No. 20-443

# In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

*v.*

DZHOKHAR A. TSARNAEV

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

## BRIEF FOR RETIRED FEDERAL JUDGES AND FORMER FEDERAL PROSECUTORS AS AMICI CURIAE SUPPORTING RESPONDENT

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## INTEREST OF AMICI CURIAE

Amici curiae are 23 retired federal judges and 19 former federal prosecutors who share a commitment to the impartiality of criminal juries in high-profile cases.[1] Amici were appointed by Democratic and Republican presidents and served during Democratic and Republican administrations, spanning from President John F. Kennedy to

[1] Pursuant to Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part, and that no person other than amici, their members, or their counsel made a monetary contribution to fund its preparation or submission. Counsel of record for both parties have consented to the filing of this brief.

President Donald J. Trump. They have been involved in thousands of criminal trials, including many in which prospective jurors were individually asked about the content of the pretrial publicity to which they had been exposed. Amici submit this brief to underscore the importance of content questioning in criminal trials and the unprecedented nature of the district court's decision to prohibit questions concerning what prospective jurors had read, heard, or seen in the news media about this case.

In amici's experience, content questioning, both as part of jury questionnaires and during voir dire proceedings, is an uncontroversial and commonplace practice that is vital to ensuring the impartiality of jurors in high-publicity cases. Content questioning enables judges, prosecutors, and defense counsel to ensure that jurors have not become biased because of extensive pretrial publicity. In turn, questions concerning the content of the news coverage to which jurors have been exposed enable judges, prosecutors, and defense counsel to exercise their discretion appropriately in deciding whether to dismiss, strike, or challenge jurors.

## SUMMARY OF ARGUMENT

On April 15, 2013, respondent and his older brother detonated two bombs at the finish line of the Boston Marathon. The heinous attack was one of the worst in modern American history, resulting in the deaths of Krystle Campbell, Lingzi Lu, and eight-year-old Martin Richard. The attack injured hundreds and forever scarred the lives of countless others. And it did not stop there: days later, as they fled law enforcement, the brothers murdered Officer Sean Collier on the Massachusetts Institute of Technology campus.

But this case is not about the brutal nature of respondent's conduct. Throughout his trial and appeals, respondent has not disputed his guilt. See Resp. Br. 8. No matter what this Court decides, respondent will at a minimum spend the rest of his life in prison for the horrific crimes he committed.

Instead, this case is about the process of empaneling the jury that recommended respondent's death sentence, in a situation where pretrial publicity was "unrivaled in American legal history." Pet. App. 19a. Amici thus focus on a question of criminal procedure that is of immense importance to the impartiality of criminal juries in high-profile cases: whether, in cases with a significant risk of prejudice due to extensive pretrial publicity, the courts of appeals may enforce reasonable supervisory rules that require district courts to ask prospective jurors, individually and outside the presence of other prospective jurors, about the content of the publicity to which they have been exposed. Under this Court's precedent, the answer is yes.[2]

The Boston Marathon bombing, the FBI investigation, and the ensuing manhunt and citywide "shelter-in-place" lockdown received unprecedented media attention. See Pet. App. 19a-21a. During the jury-selection process, defense counsel sought to ask each juror content questions, both in the jury questionnaire and during voir dire. But the government objected, even though it initially proposed content questions as part of the parties' joint questionnaire. The district court sustained the objection and declined to engage in any content questioning.

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[2] Amici take no position with respect to the second question on which the Court granted review.

Yet most high-profile criminal trials in recent history—and innumerable trials in which amici were involved as judges and prosecutors—featured precisely that kind of questioning. And for good reason: asking prospective jurors what they remember about the pretrial publicity provides vital insight into potential biases in both directions, including biases that jurors may not otherwise admit or even recognize.

As retired federal judges and former prosecutors with extensive experience in criminal trials, amici submit this brief to make one simple point: judges and prosecutors alike agree with respondent that, in high-profile criminal trials, asking prospective jurors individually about the content of what they have learned is an uncontroversial, helpful mechanism to ensure the empaneling of an impartial jury. Because the court of appeals' requirement that district courts presiding over certain high-profile cases engage in content questioning is consistent with the Constitution and represents a "reasoned exercise[]" of that court's supervisory authority, *Ortega-Rodriguez* v. *United States*, 507 U.S. 234, 244 (1993), this Court should affirm the court of appeals' judgment.

## ARGUMENT

### I. FOR DECADES, TRIAL COURTS HAVE ENGAGED IN CONTENT QUESTIONING IN HIGH-PROFILE CASES

The jury empaneled in respondent's case was selected in spite of the fact that neither the district court nor the parties knew the content of the pretrial publicity to which each juror had been exposed. See Resp. Br. 51-52. In amici's experience, however, asking jurors about the specific content of the information they have learned is the norm in high-profile cases. Such questioning is helpful not only to criminal defendants but also to judges and prosecutors, all of whom share an interest in a fair and impartial

jury that can render a verdict based only on the evidence presented. What follows are a few notable examples—including some in which amici participated—that illustrate the usefulness and ubiquity of such questioning in some of the most publicized trials of the last three decades.[3]

### A. The Enron Scandal: *United States* v. *Skilling*

The 2006 trial of Jeffrey Skilling and Kenneth Lay, two executives charged with various financial crimes related to the Enron accounting scandal, offers a familiar example of how content questioning safeguards the impartiality of jurors in high-profile trials.

The Enron scandal generated an "immense volume of coverage" in the local Houston media. *United States* v.

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[3] Other examples abound. See, *e.g.*, Dkt. 115, *United States* v. *Kelly*, Crim. No. 19-286 (E.D.N.Y. June 30, 2021) (R. Kelly's alleged sex crimes); Dkt. 235, *State* v. *Chauvin*, Crim. No. 27-20-12646 (Minn. Dist. Ct. Hennepin Cnty. Dec. 20, 2020) (George Floyd's murder); Dkt. 247, *United States* v. *Stone*, Crim. No. 19-18 (D.D.C. Nov. 5, 2019) (Mueller investigation trial); Dkt. 399-1, *United States* v. *Shkreli*, Crim. No. 15-637 (E.D.N.Y. Oct. 9, 2017) (Martin Shkreli's securities fraud); Dkts. 95, 96, 97, *United States* v. *Clemens*, Crim. No. 10-223 (D.D.C. July 6-11, 2011) (Roger Clemens's congressional perjury); Dkt. 304, *United States* v. *Bonds*, Crim. No. 03-732 (N.D. Cal. Mar. 17, 2011) (Barry Bonds' perjury over anabolic steroid use); *People* v. *Spector*, Crim. No. 255233 (Cal. Super. Ct. L.A. Cnty. 2007) (Lana Clarkson's murder) <tinyurl.com/SpectorQuestionnaire>; Dkt. 1510, *United States* v. *Moussaoui*, Crim. No. 01-455, 2006 WL 1182459 (E.D. Va. Feb. 6, 2006) (9/11 terrorist attack trial); *United States* v. *Padilla*, Crim. No. 4-600001(8) (S.D. Fla. 2006) (José Padilla's terrorist activities) <tinyurl.com/PadillaQuestionnaire>; *People* v. *Bryant*, Crim. No. 03-204 (Col. Dist. Ct. Eagle Cnty. Aug. 27, 2004) (Kobe Bryant's alleged sexual assault) <tinyurl.com/BryantQuestionnaire>; *United States* v. *McVeigh*, Crim. No. 96-68 (D. Colo. Apr. 9, 1997) (Oklahoma City bombing trial) <tinyurl.com/OKCityVoirDire>; *People* v. *Simpson*, Crim. No. 097211 (Cal. Super. Ct. L.A. Cnty. Sept. 23, 1994) (O.J. Simpson's murder trial) <tinyurl.com/OJSimpsonQuestionnaire>.

