

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

---

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

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**JOINT APPENDIX  
(VOLUME 1)**

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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 COURT OF APPEALS  
FOR THE FIRST CIRCUIT

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Docket No. 16-6001

UNITED STATES OF AMERICA, APPELLEE

*v.*

DZHOKHAR A. TSARNAEV, A/K/A JAHAR TSARNI  
(FEDERAL PRISONER: 95079-038),  
DEFENDANT-APPELLANT

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DOCKET ENTRIES

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DATE	PROCEEDINGS
2/16/16	CRIMINAL CASE docketed. Notice of appeal (doc. #1628) filed by Appellant Dzhokhar Tsarnaev. Docketing Statement, Transcript Report/Order form, and Appearance form due 03/01/2016. [16-6001] (TS) [Entered: 02/16/2016 12:20 PM]
	* * * * *
4/7/17	MOTION to supplement the record on appeal filed by Appellant Dzhokhar A. Tsarnaev. [16-6001] (DP) [Entered: 04/07/2017 04:43 PM]
	* * * * *
4/27/17	RESPONSE filed by Appellee US to motion to supplement record on appeal [6082576-2]. Certificate of service dated 04/27/2017.

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**DATE      PROCEEDINGS**


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[16-6001] (WAG) [Entered: 04/27/2017 08:51 AM]

\* \* \* \* \*

5/4/17      REPLY filed by Appellant Dzhokhar A. Tsarnaev to response [6087064-2]. Certificate of service dated 05/04/2017. [16-6001] (DP) [Entered: 05/04/2017 02:23 PM]

\* \* \* \* \*

8/11/17      ORDER entered by Juan R. Torruella, Appellate Judge: This matter is before the court on Appellant Tsarnaev's Motion to Disclose on Appeal Government Ex Parte Filings and Proceedings in the District Court. The motion is denied without prejudice. Tsarnaev can re-raise this issue once the appeal is fully briefed. The government's Motion for Leave to File a Sealed Attachment to Its Opposition to Appellant's Motion is allowed. Appellant's brief shall be filed within twelve months from August 18, 2017 and the government's brief within six months after the filing of the appellant's brief. The reply brief shall be filed within sixty days after the filing of the government's brief. [16-6001] (MNH) [Entered: 08/11/2017 02:50 PM]

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DATE	PROCEEDINGS
7/3/18	PLEADING tendered: Motion to Disclose to Appellate Counsel Reports and Recordings of Interviews of Ibragim Todashev Reviewed by the District Court In Camera and Ex Parte <b><i>provisionally filed under seal</i></b> filed by Appellant Dzhokhar A. Tsarnaev. Certificate of service dated 06/29/2018. [16-6001]. (TS) [Entered: 07/03/2018 12:12 PM]
	* * * * *
7/11/18	PLEADING tendered: Government's Response in Opposition to [6181362-2] <b><i>provisionally filed under seal</i></b> . filed by Appellee US. Certificate of service dated 07/11/2018. [16-6001] (TS) [Entered: 07/11/2018 03:40 PM]
	* * * * *
7/17/18	PLEADING tendered: Appellant's Reply to Government's Response in Opposition [6183078-2] <b><i>provisionally filed under seal</i></b> filed by Appellant Dzhokhar A. Tsarnaev. Certificate of service dated 07/17/2018. [16-6001] (TS) [Entered: 07/17/2018 01:48 PM]
	* * * * *
7/25/18	SEALED MOTION to Disclose to Appellate Counsel Reports and Recordings of Interviews of Ibragim Todashev Reviewed by the District Court In Camera and Ex Parte

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DATE	PROCEEDINGS
	filed by Appellant Dzhokhar A. Tsarnaev. Certificate of service dated 06/29/2018. [16-6001] (TS) [Entered: 07/25/2018 10:11 AM]
7/25/18	SEALED RESPONSE filed by Appellee US to Motion to Disclose to Appellate Counsel Reports and Recordings of Interviews of Ibragim Todashev Reviewed by the District Court In Camera and Ex Parte [6186007-2]. Certificate of service dated 07/11/2018. [16-6001] (TS) [Entered: 07/25/2018 10:13 AM]
	* * * * *
7/25/18	SEALED REPLY filed by Appellant Dzhokhar A. Tsarnaev to response [6186008-2]. Certificate of service dated 07/17/2018. [16-6001] (TS) [Entered: 07/25/2018 10:16 AM]
	* * * * *
10/3/18	ORDER entered by Juan R. Torruella, Appellate Judge: This matter is before the court on defendant's motion for disclosure to his appellate counsel of certain material submitted by the United States to the district court in camera and ex parte. The motion is resolved as follows: Those appellate attorneys who have filed a notice of appearance in this appeal and who maintain an active top secret security clearance ("Au-

