lived at home for over a year. He lived at UMass Dartmouth, and he spent his days down [59-145] there hanging out with his friends, smoking pot and playing video games. He wasn't financially dependent on Tamerlan, and he wasn't—he was making ample pocket money selling drugs. And he wasn't emotionally dependent on him. He had plenty of his own friends.

Tamerlan, meanwhile, had become a scold. He condemned drinking, smoking, doing drugs. It wasn't much fun to be around him, so the defendant simply stayed away. He spent his weekends at UMass Dartmouth instead of bringing friends home to the house at 410 Norfolk. He visited Tamerlan only now and then on the occasional weekend or holiday. They seldom saw each other or even spoke. That's what the phone records show.

What about the period before the parents left for Russia in the fall of 2012? Well, for the entire first part of that year, from January of 2012 to August 2012, Tamerlan himself was in Russia. For those six months, the defendant never saw Tamerlan at all. Tamerlan emailed the defendant only six times during those entire

six months. That's what the evidence shows. When he did, he sent him some jihadi videos.

But what was the defendant's response? "Thanks. That's interesting." That's it. Where is the evidence of brainwashing, of mind control? Where is the evidence that the defendant was under his brother's spell? You haven't heard it from the mouth of any witness in this case. You've only heard it from the mouths of defense attorneys.

[59-146]

What about the year before Tamerlan went to Russia? The defendant spent half that year finishing high school and half that year in college. Again, you've heard no evidence that Tamerlan exercised dominion or control over the defendant during that year.

You heard evidence that Tamerlan may have given the defendant jihadi materials to look at before he went to Russia, but then Tamerlan went off to Russia, looking for an opportunity to do jihad on his own. He didn't try and take the defendant with him. On the contrary, he left his little brother behind, quite possibly intending never to return. And as I just mentioned, he barely wrote to him while he was away.

You did hear testimony that Tamerlan was bossy. He had become abstinent himself, and he didn't want the defendant to smoke, drink or do drugs. He wanted him to pray and go to the mosque more often. But that's the way a lot of older siblings are with their younger siblings, isn't it? They admonish them to stay on the straight and narrow. And a lot of younger siblings, like the defendant, pretend to take that advice, even though they go back to doing whatever they want once they're

out of their older sibling's sight. That is a far cry from coercion or control.

The defense argues that even before the defendant's parents left in the fall of 2012 to go back to Russia, they were effectively absent anyway because Anzor's illnesses and [59-147] Zubeida's religious conversion left them unable to parent him. Is that what it looked like to you? Of course Anzor and Zubeida had their issues. All parents do. But parents can go through a lot and still have a lot left over for their children.

You saw the photos of the defendant in drum class, dance class and at farm camp. As he gets older, you see him with soccer trophies, winning wrestling matches, playing pool with his friends. Those aren't the photos of a child who was neglected or overlooked with parents too crippled with problems to parent him. On the contrary, the evidence is that both his parents were devoted to him.

And despite their problems, they stayed together and maintained a family home until all of their children had grown up, become adults and left home to begin leading independent lives. Only then, once all their kids had become adults and left the nest, did they return to their families of origin from whom they had been away for so long.

Moreover, we're not just raised by our parents. Our lives are shaped by uncles, aunts, teachers, friends, neighbors, coaches, mentors. You heard evidence that the defendant was surrounded, supported and guided by some of the best. If his parents were ever unable to support him or guide him, others were there to step in:

his teachers; his wrestling coach; his Model U.N. advisor; his kindly neighbor and [59-148] landlady, Joanna Herlihy; his uncle Ruslan, who lived only a bus ride away. That is considerably more support and guidance than a lot of adolescents have.

The last thing the defense falls back on to prove that there must have been coercion and control is the defendant's Chechen heritage. It's a tradition in Chechnya going back thousands of years that elders control the family. But traditions can change as times change. Even Professor Reynolds, the defense expert on Chechnya, told you that. It happened in Chechnya itself in the 1990s right around the time the defendant was born.

Can I have the screen, your Honor?

THE COURT: I don't see an image. I don't have a feed. There it is. Okay.

MR. BRUCK: We have to renew the objection. This is far beyond any rebuttal. We already—

THE COURT: Overruled.