*Skilling*, 554 F.3d 529, 559 (5th Cir. 2009). Unsurprisingly, the defense sought a transfer of venue to "eliminate the pervasive latent biases that exist in Houston." *United States* v. *Skilling*, Crim. No. 04-25, 2005 WL 8160703, at *3 (S.D. Tex. Jan. 19, 2005). The court denied the request because it saw "effective voir dire" as a "preferable way to ferret out any bias." *Id.* at *7. At the same time, the court cautioned that, in light of the "extensive Enron-related coverage," probing prospective jurors about the content of the pretrial publicity to which they had been exposed was critical to ensuring the fairness of the trial. *Id.* at *5.

The charges in the Skilling case were "neither heinous nor sensational," yet extensive content questioning took place without controversy or objection throughout the entire jury-selection process. 2005 WL 8160703, at *4. The court circulated a questionnaire that asked prospective jurors to detail their exposure to Enron-related publicity; list the names of media sources in which they had read coverage related to the trial; and report on what they thought about what they had had seen or read about Enron.[4] Many of the jurors that the court ultimately dismissed had been exposed to such a degree of publicity that the court doubted they could be impartial. See *Skilling* v. *United States*, 561 U.S. 358, 372-374 (2010).

The responses to the content-based inquiries in the jury questionnaire aided both the court and the parties in probing the effect that pretrial publicity had on the prospective jurors' impartiality. During voir dire, the court not only "asked about exposure to Enron-related news and the content of any stories that stood out in the pro-

[4] See Dkt. 1214, Tr. 7-8, *United States* v. *Skilling*, Crim. No. 04-25 (S.D. Tex. Apr. 9, 2007).

spective juror's mind," but also "homed in on questionnaire answers that raised a red flag signaling possible bias." 561 U.S. at 374.

For instance, although Juror 104 indicated that she could be impartial, she "hesitated a little bit" in answering.[5] And in response to the court's questioning as to whether she "recall[ed] any particular articles * * * about Enron," she admitted to reading the paper "daily," including some internal Enron e-mails.[6] The reporting had been "redundant," she noted, but it left her with the impression that "[t]here was enough information for [Skilling and Lay] to know."[7] To be sure, Juror 104 insisted she could "abide by law," follow the court's instructions, and find the defendants not guilty if the government failed to prove its case beyond a reasonable doubt.[8] But based on "all the answers she gave," the court was "persuaded * * * that she could not be fair and impartial."[9] And even though the government had initially objected to the defense's for-cause challenge to that juror, it withdrew its objection following the court's content questioning.[10]

Juror 104 was far from an isolated example. The court's careful probing of the jurors' exposure to media coverage repeatedly uncovered the possibility of bias among jurors who claimed to be impartial.[11] For example,

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[5] J.A. 1004a, *Skilling* v. *United States*, 561 U.S. 358 (2010).

[6] J.A. 1005a.

[7] *Ibid.*

[8] J.A. 1004a.

[9] J.A. 1006a.

[10] *Ibid.*

[11] See, *e.g.*, J.A. 817a-818a, 844a-846a, 847a-848a.

Juror 55 initially stated in her questionnaire that she could be objective and was "not one to get up in possible false publicity."[12] But when pressed on what she had read about the case and what she "recall[ed] in particular" about the defendants, Juror 55 admitted that she "lean[ed] towards prejudging" their guilt based on what she had read in the Houston Chronicle, which she skimmed every day, as well as her personal experience working for a bankrupt corporation.[13] Without objection, the court granted the defense's for-cause challenge to that juror.[14]

Not only did content questioning unearth potentially biased jurors; it also permitted the court and the parties to become comfortable with jurors who may otherwise have been dismissed solely based on their jury questionnaires. For instance, Juror 11 had indicated in writing that he had formed an opinion about "greed on Enron's part."[15] But in response to questions about the content of the publicity to which he had been exposed, he elaborated that, although he read the Chronicle every day, he did not "believe everything he read in the paper," nor did he "get into the details of the Enron case." 561 U.S. at 390 & n.26, 396 (citations and alterations omitted). In fact, Juror 11 indicated that he had "no idea" whether the defendants had broken the law, "ha[d]n't watched [television] in several years," and his response to the case's publicity was to "tune [it] out."[16] Despite the court's initial hesitance in

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[12] J.A. 920a.

[13] J.A. 920a-922a.

[14] J.A. 922a.

[15] J.A. 854a.

[16] J.A. 855a-856a.

light of his questionnaire responses, Juror 11's answers to the court's content questioning showed that he was not unduly influenced by the media attention surrounding the case, and the court empaneled him.[17]

In sum, the content questioning in *Skilling* allowed the court to do more than "simply take venire members who proclaimed their impartiality at their word." 561 U.S. at 394. Instead, by following up individually with each prospective juror on the content of what they had learned about the case, the court was able to evaluate the influence of pretrial publicity on each juror's fairness.[18] And because of the court's thorough and pervasive content questioning, this Court was confident that, "whatever community prejudice existed in Houston generally, Skilling's jurors were not under its sway." *Id.* at 391.

### B. The 1993 World Trade Center Bombing: *United States* v. *Salameh*

In 1993, a group of terrorists detonated a bomb in a parking garage below the World Trade Center in New York City, killing six people and injuring over one thousand. Like the Boston Marathon bombing, the devastation wrought by the bombers' appalling crimes provoked an immense emotional response and generated intense news coverage around the country.[19] Naturally, the pub-

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[17] J.A. 858a.

[18] See, *e.g.*, J.A. 819a-820a, 859a-860a, 944a, 974a-975a, 1008a.

[19] See, *e.g.*, *Trade Center Probe Is Far From Done*, Wash. Post (Mar. 7, 1993) <tinyurl.com/WTCProbe>.

licity was most intense in New York City, where newspapers published countless investigative reports[20] and tabloids ran coverage that spread misinformation about the bombers.[21] Following their arrests, the names and faces of those terrorists who were charged with carrying out this horrific crime—Mahmud Abouhalima, Ahmed Ajaj, Nidal Ayyad, and Mohammad Salameh—were widely disseminated in the media.[22]

The Salameh trial, the first of multiple trials related to the bombing, began seven months after the terrorist attack. Predictably, there were efforts to change the trial's venue, which were unsuccessful. The court acknowledged that "it would seem impossible to empanel a jury whose members have never even heard of the explosion." *United States* v. *Salameh*, Crim. No. 93-180, 1993 WL 364486, at *1 (S.D.N.Y. Sept. 15, 1993), aff'd, 152 F.3d 88 (2d Cir. 1998). Ironically, in rejecting the defendants' motion for a change of venue, the court suggested that the "publicity engendered by the explosion * * * so permeates the nation" that there was no other jurisdiction "where the matter might more fairly be tried." *Id.* at *1-*2.