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**DATE      PROCEEDINGS**


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thorized Counsel”) will be permitted to review the material (contained on a copy of the disk originally submitted to the district court under docket entry 266) at the John J. Moakley Courthouse (the “Courthouse”) on the following dates and at the following times: **October 15, 16, and 17, 18, and 19, 2018, between the hours of 9:00 a.m. and 4:00 p.m.** The United States is hereby instructed forthwith to confirm in writing to this court the date of the video/audio recording submitted on disk to the district court under docket entry 266 and whether the cover letter accompanying the disk lists an incorrect date. One week prior to **October 15, 2018**, appellate counsel shall submit via a sealed letter to the Clerk the names of those attorneys who intend to review the material and verify that those attorneys hold active top secret security clearances. Authorized Counsel’s review of the material shall not delay the appeal. [16-6001] (TS) [Entered: 10/03/2018 04:59 PM]

\* \* \* \* \*

10/25/18 ORDER entered by Juan R. Torruella, Appellate Judge: Defendant’s Motion to Seal and Limit Access to Authorized Counsel’s Unopposed Motion for Modification to Protective Order is resolved as follows: the Motion to Seal is accepted for filing under seal. Authorized Counsel’s Unopposed

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**DATE      PROCEEDINGS**


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Motion for Modification to Protective Order is resolved as follows: paragraph (5) of the Court's October 3, 2018 Order is modified as follows: "(5) Only Authorized Counsel and Learned Counsel (Clifford Gardner and Gail K. Johnson) shall be privy to the content of the material and shall not share it with defendant or any other members of the defense team[.]" [16-6001] (MNH) [Entered: 10/25/2018 08:57 AM]

\* \* \* \* \*

12/31/18    OVERSIZED ADDENDUM filed by Appellant Dzhokhar A. Tsarnaev. Number of volumes: 1. Number of copies: 10. Electronic Material: 10 USB drives. Certificate of service dated 12/27/2018. [16-6001]. (JMK) [Entered: 08/28/2019 01:51 PM]

\* \* \* \* \*

1/4/19      APPENDIX filed by Appellant Dzhokhar A. Tsarnaev. Number of volumes: 26. Number of copies: 5. Certificate of service dated 12/27/2018. [16-6001] (TS) [Entered: 01/04/2019 08:17 AM]

\* \* \* \* \*

1/7/19      SEALED APPENDIX filed by Appellant Dzhokhar A. Tsarnaev. Number of volumes: 1. Number of copies: 5. Certifi-



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DATE	PROCEEDINGS
	cate of service dated 12/27/2018. [16-6001] (TS) [Entered: 01/07/2019 03:36 PM]
	* * * * *
1/7/19	SEALED APPELLANT'S BRIEF filed by Appellant Dzhokhar A. Tsarnaev. Certifi- cate of service dated 12/27/2018.. [16-6001] (TS) [Entered: 01/07/2019 03:47 PM]
1/7/19	PARTIALLY REDACTED APPEL- LANT'S BRIEF filed by Appellant Dzhok- har A. Tsarnaev. Certificate of service dated 12/27/2018. Nine paper copies iden- tical to that of the electronically filed brief must be submitted so that they are received by the court on or before 01/14/2019. <b><i>Brief due 06/27/2019 for APPELLEE United States.</i></b> [16-6001]. (TS) [Entered: 01/07/2019 04:04 PM]
	* * * * *
4/25/19	PLEADING tendered: Authorized Coun- sel's Motion For Partial Reconsideration of Disclosure of Government Ex Parte Tran- scripts Concerning "Discovery Matters" <b><i>provisionally filed under seal</i></b> filed by Appel- lant Dzhokhar A. Tsarnaev. [16-6001] (TS) [Entered: 04/25/2019 02:19 PM]
	* * * * *
4/30/19	PLEADING tendered: Government's Op- position to Authorized Counsel's Motion for Leave to File a Supplemental Opening Brief

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**DATE      PROCEEDINGS**


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*provisionally filed under seal* filed by Appellee US. [16-6001] (TS) [Entered: 04/30/2019 12:03 PM]

\* \* \* \* \*

5/6/19      PLEADING tendered: Authorized Counsel's Reply to Government's Opposition to File a Supplemental Opening Brief and Reply in Support of Motion for Leave to File a Supplemental Opening Brief *provisionally filed under seal* filed by Appellant Dzhokhar A. Tsarnaev. [16-6001] (TS) [Entered: 05/06/2019 02:13 PM]

\* \* \* \* \*

5/21/19      ORDER entered by Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge: Defendant's Motion for Leave to File a Supplemental Opening Brief is allowed. The supplemental brief shall be limited to 10 pages and shall be filed within 14 days following the issuance of this order. Defendant's Motion for Partial Reconsideration of Disclosure of Government Ex Parte Transcripts Concerning Discovery Matters is denied without prejudice to defendant re-raising the issue, if necessary, within 30 days after the appeal is fully briefed. [16-6001] (KPC) [Entered: 05/21/2019 11:36 AM]