MR. WEINREB: Here's what Professor Reynolds wrote back in May 2013.

MS. CONRAD: Objection, your Honor. That's not in evidence. It was not shown to the jury. It should not be on the screen.

MR. WEINREB: It's a chalk, your Honor.

MS. CONRAD: It's not a chalk.

THE COURT: I think it was shown during the trial.

[59-149]

MS. CONRAD: No, it was not.

MR. WEINREB: It was handed to the witness, and I reviewed it with the—

MS. CONRAD: It was not shown.

May we be heard, your Honor?

THE COURT: Put it up again.

MR. WEINREB: That's all right. I don't need to keep it there.

THE COURT: Okay.

MR. WEINREB: But the next one is just a clip.

THE COURT: All right. You may use that as a chalk.

MR. WEINREB: I can't see it. There we go. Okay.

MS. CONRAD: This was not shown to the jury, your Honor. I would like to be heard at sidebar.

THE COURT: This is used as a chalk.

Go ahead.

MR. WEINREB: Your Honor, I cleared this with Mr. Bruck before—

THE COURT: All right. Go ahead.

MS. CONRAD: Your Honor, this was impeachment.

THE COURT: Overruled.

MR. WEINREB: This is what Professor Reynolds wrote back in May of 2013 before the defense hired him and explained to him what they were trying to prove in the mitigation phase. He wrote, “The experience of Chechnya in the 1990s profoundly [59-150] affected Chechen cultural norms. For example, the cult of the elders by which Chechens, like most North Caucasians, would routinely accept the opinions of the older males as law, declined precipitously.” Went down. “The masculine ideal of the Chechen as an irrepressible warrior remained, but much of the culture that had nourished that ideal and bounded it with obligation to others, that part had withered away.”

And, in fact, you know that the defendant’s family isn’t actually from Chechnya. His father and his father’s siblings were born in Kazakhstan, and his mother and all her siblings were born in Dagestan. And the defendant and his siblings certainly weren’t born or raised in Chechnya.

Again, this is what Professor Reynolds wrote back in May 2013 before he became a defense expert. He wrote, “Tamerlan and Dzhokhar Tsarnaev were hardly typical of Chechens, and one might justifiably question whether they could even be properly described as Chechen. Their mother, Zubeida, was an ethnic Avar. Both brothers were born outside of Chechnya. Both brothers grew up outside of Chechnya. And both brothers—

MS. CONRAD: Your Honor, I renew my objection.

THE COURT: Over—

MS. CONRAD: This is being confused. This is a prior inconsistent statement.



THE COURT: No, the witness was examined on it at the [59-151] time.

MS. CONRAD: And we don't have an opportunity to respond to—

THE COURT: The objection is overruled.

MR. WEINREB: And both brothers spent little or no time in Chechnya.

No matter what things might be like for actual Chechen families that actually live in Chechnya, you know from the evidence in this case that there was no tradition of obeying elders in the defendant's family. Anzor Tsarnaev defied his own father by marrying Zubeidat, an Avar, and an immodest dresser. Tamerlan, in turn, defied Anzor by marrying Katherine Russell, a Christian. Ruslan Tsarnaev, the defendant's uncle, defied tradition by assuming leadership of the whole extended family, even though he was the youngest of Anzor's two brothers.

And the defendant's sister, who was married to Ruslan's nephew, Elmirza, defied both Ruslan and her husband by calling the police on Elmirza and divorcing him. In fact, Elmirza—remember, he's the—he's Ruslan's son-in-law, the defendant's ex-brother-in-law. He's the one who testified over the video link. He told you something very telling. He said that Ruslan, the youngest brother, became the leader of the family because he was the smartest and the most successful, even though he was the youngest. That's a typical American [59-152] story. Who was the smartest and most successful in the defendant's immediate family? It wasn't Tamerlan Tsarnaev.

What was modeled for the defendant his entire life were family members making up their own minds and making their own independent life choices, regardless of what their elders wanted them to do.

If the defense wanted to prove to you that Tamerlan Tsarnaev played a dominant role in the defendant's household and that his younger sibling was under his sway, they had a funny way of going about it. You didn't hear testimony from his patients, his sisters or his uncles. You didn't hear testimony from any of Tamerlan's best friends or from any of the defendant's best friends.