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[20] See, *e.g.*, *Pieces of Terrorism: Accounts Trace the Trade Center Explosion*, N.Y. Times (May 26, 1993) <tinyurl.com/WTCRetracingSteps>; *Letter Explained Motive in Bombing, Officials Now Say*, N.Y. Times (Mar. 28, 1993) <tinyurl.com/WTCBombersLetter>.

[21] See, *e.g.*, *Bomb Rocks Manhattan*, N.Y. Daily News (Feb. 27, 1993) <tinyurl.com/WTCBosnia>.

[22] See, *e.g.*, *The Suspects So Far in the World Trade Center Bombing*, N.Y. Times B4 (May 26, 1993) <tinyurl.com/WTCSuspects>.

To mitigate the concerns over juror bias, the court summoned "an unusually large pool of 5,000 jury panelists."[23] With that pool, the court conducted a thorough voir dire that was replete with content questioning. See 152 F.3d at 120. The court chose not to use a jury questionnaire, because it concluded that such a questionnaire would be of no "particular help in the selection of a jury in highly publicized cases where a searching voir dire is conducted." 1993 WL 364486, at *2.

In conducting its extensive voir dire, the court relied heavily on content questioning. For instance, when the court asked Juror 78 what she knew about the case, she admitted to having "heard about the gentleman who brought back the truck" following the bombing, before he was arrested.[24] At the parties' request, the court followed up to clarify that she heard that information "from the news."[25] But because Juror 78 did not remember any other details about the case, since she didn't "get to read newspapers too much" and "hardly watch[ed] TV," neither the government or defendant challenged her.[26]

Similarly, the court asked Juror 102 to share "what [she] ha[d] seen or heard or read" about the case, and when she last "saw or heard anything about" the bombing.[27] The juror was qualified, without objection, after she confirmed that she "look[ed] at the news" but simply

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[23] See *Jury Selection Starts in World Trade Center Case*, N.Y. Times (Sept. 15, 1993) <tinyurl.com/WTCJurySelection>.

[24] Tr. 625, *United States* v. *Salameh*, Crim. No. 93-180 (S.D.N.Y. Sept. 22, 1993).

[25] *Id.* at 629-631.

[26] *Id.* at 625.

[27] Tr. 364 (Sept. 21, 1993).

heard that the bombing occurred "when it first happened," and "that's about it."[28] By contrast, when Juror 391 disclosed that she believed the defendants "threatened * * * to kill Jews very gleefully" based on what she had read "in the newspaper," she was excused for cause with both parties' approval.[29]

As coverage of the case continued to percolate in the local and national press, the court targeted its content questioning at determining the effect of specific news stories on prospective jurors' objectivity. For example, on the fourth day of the jury-selection process, when the New York Post ran an article entitled "Twin Towers Suspects' Secret Conversations Revealed: The Terror Tapes," the court asked jurors probing questions about the content of the media coverage to which they had been exposed.[30] When the court asked what Juror 137 had "seen in the TV or newspapers about this case," the juror reported to have seen (though not read) the Post article, which he could not avoid because it was "on the front page."[31] But after following up on Juror 137's answers to the court's questioning, the parties and court were reassured that his media exposure would not affect his impartiality, as he didn't "believe everything in the media."[32] Similarly, when Time magazine ran a cover story on the alleged "ringleader" of the bombing,[33] the court and the

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[28] Tr. 364 (Sept. 21, 1993).

[29] Tr. 1093-1094 (Sept. 29, 1993).

[30] Tr. 329 (Sept. 21, 1993).

[31] *Id.* at 392.

[32] *Ibid.*

[33] *The Secret Life of Mahmud the Red*, Time (Oct. 4, 1993) <tinyurl.com/TIME-SecretLife>.

parties agreed that it was imperative to ask prospective jurors if they had read the article.[34]

In short, content questions played a vital role in the selection of the jury that presided over the bombing trial. Both the government and the defense advocated for content questioning to establish a factual basis for assessing prospective jurors' impartiality.[35] And the court's repeated questioning of jurors' exposure to pretrial publicity, which evolved as the voir dire unfolded, illustrates the critical role of content questioning in ferreting out potential bias and ensuring a fair trial amidst intense media coverage.[36]

### C. The Louima Police Assault: *United States* v. *Volpe*

In 1997, New York City police officer Justin Volpe took Abner Louima, a handcuffed arrestee, to the bathroom of a Brooklyn police station and used a broken broomstick to sexually assault him. Volpe and three other officers were indicted on twelve counts for assaulting and falsely arresting Louima. See *United States* v. *Volpe*, 78 F. Supp. 2d 76 (E.D.N.Y. 1999), aff'd in part, 224 F.3d 72 (2d Cir. 2000).

The attack shocked the entire city. Local newspapers, including the New York Daily News, ran Pulitzer Prize-winning reports on the Louima assault for months.[37] They

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[34] Tr. 872-873 (Sept. 27, 1993).

[35] See, *e.g.*, Tr. 487 (Sept. 21, 1993); Tr. 629 (Sept. 22, 1993); Tr. 680-681, 699-700 (Sept. 23, 1993).

[36] See, *e.g.*, Tr. 373-374, 377-379, 404-405, 412-413, 427-429, 439-440, 447-448, 459-461, 483-484 (Sept. 21, 1993); Tr. 635-637 (Sept. 22, 1993); Tr. 670-671, 682-685, 695-697, 701, 715-716, 725-726, 731-733, 738-740 (Sept. 23, 1993).

[37] See, *e.g.*, *Rudy Cops Out on Review Board*, N.Y. Daily News (Sept. 19, 1997) <tinyurl.com/LouimaReviewBoard>; *Rev & Rudy*

told "a tale straight from the police dungeon," a story that seemed "impossible" and "crudely medieval."[38] They featured cover-page pictures of Louima in his hospital bed, with headlines such as "Tortured by Cops."[39] They referred to Louima as "America's most famous victim of police brutality," and noted how he "deserves millions from a city that didn't want to believe police brutality is a serious problem."[40] They wrote about the details of the assault and his injuries, his grandmother, and his one-year-old son.[41] Emotions ran high in New York City, and a week after the assault, thousands marched in protest to City Hall and the police station where the attack took place.[42]

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*Could Be Quite a Show*, N.Y. Daily News (Sept. 12, 1997) <tinyurl.com/LouimaRudyShow>; *They Saw Louima's Terror*, N.Y. Daily News (Sept. 5, 1997) <tinyurl.com/LouimaTerror>; *Rudy & Brass Reap Harvest of Hate*, N.Y. Daily News (Aug. 29, 1997) <tinyurl.com/LouimaHarvestHate>; *'It Wasn't Me,' Cop Maintains*, N.Y. Daily News (Aug. 22, 1997) <tinyurl.com/LouimaWasntMe>; *Gal Pal: He Couldn't Do It*, N.Y. Daily News (Aug. 18, 1997) <tinyurl.com/LouimaGalPal>; *Victim and City Deeply Scarred*, N.Y. Daily News (Aug. 14, 1997) <tinyurl.com/LouimaScarred>.