For the most part, the only witnesses the defense subpoenaed to talk about Tamerlan were people who happened to be present on an occasion when he lost his temper or acted inappropriately. What about the people who spent time with him every day?

As for the defendant, you heard mainly from Russian aunts and uncles who haven't seen him for over a decade, schoolteachers and coaches from years past. But none of those people can tell you what things were like in the Tsarnaev household. Isn't that what really matters?

You also heard from a number of young women who were sweet on the defendant. They took the witness stand and got [59-153] teary seeing him in court. But none of them had even been to his house. They hadn't even met his brother or anyone else in his family. One last saw him at a barbecue in the summer of 2012. One was only friends with him during his freshman year in college. And one had just met him in college and only hung out with him for a few months. How well did they actually know him? Obviously not very well since none

of them had any idea that he was reading *Inspire* magazine, listening to Anwar al-Awlaki lectures, or listening to jihadi nasheeds on his iPod or in his car. And he didn't care enough about them to warn them away from Boylston Street on the day of the marathon.

The defense wants you to believe that Tamerlan coerced, dominated and controlled the defendant; that he had such a great influence over the defendant that it lessened his moral culpability for these crimes. That is the centerpiece of their mitigation case. They have the burden of proving it. Did they meet that burden?

Why did they spend days calling witnesses with so little connection to Tamerlan and his brother? Why didn't they call anyone with actual insight into their relationship with one another? Ask yourselves those questions when you go back to deliberate and when you decide whether they have met their burden of proof.

What the whole claim of influence, dominance and coercive control really boils down to in the end is the [59-154] proposition that Tamerlan supplied the defendant with most of the jihadi files on his computer and sent him a handful of jihadi links from Russia. Now, the computer evidence, as you heard at very great length during the trial, is open to interpretation, and I don't intend to rehash all of that here.

Instead, I urge you to ask yourself this question: So what? Even if it's true, so what? Does it matter whether you get your jihadi files from your brother, a distant cousin, a quick search of the Internet or Anwar al-Awlaki himself?

Tamerlan didn't turn the defendant into a murderer by giving him some magazines and lectures and then disappearing to Russia for six months. The defendant had to become a believer, and that is something he did entirely by himself.

He became so much of a believer that he began to tweet what he had learned to others. He became so much of a believer that he could summarize the teachings on the inside wall of a boat when he didn't have any books or lectures to crib from.

As Professor Levitt told you during the guilt phase, a million people look at those materials. Only a handful of people find the materials convincing. And of that handful, only a tiny fraction consider them so convincing that they're willing to shred people alive in front of their family members and friends in order to advance a political agenda. The defendant is one of that tiny fraction. His actions are the best guide to the depths of his beliefs.

[59-155]

If you want to know why the defendant committed these crimes, that's the question Ms. Clarke just told you is unanswerable. If you want to know—if you want an explanation of how he became this person, of what made him do it? What better place to look for the answer than in his own handwritten explanation of his actions.

He wrote in the boat, "I'm jealous of my brother who has received the reward of martyrdom, but God has a plan for each person. Mine was to hide in this boat and shed some light on our actions." "God has a plan for

each person.” That’s who he believed he was doing this for. His god, not Tamerlan Tsarnaev.

He wrote, “He who Allah guides, no one can misguide.” Again, that’s who he believed was guiding him, Allah, not his brother.

He wrote, “The U.S. government is killing our civilians. As a Muslim, I can’t stand to see such evil go unpunished.” He’s talking about himself. He doesn’t even mention his brother.

He also wrote, “Now, I don’t like killing innocent people. It is forbidden in Islam, but in this case it is allowed.” Again, “I don’t like killing innocent people.” He’s talking about himself.

His tweets are the same. They give the reasons—they give his reasons for believing in violent jihad. Those [59-156] tweets never even mentioned his brother.

In the end, the best evidence you have of the nature of the defendant’s relationship with his brother, Tamerlan, is the evidence of how they actually committed these crimes. They committed them together as partners. Each one had an essential role to play.