[38] *The Frightful Whisperings From a Coney Island Hospital Bed*, N.Y. Daily News (Aug. 13, 1997) <tinyurl.com/LouimaConeyIslandBed>.

[39] *Ibid.*

[40] *Love Leading Louima Home From the Hospital*, N.Y. Daily News (Oct. 10, 1997) <tinyurl.com/LouimaHome>.

[41] *Ibid.*

[42] *Thousands March to Protest Police*, N.Y. Times (Aug. 17, 1997) <tinyurl.com/LouimaMarch>.

The Volpe trial is another case in which the court, the government, and defense counsel showed a keen awareness of the risk of juror bias due to pretrial publicity. The jury questionnaire was replete with content questioning.[43] Prospective jurors were asked whether they had "hear[d] or read about any comments" that certain "political figures or community leaders" might have made "as to their opinions of the allegations in this case."[44] They were also asked about any information they had heard or seen about the case.[45] And that content questioning was just the starting point for more pointed inquiries during voir dire.

The voir dire questioning of Juror 6 highlights the court's focus on the risk of bias due to the extensive pretrial publicity. The court was generally concerned about what jurors might have read or seen "about th[e] so-called Diallo case"—the then-recent fatal shooting of an unarmed Guinean immigrant at the hands of four New York City police officers.[46] Even though Juror 6 said that she had heard "[j]ust a little bit" about the Diallo killing, the court further inquired whether she "remember[ed] vaguely what it was about" in order to ensure that Juror

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[43] See *Jury Selection in Louima Case Is Moving Into Second Phase*, N.Y. Times (Apr. 12, 1999) <tinyurl.com/LouimaJurySelection>; *Reporter's Notebook; A Heavy Load of Answers for Louima Case Lawyers*, N.Y. Times (Apr. 5, 1999) <tinyurl.com/LouimaHeavyAnswers>.

[44] *Louima Questionnaire Puts Department on Trial*, N.Y. Post (Mar. 31, 1999) <tinyurl.com/LouimaQuestionnaire>.

[45] *Jury Candidates in Louima Case Asked About Attitudes on Race and Cops*, Associated Press (Mar. 30, 1999).

[46] Tr. 43, *United States* v. *Volpe*, Crim. No. 98-196 (E.D.N.Y. Apr. 14, 1999).

6 understood that the Diallo case "has nothing whatsoever to do with this case."[47]

The court then moved on to content questioning about the Volpe case, acknowledging that Juror 6 likely "saw on television on some occasions one of the people who [it is] alleged in the indictment * * * was assaulted," and inquiring "what, if anything, [Juror 6] remember[ed] about that."[48] Although Juror 6 did not recall specific facts, because she said she did not "watch television that much," the court followed up by asking whether she had "any reaction * * * to any of the media or what [she] saw on TV."[49] The court's ultimate concern was whether Juror 6 "would have any difficulty in putting aside whatever impression [she] got on TV or on radio."[50] Because Juror 6's answers demonstrated that she could be impartial, neither party moved to strike her.[51]

With respect to other jurors, however, content questions elicited such clear signs of bias that the court and parties agreed to excuse them for cause. For instance, Juror 139 initially stated that any media coverage of the assault that he remembered would not affect his ability to be fair and impartial.[52] Yet when the court pressed him to share, "in substance," what he had "heard or read or seen about this case," Juror 139 explained that he remembered "some prisoner that was accosted while in police custody"

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[47] Tr. 43-44 (Apr. 14, 1999).

[48] *Id.* at 44.

[49] *Id.* at 44-45.

[50] *Id.* at 44.

[51] *Id.* at 46-48.

[52] Tr. 357 (Apr. 15, 1999).

and "some mention of sodomy with a broom stick."[53] The court again asked whether the juror would "have any problem putting aside what [he] read or heard or saw," and Juror 139 admitted that "it's hard to just put it aside," because "[w]e're all influenced by the media" and he had "seen so much of the media hype around this case."[54] After Juror 139 admitted that being fair "would be difficult to do" given that he had "been bombarded through the media," both parties agreed that he should be excused.[55]

On the rare occasions when the court failed to ask content questions, the prosecution stepped in. For instance, the court asked Juror 142 whether he watched television, listened to radio, and whether he had "read anything or watched anything on TV or heard anything on the radio about the incident which gave rise to this case."[56] Juror 142 said he did not "remember."[57] He later explained that first time he heard the victim's name was "the day we had the jury questionnaire," because he generally "got tired of watching news reports" and "steer[ed] away from them as far as the bad news" goes.[58] Still, the prosecution reminded the court that there were further content questions to be asked, and the court accordingly inquired

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[53] Tr. 357 (Apr. 15, 1999).

[54] *Id.* at 358-359.

[55] *Id.* at 359.

[56] *Id.* at 365.

[57] *Ibid.*

[58] *Id.* at 365-366.

about what Juror 142 had "heard of a case called the Diallo case."[59] Following his responses, neither party moved to strike him.[60]

At the Volpe trial, therefore, the court repeatedly asked prospective jurors whether they were exposed to any pretrial publicity, the nature and the extent of their exposure, and whether they had any particular reactions to what they heard or saw.[61] In the shadow of widespread public outcry, there was nothing controversial about the jury-selection process. When it came to content questioning, the prosecution and the defense joined efforts to ensure a fair and impartial jury. This trial record reveals how content questioning in jury questionnaires and voir dire proceedings is eminently manageable and can empower a court to make an informed, independent determination of each juror's impartiality.

### D. The Charleston Church Shooting: *United States* v. *Roof*

The practice of asking prospective jurors in high-profile cases questions about the content of their exposure to pretrial publicity continues to this day. Consider one last example: the Charleston church shooting. On June 17, 2015, Dylann Roof walked into Emanuel African Methodist Episcopal Church, a predominantly black church in Charleston, South Carolina. After spending almost one hour at a Bible-study class, Roof opened fire on the parishioners and killed nine of them.

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[59] Tr. 370-371 (Apr. 15, 1999).

[60] *Id.* at 372.

[61] See, *e.g.*, Tr. 81, 86, 97, 102, 106-107, 126-127, 133-134, 138-139, 157, 176-177, 187, 195-197, 201, 206-208, 213-214, 223-224 (Apr. 14, 1999); Tr. 246-247, 401, 406-408, 410, 414-415, 423-426, 435-436, 440-442, 447-449 (Apr. 15, 1999).

This horrific hate crime, the subsequent manhunt and arrest, and Roof's history of racist writings received intense media attention.[62] Photographs of Roof entering the church were disseminated so widely in the news media that his arrest occurred as a result of a tip from a commuter in another state who had seen Roof's photograph on the morning news.[63] Following his arrest, a grand jury indicted Roof on some 33 federal charges,[64] and the government sought the death penalty.[65]

The centrality of content questioning in this case was evident from the onset of the jury-selection process. The questionnaire mailed to prospective jurors, which was based on the parties' joint submission, contained a range of content questions related to the media coverage that prospective jurors had consumed about the case; the sources from which they had read or heard about the case or the defendant; and the substance of the information that they had learned.[66] Responses to those questions, the court noted, were "tremendously helpful."[67]

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[62] See, *e.g.*, *Suspect Captured in Deadly Shooting at Black Church in South Carolina*, Wash. Post (June 18, 2015) <tinyurl.com/RoofCaptured>; *Suspect in Charleston Church Attack Detained; Victims Include 3 Ministers*, L.A. Times (June 18, 2015) <tinyurl.com/RoofDetained>.