Tamerlan was ready to commit violent jihad as early as January 2012 when he left for Russia, but the defendant wasn’t ready yet. He was reading terrorist writings and listening to terrorist lectures, but he wasn’t yet convinced. So Tamerlan left for Russia, hoping to find a partner there. He came back when he didn’t succeed.

But by then, the defendant had steeped himself in the writings of *Inspire* and Anwar al-Awlaki, and he had become inspired himself. He decided he was ready to partner up. It was only then, when the defendant

made the decision to become a terrorist, that Tamerlan was able to go into action. The defendant obtained a gun and ammunition, a crucial ingredient in their plans. He arranged for them to go to the range in Manchester to practice firing it.

When Marathon Monday arrived, he let Tamerlan go on ahead to the finish line, and then he chose on his own where to place his bomb for maximum effect. Then he called Tamerlan to give him the go-ahead.

Again, contrary to what Ms. Clarke just told you, [59-157] later, on April 18th, both of them executed Sean Collier. There's no evidence of who pulled the trigger. You know that Sean Collier's blood was found on the defendant's keychain and on the gloves that were on the floor of the car by his feet, but the video doesn't show who pulled the trigger. Don't mistake argument for fact.

It was a full-on partnership, a partnership of equals. They did not do the exact same things, but they were both terrorists engaged in a joint effort. They bear the same moral culpability for what they did together.

The very first mitigating factor on the defense list is that the defendant was 19 years old when he committed these crimes. In fact, he was just shy of 20. What about that fact? And what about the fact that some of the time he still acted like a teenager doing teenage things? Is that a mitigating factor that deserves any weight?

It might deserve some weight if these were youthful crimes. For example, if the defendant and his brother had robbed a liquor store and shot the clerk in a moment

of panic. But these weren't youthful crimes. There was nothing immature or impulsive about them.

These were political crimes, designed to harm the United States, to punish Americans for our military actions overseas by killing and mutilating innocent civilians on U.S. soil. They were acts of terrorism planned over a period of [59-158] months and carried out over days. They were acts of terrorism so successful that they not only killed four people and maimed 17 others, but stopped the Boston Marathon, closed Logan Airport and shut down the entire city of Boston for nearly a day.

The murders on Boylston Street were not a youthful indiscretion. The cold-blooded execution of Sean Collier, a police officer, was not a rash or impulsive act. The defendant was old enough to understand right from wrong. He wrote in the boat, "I don't like killing innocent people, but in this case it is allowed." He decided that the cause of his people, the ummah, justified the murders of a small child, two young women and a police officer. Does being nearly 20 years old mitigate any of that?

Ms. Clarke said at the beginning of her closing that these crimes were senseless and unimaginable, but they made perfect sense to the defendant, and he was perfectly able to imagine the harm his actions would cause. He was certainly old enough for that.

Mr. Mellin already talked at length about ADX and the SAMs. I'm not going to repeat what he said. I just want to emphasize one point that every witness who testified agreed upon: There is no guarantee that the defendant will spend the rest of his life in H unit or even in ADX. In fact, the opposite is true. BOP tries to

step down inmates whenever [59-159] possible. And BOP's desires are taken into consideration whenever SAMs are up for renewal.

Even if everyone in the government wanted the defendant to stay on SAMs, there are legal requirements for keeping them in place. If those requirements are not met, the SAMs can't be renewed. There has been litigation over SAMs. Will the defendant spend the rest of his life on H unit or even in ADX? He has not proved that to you because he can't.

Let's talk for a minute about Sister Helen. Why did the defense choose her over all other clergy who could have been invited to spend time with the defendant and then testify about it in court? Why not call an imam from the mosque here in Cambridge, like Loay Assaf, who testified here in court? Why bring in someone from Louisiana? Do you think it has anything to do with the fact that Sister Helen is one of the leading death penalty opponents in the United States?

Did Sister Helen's testimony really give you much insight into what the defendant truly thinks and believes? Put aside for a moment that, as a nun, she undoubtedly tries to see the good in everyone. And put aside that, as a committed opponent of the death penalty, she undoubtedly wants to help the defendant avoid it. Focus instead on what she told you the defendant actually said to her. What do those words really mean in the end? They're open to a lot of interpretation. And because of that, they really don't tell you anything at all. [59-160] In the end, can you be confident that you really know more about the defendant now than before Sister Helen testified?



According to Sister Helen, the defendant said, “No one should have to suffer like that.”

MR. BRUCK: Objection.

MS. CONRAD: Objection.

MR. BRUCK: Under the circumstances, we object. Given the limitations on her testimony, this is not fair.

MS. CONRAD: And also that misstates the evidence. That’s not what she said.

THE COURT: Go ahead. The objections are overruled.

MR. WEINREB: But he expressed pretty much the same sentiment in the manifesto he wrote in the boat. He wrote, “I don’t like having to kill people,” but he went on to say that sometimes it is necessary to kill people to advance the cause of the Muslim people. That’s a core terrorist belief. The fact that now, while he’s on trial for his life, the defendant is willing to go so far as to say that no one should have to suffer like that doesn’t tell you much about his core beliefs. When you stack that up against his actions in this case, does it really make a difference to your decision?

Sister Helen said that the defendant seemed young to her, and Ms. Clarke tries to spin that into a guarantee that the defendant will become remorseful over time, but there’s no evidence of that, no reason for you—

[59-161]

MS. CONRAD: Your Honor, same objection.

MR. WEINREB: —to believe that it’s true.

MS. CONRAD: We were not allowed to elicit that testimony.

THE COURT: Overruled.

MR. WEINREB: Sister Helen is 76, and the defendant is 21. Of course he seems young to her.

What did their brain development expert, Dr. Giedd, tell you? He testified that in determining a person's level of maturity, the single most important thing to look at is his behavior. He told you that some people are more mature at age 19 or even age 14 than some adults will ever be. And he told you that there is absolutely no guarantee that a 19-year-old will get any more mature or reflective just because his brain will continue to grow over time.

Ms. Clarke criticizes the government for showing you the image of the defendant in the holding cell giving the camera the finger rather than showing you the whole video, but the whole video is even worse. It shows just how remorseless the defendant was when he came into court to answer for his crimes three months after committing them.

Mr. Bruck said in his opening that if you sentence the defendant to life, he'll spend the rest of his life thinking about his crimes. But that's not true just because the defense says it is. Where's the evidence of that?

[59-162]

If the defendant goes to prison for life, he won't be free to come and go, but he will be safe, well fed and have excellent medical care. Will he spend his days thinking about the victims, or will he spend the rest of his life thinking about himself, his family, his friends, his pen

pals, his next workout, his next visit, his next phone call, his next meal?

Will he stare at the wall all day thinking about the pain and suffering he has caused, or will he do many of the very same things that people do every day to enjoy life: read books and magazines; talk on the telephone to his parents, his sisters and his friends; eat; pray; sleep; exercise? Maybe he'll even write a book.

You saw from the evidence what kind of a person he is. Maybe he'll leave behind his memories of Martin Richard, Krystle and Lingzi Lu in the same way he left them dying on the street when he went shopping at Whole Foods. Maybe he'll leave behind his memories of Sean Collier, the same way he left him bleeding to death in his patrol car as he drove into Boston to look for another gun.

The callousness and indifference that allows you to destroy people's lives, to ignore their pain, to shrug off their heartbreak, that doesn't go away just because you're locked up in a prison cell. It's what enables you to be a terrorist, and it's what insulates you from feelings of remorse.

[59-163]

In the end, did you hear any testimony from any witness that speaks louder about the appropriate punishment in this case than the defendant's own actions on Boylston Street or at Whole Foods or at MIT or on Laurel Street? The defendant deserves the death penalty, not because he's inhuman, but because he's inhumane. Because of his willingness to destroy other people's lives for an idea.

Most people can't even imagine standing for four minutes behind a row of children, sometimes only feet away from them, and leaving behind a bomb that you know will cause them excruciating pain and a lingering death on the sidewalk. But that's what it is to be a terrorist.

If you want to know who the defendant was, you have the testimony of his relatives, his teachers and his friends. But if you want to know who he turned into, look at his actions. They tell you all you need to know about the kind of person he became. His actions on Boylston Street, afterwards at Whole Foods, at MIT and in Watertown and in this courthouse on the day of his arraignment, they are the best evidence you have about who the defendant became.