[63] *Church Massacre Suspect Held as Charleston Grieves*, N.Y. Times (June 18, 2015) <tinyurl.com/RoofHeld>.

[64] See Dkt. 2, *United States* v. *Roof*, Crim. No. 15-472 (D.S.C. July 22, 2015).

[65] See Dkt. 164 (May 24, 2016).

[66] Dkt. 433, Tr. 7-9 (Sept. 26, 2016).

[67] Dkt. 919, Tr. 11 (Nov. 28, 2016).

During voir dire, the court continued to focus on prospective jurors' exposure to pretrial publicity. The court repeatedly asked prospective jurors whether they had "heard or read anything about this case" since they had completed their jury questionnaires.[68] When Juror 106 responded affirmatively to the court's question, the court followed up with further content questions.[69] Those questions revealed that she "learned" on the radio that "Mr. Roof was going to defend himself" in court, and she "absolutely" respected his constitutional right to do so.[70] Following the court's content questioning, neither party challenged the juror's qualification.

The government itself also engaged in content questioning during voir dire. For instance, Juror 274 indicated on her questionnaire that she had "not read much about the hate crime or the supposed history of white supremacy."[71] The prosecution requested that the court "follow up" with further content questions in order to inquire into whether the juror's lack of exposure to writings about white supremacy was "a reference to this case or a reference more broadly."[72] Juror 274 explained that her response was informed by the minimal reporting to which she had been exposed, because she was "more of a headline person" and "ha[dn't] read any articles" about the

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[68] See, *e.g.*, Dkt. 919, Tr. 16, 29, 41, 49, 85, 104, 131, 148 (Nov. 28, 2016).

[69] Dkt. 920, Tr. 23 (Nov. 29, 2016)

[70] *Ibid.*

[71] Dkt. 921, Tr. 197 (Nov. 30, 2016).

[72] *Id.* at 195-196.

case.[73] Satisfied with Juror 274's responses to those follow-up questions, the government declined to challenge her.[74]

In short, the Roof trial offers yet another powerful example of the practical importance of content questioning during the jury selection process. In light of the widespread publicity in that case, the court and the parties repeatedly asked prospective jurors about the content of the pretrial reporting to which they had been exposed.[75] Those content questions provided the court and the parties with a strong factual basis to assess reliably the impartiality of prospective jurors.

## II. THE DISTRICT COURT'S DEPARTURE FROM THE PRACTICE OF CONTENT QUESTIONING IN HIGH-PROFILE CASES WAS UNWARRANTED

In this case, the district court—at the government's behest—departed from the entrenched and uncontroversial practice of asking prospective jurors in high-profile cases about the content of the pretrial publicity to which they were exposed. On the unique facts of this case, where the pretrial publicity was unprecedented, the First Circuit reasonably concluded that a departure from its longstanding supervisory rule applicable to high-profile cases required vacatur of respondent's death sentence. And because the court of appeals' rule is eminently reasonable, this Court should not disturb the judgment below on that ground. See Resp. Br. 38-53.

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[73] Dkt. 921, Tr. 198 (Nov. 30, 2016).

[74] *Id.* at 199.

[75] See, *e.g.*, Dkt. 919, Tr. 16, 29, 41, 49, 85, 104 (Nov. 28, 2016); Dkt. 921, Tr. 34, 42, 57, 76-77, 92 (Nov. 30, 2016).

### A. The Pretrial Publicity In This Case Was Unprecedented

1. No one can dispute the magnitude of the publicity surrounding the Boston Marathon bombing. Respondent and his brother remained at large for days while "[r]eports and images" of the bombing and its aftermath "flashed across the TV, computer, and smartphone screens of a terrified public—around the clock, often in real time." Pet. App. 2a. Despite the government's remarkable suggestion that the court of appeals judges were "remote from the specific news stories that might influence a juror" in this case, Br. 30 (internal quotation marks and citation omitted), it is not hyperbole to say that "the reporting of the events here * * * stands unrivaled in American legal history," Pet. App. 19a. In light of the nature of the crime and ensuing media frenzy, the court of appeals certainly did not—as the government suggests—"lack * * * comprehension of the situation" facing the district court in this case, as might be the case in lower-profile criminal trials. Br. 30 (internal quotation marks and citation omitted).

The pretrial publicity was not only pervasive, but raw. It included videos of respondent placing a bomb; of "the carnage-filled terror scene—with the sights and sounds of the wounded and the dying in full display"; and of respondent's arrest. Pet. App. 19a-20a. Public figures and victims took to television and social media to speak to the appropriateness of the death penalty.[76] And respondent

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[76] See, *e.g.*, *Marty Walsh on Dzhokhar Tsarnaev Death Penalty Decision: 'I Support the Process'*, Boston Mag. (Jan. 30, 2014) <tinyurl.com/TsarnaevBostonMayor>; *Parents of Youngest Boston Marathon Bombing Victim Urge Against Death Penalty*, Wall St. J. (Apr. 17, 2015) <tinyurl.com/TsarnaevVictimParents>.

was described as "evil," "depraved," "vile," and a "scumbag." *Id.* at 21a, 167a.

2. The 1,373 prospective jurors called for respondent's trial almost certainly had seen, read, or heard accounts of the events. It was therefore paramount for the district court to make an independent determination as to whether the prospective jurors' mere knowledge of the bombing had turned into unfair prejudice. Yet over defense counsel's objection, the 100-item questionnaire that each juror was asked to complete omitted a crucial 101st question: "What did you know about the facts of this case before you came to court today (if anything)?" Pet. App. 16a. That omission, and the failure to include any alternative content-based question, was especially noteworthy—and puzzling—for two reasons.

*First*, that content question had been included in the parties' joint proposed jury questionnaire. See Pet. App. 24a. But sometime after the joint filing, the government changed its mind. Compare J.A. 474-477 (joint proposed jury questionnaire) with Pet. App. 371a-373a (final jury questionnaire). That abrupt shift is hard to explain, especially because the parties had also submitted agreed-upon preliminary jury instructions that similarly told jurors to be prepared to explain what they had "read, seen, heard, or experienced in relation to the case." J.A. 473. The government nevertheless argued at a pretrial conference that, if such content questioning were to be included in the jury questionnaire, the court and the parties would "follow[] up on every fact asserted" during the individual voir dire proceedings, which "would take forever." J.A. 481.

In addition, as jury selection was underway, the government objected to similar lines of questioning during voir dire. According to the government, the goal of voir dire was "to try and come up with an approach that satisfie[s] the objectives and the needs of voir dire without

making the process unduly cumbersome, lengthy, and perhaps even counterproductive from having to drag on too long"—an objective it claimed would have been undermined by content questioning. J.A. 498.

*Second*, the omission of the jointly proposed content question, and the failure to include any similar content questioning, was particularly unusual because that line of inquiry is exceedingly common during the jury-selection process in high-profile cases. See, *e.g.*, *Skilling*, 561 U.S. at 371 n.4. As illustrated above, similar content questioning has been key to empowering district courts in other high-profile cases to make an independent determination as to each juror's impartiality. See pp. 4-21, *supra*. In this case, however, the district court agreed with the government that allowing content questioning would yield "unmanageable data" without producing "reliable answers." J.A. 481, 494. Such an approach, according to the court, would only "cause trouble because it will be so unfocused." J.A. 480.

3. In this case, then, it was up to each juror to be the judge of his or her own impartiality. But see *Skilling*, 561 U.S. at 394 (suggesting the impropriety of "simply tak[ing] venire members who proclaimed their impartiality at their word"). Neither the jury questionnaire nor the voir dire proceedings focused on the content of the publicity that jurors had likely heard or read about the case. All that jurors were asked—in Question 77 of the jury questionnaire—was whether, "[a]s a result of what [they] ha[d] seen or read in the news media," they had "formed an opinion" that respondent was "guilty" or "not guilty" and "should" or "should not" receive the death penalty. Pet. App. 373a.

To be sure, the district court occasionally asked jurors to "amplify" their responses to Question 77, see J.A. 290, 299-300, or to "tell" the court and the parties "about that,"

J.A. 311-312, 326-328, 360-361, 399-401, 419-421, 434, 448-449, 459. But the questioning rarely went beyond those open-ended inquiries. Respondent's counsel persistently attempted to pose content-specific questions as follow-ups to the court's questioning. Although respondent's counsel was occasionally able to probe jurors as to the content of the information that they had read or heard about the case, see, *e.g.*, J.A. 408-412, 453-456, 510-512, the district court for the most part sustained the government's objections to any such questioning, see, *e.g.*, J.A. 317-318, 371-372, 392; Dkt. 1008-1, Tr. 95-96 (Jan. 20, 2015); Dkt. 1009-1, Tr. 36-37, 87-88 (Jan. 21, 2015); Dkt. 1013-1, Tr. 99 (Jan. 29, 2015); Dkt. 1028-1, Tr. 51-52 (Feb. 12, 2015); Dkt. 1083-1, Tr. 54-55 (Feb. 25, 2015).

Consider, for example, the voir dire questioning of Juror 286. In her jury questionnaire, Juror 286 stated that she had not formed an opinion about respondent's guilt or whether he should receive the death penalty. J.A. 384. Still, she admitted during voir dire that she had "absolutely" seen "everything on the news," but did not feel as though she "knew enough of the facts to base a decision." *Ibid.* The district court followed up by asking whether Juror 286 could "faithfully apply" the court's instructions as to the government's burden of proof, and she responded in the affirmative. J.A. 385. Although the court moved on to discuss other topics, see J.A. 385-388, the defense sought to follow up with a basic question that is commonplace in high-profile cases: "Can you tell us what stands out in your mind that you read about [this case]?" J.A. 392. But the government objected, and the district court sustained the objection. See *ibid.*

4. The government thus persuaded the district court to prioritize convenience and efficiency over the routine and uncontroversial practice of individually questioning jurors in high-profile cases, outside the presence of other

prospective jurors, about the content of the pretrial publicity to which they had been exposed. But this Court has emphasized that "our Government is not one of mere convenience or efficiency." *Kotteakos* v. *United States*, 328 U.S. 750, 773 (1946). Rather, the government "too has a stake, with every citizen, in his [or her] being afforded our historic individual protections, including those surrounding criminal trials," even where those protections may be "inconvenient for prosecution." *Ibid.* In other words, "the interest in fairness and reliability * * * has always outweighed the interest in concluding trials swiftly," because, "however convenient" more expedient approaches "may appear at first," "little inconveniences in the forms of justice[] are the price that all free nations must pay for their liberty in more substantial matters." *United States* v. *Booker*, 543 U.S. 220, 244 (2005) (internal quotation marks, citation, and alteration omitted).

Given the long history of content questioning, any anxiety in this case about the possibility that such questioning could have been inconvenient (U.S. Br. 30) is difficult to credit—especially where the availability of death as a potential punishment necessitates particular care in the jury-selection process. See Resp. Br. 50. Innumerable trials have featured content questioning without unduly compromising judicial efficiency. Rather, all of those trials show that content questioning is not unnecessarily burdensome, and does not necessitate endless voir dire proceedings. Asking jurors about the content of any pretrial publicity to which they had been exposed would not have been an "unfocused" inquiry that would produce "unmanageable data." J.A. 480-481; see J.A. 485-486. Nor would it have been "unnecessarily onerous." U.S. Br. 37.

As amici have shown, some of the highest-profile criminal trials over the last several decades offer unmistakable evidence of how content questioning provides manage-

able, useful data in assessing juror impartiality in cases involving extensive pretrial publicity. Whether this Court looks at the jury-selection process in *Skilling*, or in other cases that did not reach the Court, one thing is clear: content questioning is a commonplace and uncontroversial tool that courts, prosecutors, and defense counsel routinely deploy in high-profile cases.

### B. In Light Of The Ubiquity Of Content Questioning In High-Profile Cases, The Court Of Appeals Reasonably Exercised Its Supervisory Authority In This Case

The First Circuit has invoked its supervisory authority to regulate voir dire proceedings in high-profile cases for over half a century. See, *e.g.*, *United States* v. *Casellas-Toro*, 807 F.3d 380, 384 (2015); *Patriarca* v. *United States*, 402 F.2d 314, 317-318 (1968).[77] This case represents a reasonable exercise of that power.

1. In the First Circuit, a district court handling a case "where there is, in the opinion of the [district] court, a significant possibility that jurors have been exposed to potentially prejudicial material" "should" conduct individual *voir dire* of "each prospective juror," if requested by counsel, in order to "elicit[] the kind and degree of his exposure to the case or the parties." *Patriarca*, 402 F.2d at 318. The goal is to assess the "effect of such exposure" on the prospective juror's "present state of mind," as well as "the extent to which such state of mind is immutable or subject to change from evidence." *Ibid.*

Content questioning is essential to ascertain juror impartiality in high-profile cases. "The theory of our [trial]

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[77] Other circuits do the same. See *United States* v. *Beckner*, 69 F.3d 1290, 1291-1293 & n.1 (5th Cir. 1995); *United States* v. *Dellinger*, 472 F.2d 340, 375 (7th Cir. 1972); *United States* v. *Addonizio*, 451 F.2d 49, 67 (3d Cir. 1971); *Silverthorne* v. *United States*, 400 F.2d 627, 639 (9th Cir. 1968).

system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print." *Patterson* v. *Colorado*, 205 U.S. 454, 462 (1907). To maintain the promise of impartiality, a court has to answer a simple yet weighty question: "[I]s this juror to be believed when he says he has not formed an opinion about the case?" *Mu'Min* v. *Virginia*, 500 U.S. 415, 425 (1991). Delegating to prospective jurors the responsibility to determine their own capacity for service, especially in high-profile cases, fails to account for the very real possibility that "the juror may have an interest in concealing his own bias" or "may be unaware of it." *Smith* v. *Phillips*, 455 U.S. 209, 221-222 (1982) (O'Connor, J., concurring). Indeed, because the court and the parties have a superior knowledge of the case and the admissible evidence, they are far better equipped to determine whether the juror has been exposed to information that could lead to bias. But in order to make that crucial determination, the juror must be subject to questions that can elicit the necessary information.