Ms. Clarke urged you to just go through the intent factors and the aggravating factors in the verdict form and just check them off. I urge you to take your time with each one and give it the consideration it deserves.

As for the mitigators, she urged you to go through [59-164] them one by one and just fill in 12. But you only write in 12 if all 12 of you find a mitigator to be proved.

One final thought before I sit down: If you sentence the defendant to life imprisonment, you will be giving him the minimum punishment authorized by law for these crimes. Contrary to what Ms. Clarke said, it is a lesser punishment than death. Does he deserve the minimum punishment or do these crimes, these four deaths, demand something more? Please ask yourself that question when you go back to deliberate.

Thank you.

THE COURT: I'll see you at the side.

(Discussion at sidebar and out of the hearing of the jury:)

MS. CONRAD: Your Honor, first of all, as we had previously objected, that this—that the government should be limited to rebuttal, that was 45 minutes of pre-prepared, typewritten rebuttal. I watched Mr. Weinreb during Ms. Clarke's closing. He made three—he wrote down three words or three sentences on a piece of paper. He didn't refer to those at all. He had a canned presentation that was not proper rebuttal.

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Tues., Apr. 21, 2014  
10:08 a.m.

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**JURY TRIAL—DAY FORTY SEVEN**

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On Behalf of the Defendant

\* \* \* \* \*

[47-96]

\* \* \* \* \*

Q. And, Billy, what was it like for you to learn that Krystle was gone?

A. It wasn't real at first. It was just something's wrong. This can't be true. This isn't real. Like you just were stunned. You didn't sleep. You were just trying to rationalize everything in your own mind, trying to make any type of reason. Maybe there was another mistaken identity, maybe there was—just anything you could tell yourself to calm yourself down at that point.

Q. And as time went on, how did you deal with it?

A. I had a hard time dealing with it. I went to bad places. I didn't do probably the right things. But I just eventually had to deal with it. I had to deal with it for my family, I had to deal with it for my son. I just eventually had to accept the facts.

[47-97]

Q. And how did your family react?

A. They were horrified. I mean, there was crying. It was emotional. You don't know what to say, you don't know what to do. There's this heightened state of panic and you don't know what to say. You don't know what's comforting. You're trying to comfort somebody else while you, yourself, need comforting. You're just lost.

Q. And since that time two years ago, what's it been like—or what's it like now for your family without Krystle?

A. It's tough. It's still tough. Every day, you know, we still think about her. She's—not a day goes by when she doesn't pop into your head at least in some aspect. I think the hardest time I had was trying not to



pick up my phone every time I wanted to call her if I'd run into some friends or something. I think that was the hardest thing to get over, just not being able to make that phone call anymore.

Q. And for your mom and dad?

A. They still struggle with it daily. You know, they have their okay days and then they have their bad days. I mean . . .

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
TSARNI, DEFENDANT

---

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wed., Apr. 22, 2015  
9:13 a.m.

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**JURY TRIAL—DAY FORTY-EIGHT**

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San Diego, California 92101  
On Behalf of the Defendant

- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, ESQ.  
1010 Second Avenue  
Suite 1800  
San Diego, California 92101  
On Behalf of the Defendant

\* \* \* \* \*

[48-122]

\* \* \* \* \*

Q. How are you related to Lingzi Lu?

A. Lingzi call me “aunt” because my sister married to Lingzi’s mother’s brother. So basically, you know, Lingzi call my sister “aunt,” so she call me “aunt.”

Q. And in Chinese culture, she treated you as an aunt and you treated her as a niece?

A. Yes, as a niece.

Q. Do you know her parents?

A. Yes.

Q. Were her parents able to travel from China to be with us [48-123] here today?

A. No.

Q. Why not?

A. I don’t think they’re capable because the devastation that had—even mention about, you know, the whole case, stuff. One time they told me, the husband—things the father told me, the mom could not get out of bed for two days just to hear, you know, something from this side. So they absolutely cannot make it here.

\* \* \* \* \*

[Map showing relative locations of homes of  
Dzhokhar and Tamerlan Tsarnaev]