To be sure, "pretrial publicity—even pervasive, adverse publicity—does not inevitably lead to an unfair trial." *Nebraska Press Association* v. *Stuart*, 427 U.S. 539, 554 (1976). Today more than ever, "every case of public interest is almost, as a matter of necessity, brought to the attention of all the intelligent people in the vicinity," and it is sometimes impossible to find anyone "among those best fitted for jurors who has not read or heard of it, and who has not some impression or some opinion in respect to its merits." *Reynolds* v. *United States*, 98 U.S. (Otto) 145, 155-156 (1879). To serve on a jury, therefore, it is sufficient that jurors can "lay aside their impressions or opinions and render a verdict based on the evidence

presented in court." *Skilling*, 561 U.S. at 398-399 (citation and alteration omitted).

But it remains the district court's "obligation" to "impanel an impartial jury." *Rosales-Lopez* v. *United States*, 451 U.S. 182, 189 (1981). And the First Circuit's supervisory rule, requiring content questioning in certain high-profile cases, is a reasoned mechanism to distinguish between mere familiarity and disqualifying prejudice.

2. This Court's review of supervisory rules adopted by courts of appeals has always been "limited in scope." *Ortega-Rodriguez* v. *United States*, 507 U.S. 234, 244 (1993). Indeed, appellate courts are traditionally free to "require [trial courts] to follow procedures deemed desirable from the viewpoint of sound judicial practice although in no-wise commanded by statute or by the Constitution." *Cupp* v. *Naughten*, 414 U.S. 141, 146 (1973). Supervisory rules will thus pass muster so long as they do not "conflict[] with constitutional or statutory provisions," *Thomas* v. *Arn*, 474 U.S. 140, 148 (1985), and "represent reasoned exercises of the courts' authority," *Ortega-Rodriguez*, 507 U.S. at 244. The *Patriarca* rule easily survives that reasonableness review. See Resp. Br. 38-53.

The government suggests (Br. 32-33) that *Mu'Min* created an inflexible rule that content-based questioning is forbidden under the Constitution. That is incorrect. In *Mu'Min*, the Court held that trial courts are not ordinarily "constitutionally required" to ask prospective jurors "about the specific contents of the news reports to which they had been exposed." 500 U.S. at 417, 425. Yet the Constitution "prescribes a floor below which protections may not fall, rather than a ceiling beyond which they may not rise." *United States* v. *Hammad*, 858 F.2d 834, 839 (2d Cir. 1988). It is thus unsurprising that the Court recognized in *Mu'Min* that, independent of the Constitution, appellate courts "enjoy more latitude in setting standards

for voir dire" pursuant to their "supervisory power." 500 U.S. at 424 (emphasis omitted).

Moreover, the *Mu'Min* Court specifically recognized the reasonableness of content questioning in high-profile cases. There, the parties drew the Court's attention to the fact that some courts of appeals had taken the view that, "in some circumstances," content-based questioning is "required" for reasons other than "constitutional grounds." 500 U.S. at 426-427. As Justice Marshall noted in his dissenting opinion, the majority was careful not to overturn those existing supervisory rules, nor to "prevent[] other Federal Circuits from following suit." *Id.* at 447 n.6.

The reason the Court declined to invalidate those circuit precedents is simple: all nine Justices agreed that content questioning in high-profile cases is useful. The majority made clear that "[q]uestions about the content of the publicity to which jurors have been exposed might be helpful in assessing whether a juror is impartial." 500 U.S. at 425. In her concurring opinion, Justice O'Connor agreed that content questioning—albeit not constitutionally required—"might still have been helpful," because a "juror's tone of voice or demeanor might have suggested to the trial judge that the juror had formed an opinion about the case, and should therefore be excused." *Id.* at 433. The dissenting Justices held similar views. See *id.* at 434 (Marshall, J., dissenting); *id.* at 451 (Kennedy, J., dissenting).

Ultimately, the best metric to evaluate the reasonableness of a supervisory rule that requires content questioning in high-profile cases is the scores of such cases in which courts and parties have engaged in extensive questioning of prospective jurors. Put simply, content questioning in certain high-profile cases is "desirable from the viewpoint of sound judicial practice," *Cupp*, 414 U.S. at

146, and a supervisory rule requiring such questioning is consistent with this Court's precedents. In amici's experience, content questioning is the norm in high-profile cases, and the First Circuit's rule is a reasoned exercise of supervisory authority that is entirely consistent with the Constitution.

## CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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## APPENDIX

**List of Retired Federal Judges**

*William G. Bassler*, Judge, U.S. District Court for the District of New Jersey (1991-2005).

*Mark W. Bennett*, Judge, U.S. District Court for the Northern District of Iowa (1994-2019); Chief Judge (2015-2019); Magistrate Judge, U.S. District Court for the Southern District of Iowa (1991-1994); Director, Institute for Justice Reform & Innovation, Drake University Law School (2019-present).

*Bruce D. Black*, Judge, U.S. District Court for the District of New Mexico (1995-2017); Chief Judge (2010-2012).

*Edward N. Cahn*, Judge, U.S. District Court for the Eastern District of Pennsylvania (1975-1998); Chief Judge (1993-1998).

*William Royal Furgeson Jr.*, Senior Judge, U.S. District Court for the Northern District of Texas (2008-2013); Judge, U.S. District Court for the Western District of Texas (1994-2008).

*Jeremy D. Fogel*, Judge, U.S. District Court for the Northern District of California (1998-2018); Judge, Superior Court of Santa Clara County (1986-1998); Judge, Municipal Court of Santa Clara County (1981-1986).

*Nancy Gertner*, Judge, U.S. District Court for the District of Massachusetts (1994-2011).

*John Gleeson*, Judge, U.S. District Court for the Eastern District of New York (1994-2016); Assistant U.S. Attorney, Eastern District of New York (1985-1994); Chief, Criminal Division (1993-1994); Chief, Organized Crime Unit (1990-1993); Chief, Special Prosecutions Unit (1989-1990); Chief, Appeals Unit (1987-1989).

*James T. Giles*, Judge, U.S. District Court for the Eastern District of Pennsylvania (1979-2008); Chief Judge (1999-2005).

*Paul S. Grewal*, Magistrate Judge, U.S. District Court for the Northern District of California (2010-2016).

*Thelton E. Henderson*, Judge, U.S. District Court for the Northern District of California (1980-2017); Chief Judge (1990-1997).

*Richard J. Holwell*, Judge, U.S. District Court for the Southern District of New York (2003-2012).

*D. Lowell Jensen*, Judge, U.S. District Court for the Northern District of California (1986-2014); Deputy Attorney General, U.S. Department of Justice (1985-1986); Associate Attorney General (1983-1985); Assistant U.S. Attorney General, Criminal Division (1981-1983).

*Barbara S. Jones*, Judge, U.S. District Court for the Southern District of New York (1995-2012); Assistant U.S. Attorney, Southern District of New York (1977-1987); Chief, General Crimes Unit (1983-1984); Chief, Organized Crime Unit (1984-1987); Special Attorney, Criminal Division, U.S. Department of Justice (1973-1977); Organized Crime & Racketeering Section (1973); Manhattan Strike Force Against Organized Crime & Racketeering (1973-1977).

*Elizabeth D. Laporte*, Magistrate Judge, U.S. District Court for the Northern District of California (1998-2019); Chief Magistrate Judge (2013-2015).

*John S. Martin, Jr.*, Judge, U.S. District Court for the Southern District of New York (1990-2003); U.S. Attorney, Southern District of New York (1980-1983); Assistant U.S. Attorney, Southern District of New York (1962-1966).

*A. Howard Matz*, Judge, U.S. District Court for the Central District of California (1998-2013); Assistant U.S. Attorney, Central District of California (1974-1978); Chief, Special Prosecutions Unit (1977-1978).

*James Orenstein*, Magistrate Judge, U.S. District Court for the Eastern District of New York (2004-2020); Assistant U.S. Attorney, Eastern District of New York (1990-2001); Associate Deputy Attorney General, U.S. Department of Justice (1999-2001); Attorney-Advisor, Office of Legal Counsel, U.S. Department of Justice (1998-1999); Special Attorney to the Attorney General, Oklahoma City Bombing Task Force, U.S. Department of Justice (1996-1998).

*Stephen M. Orlofsky*, Judge, U.S. District Court for the District of New Jersey (1995-2003); Magistrate Judge, U.S. District Court for the District of New Jersey (1976-1980).

*Marilyn Hall Patel*, Judge, U.S. District Court for the Northern District of California (1980-2012); Chief Judge (1997-2004).

*Shira A. Scheindlin*, Judge, U.S. District Court for the Southern District of New York (1994-2016); Magistrate Judge, Eastern District of New York (1982-1986); General Counsel, New York City Department of Investigations (1981-1982); Assistant U.S. Attorney, Eastern District of New York (1977-1981).

*Herbert Jay Stern*, Judge, U.S. District Court for the District of New Jersey (1973-1987); Judge, U.S. Court for Berlin (1979); U.S. Attorney, District of New Jersey (1971-1973); Chief Assistant U.S. Attorney, District of New Jersey (1969-1971); Trial Attorney, Organized Crime and Racketeering Section, Criminal Division, U.S. Department of Justice (1965-1969); Assistant District Attorney, New York County (1962-1965).

*Thomas I. Vanaskie*, Judge, U.S. Court of Appeals for the Third Circuit (2010-2019); Judge, U.S. District Court for the Middle District of Pennsylvania (1994-2010); Chief Judge (1999-2006).

**List of Former Federal Prosecutors**

*Donald B. Ayer*, Deputy Attorney General, U.S. Department of Justice (1989-1990); Principal Deputy Solicitor General, U.S. Department of Justice (1986-1988); U.S. Attorney, Eastern District of California (1981-1986); Assistant U.S. Attorney, Northern District of California (1977-1980).

*J.A. "Tony" Canales*, U.S. Attorney, Southern District of Texas (1977-1980).

*Shawn G. Crowley*, Assistant U.S. Attorney, Southern District of New York (2014-2020); Co-Chief, Terrorism & International Narcotics Unit (2019-2020); Co-Chief, Narcotics Unit (2017-2019).

*Tiana Demas*, Assistant U.S. Attorney, Eastern District of New York (2008-2018); Deputy Chief, General Crimes Unit (2018).

*Seth D. DuCharme*, Acting U.S. Attorney, Eastern District of New York (2020-2021); Principal Associate Deputy Attorney General, U.S. Department of Justice (2019-2020); Counselor to the Attorney General (2019); Assistant U.S. Attorney, Eastern District of New York (2008-2020); Chief, Criminal Division (2018-2019); Chief, National Security & Cybercrime Unit (2015-2018).

*Michael Ferrara*, Assistant U.S. Attorney, Southern District of New York (2010-2020); Co-Chief, Terrorism & International Narcotics Unit (2018-2019); Co-Chief, Complex Frauds & Cybercrime Unit (2017-2018); Deputy Chief, Appeals Unit (2016-2017); Trial Attorney, Public Integrity Section, Criminal Division, U.S. Department of Justice (2005-2009).

*Randall Jackson*, Assistant U.S. Attorney, Terrorism and International Narcotics Trafficking Unit, Securities and Commodities Fraud Task Force, Southern District of New York (2007-2015).

*Sidhardha Kamaraju*, Assistant U.S. Attorney, Southern District of New York (2014-2021); Terrorism and International Narcotics Unit (2015-2021).

*David V. Kirby*, U.S. Attorney, District of Vermont (2005-2006); Assistant U.S. Attorney (1989-2007); First Assistant U.S. Attorney (2003-2005, 2006-2007); Chief, Criminal Division (1989-2001); Assistant U.S. Attorney, Eastern District of New York (1977-1988); Chief, General Crimes Unit (1999-2002); Chief, Appeals Unit (2002-2007).

*Jeffrey H. Knox*, Chief, Fraud Section, Criminal Division, U.S. Department of Justice (2013-2014); Principal Deputy Chief, Fraud Section (2012-2013); Assistant U.S. Attorney, Eastern District of New York (2003-2010); Chief, Violent Crimes & Terrorism Unit (2008-2010).

*Glen McGorty*, Assistant U.S. Attorney, Southern District of New York (2002-2012); Acting Chief, General Crimes Unit (2012); Senior Trial Counsel, Public Corruption Unit (2010-2012); Acting Deputy Chief, Criminal Division (2010); Acting Chief, Violent Crimes Unit (2009-2010); Deputy Chief, Narcotics Unit (2008-2010); Trial Attorney, Criminal Division, U.S. Department of Justice (1998-2002); Special Assistant U.S. Attorney, Eastern District of Virginia (1999).

*John McKay*, U.S. Attorney, Western District of Washington (2001-2007).

*Moira Kim Penza*, Assistant U.S. Attorney, Eastern District of New York (2015-2019).

*Michael S. Schachter*, Assistant U.S. Attorney, Securities and Commodities Fraud Task Force, Southern District of New York (1999-2005).

*Paul H. Schoeman*, Assistant U.S. Attorney, Eastern District of New York (1998-2003, 2007-2009); Chief Assistant U.S. Attorney (2007-2009); Deputy Chief, General Crimes Unit (2002-2003).

*Karen P. Seymour*, Assistant U.S. Attorney, Southern District of New York (1990-1996, 2002-2004); Chief, Criminal Division (2002-2004); Chief, General Crimes Unit (1995-1996); Deputy Chief, Narcotics Unit (1993-1995).

*Howard M. Shapiro*, General Counsel, Federal Bureau of Investigation (1993-1997); Assistant U.S. Attorney, Southern District of New York (1987-1992).

*James Walden*, Assistant U.S. Attorney, Eastern District of New York (1993-2002); Chief, Computer Crimes and Intellectual Property Unit (2001-2002); Deputy Chief, Organized Crimes & Racketeering Unit (1998-2000); Deputy Chief, Narcotics Unit (1995-1997).

*Mary Jo White*, Chair, Securities and Exchange Commission (2013-2017); U.S. Attorney, Southern District of New York (1993-2002); Acting U.S. Attorney, Eastern District of New York (1992-1993); First Assistant U.S. Attorney, Eastern District of New York (1990-1992); Assistant U.S. Attorney, Southern District of New York (1978-1981); Chief Appellate Attorney, Criminal Division (1980-1981).