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**DATE      PROCEEDINGS**


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\*   \*   \*   \*   \*

5/29/19    PLEADING tendered:    Authorized Counsel's Motion to Disclose on Appeal Recordings of Ibragim Todashev's Final Interview with Law Enforcement ***provisionally filed under seal*** filed by Appellant Dzhokhar A. Tsarnaev.    Certificate of service dated 05/24/2019.    [16-6001].    CLERK'S NOTE: Docket entry was edited to modify the docket text.    (TS) [Entered:    05/29/2019 12:37 PM]

\*   \*   \*   \*   \*

5/31/19    PLEADING tendered:    Government's Opposition to Authorized Counsel's Motion to Disclose on Appeal Recordings of Ibragim Todashev's Final Interview with Law Enforcement ***provisionally filed under seal*** filed by Appellee US.    [16-6001] (TS) [Entered: 05/31/2019 02:52 PM]

\*   \*   \*   \*   \*

6/5/19    PLEADING tendered:    ***Provisionally filed under seal*** Authorized Counsel's Reply in Support of Motion to Disclose on Appeal Recordings of Ibragim Todahsev's Final Interview with Law Enforcement filed by Appellant Dzhokhar A. Tsarnaev.    [16-6001] (TS) [Entered:    06/05/2019 12:01 PM]

\*   \*   \*   \*   \*

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DATE	PROCEEDINGS
6/13/19	SEALED OPENING SUPPLEMENTAL BRIEF RESTRICTED TO AUTHORIZED COUNSEL filed by Appellant Dzhokhar A. Tsarnaev. Number of copies: 9 and 2 disks. Certificate of service dated 06/02/2019. [16-6001] (TS) [Entered: 06/13/2019 12:10 PM]
* * * * *	
6/27/19	APPELLEE'S REDACTED BRIEF filed by Appellee US. Certificate of service dated 06/27/2019. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 07/05/2019. [16-6001]. CLERK'S NOTE: Docket entry was edited to modify the docket text. [16-6001]. (LIM) [Entered: 06/27/2019 04:11 PM]
* * * * *	
6/28/19	APPELLEE'S SEALED BRIEF filed by Appellee US. Number of copies: 2. Certificate of service dated 06/27/2019. Seven paper copies identical to that of the brief filed must be submitted so that they are received by the court on or before 07/05/2019. Reply brief due 08/26/2019 for APPELLANT Dzhokhar A. Tsarnaev. [16-6001]. CLERK'S NOTE: Docket entry was edited to modify the docket text. [16-6001] (LIM) [Entered: 06/28/2019 03:05 PM]

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**DATE      PROCEEDINGS**


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6/28/19    SUPPLEMENTAL APPENDIX filed by Appellee US. Number of volumes: 1. Number of copies: 5. Electronic Exhibit: 6 USB Drives. Certificate of service dated 06/27/2019. [16-6001] (LIM) [Entered: 06/28/2019 03:19 PM]

\*   \*   \*   \*   \*

7/24/19    SECOND SUPPLEMENTAL BRIEF filed by Appellant Dzhokhar A. Tsarnaev. Certificate of service dated 07/14/2019. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 07/31/2019. [16-6001] (TS) [Entered: 07/24/2019 10:14 AM]

\*   \*   \*   \*   \*

7/31/19    ORDER entered by Juan R. Torruella, Appellate Judge: Authorized Counsel's Motion to Disclose on Appeal Recordings of Ibragim Todashev's Final Interview with Law Enforcement (the "Recordings") is granted as follows. The government shall produce a single copy of the Recordings to defendant's Authorized Counsel *within three business days following the issuance of this order*. Authorized Counsel shall treat the Recordings as sealed and shall not make copies. Only Authorized Counsel and Learned Counsel (Clifford Gardner and Gail K. John-

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**DATE      PROCEEDINGS**


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son) shall be privy to the content of the Recordings and shall not share it with defendant or any other members of the defense team. Authorized Counsel shall file any supplemental brief relating to the Recordings under seal ***within ten calendar days after Authorized Counsel's receipt of the Recordings.*** The government shall file any responsive supplemental brief under seal within ten calendar days after Authorized Counsel files the supplemental brief. Any reply brief shall be filed under seal within three calendar days after the government files its responsive supplemental brief. The government shall file, on one or more electronic discs, a copy of the Recordings with this court under seal at the same time as the Recordings are produced to defendant's Authorized Counsel. The court must be provided with six copies of the disc(s) which should not be password protected. No extensions will be granted. Authorized Counsel ***shall return their copy of the Recordings to the government at the time they file the reply.*** [16-6001] (TS) [Entered: 07/31/2019 04:18 PM]

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8/6/19      SEALED SUPPLEMENTAL APPENDIX  
 filed by Appellee US. Number of volumes:  
 Vol. 2 (sealed).      Number of copies:    5.

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DATE	PROCEEDINGS
	[16-6001] (TS) [Entered: 08/06/2019 01:50 PM]
8/16/19	SEALED THIRD SUPPLEMENTAL BRIEF filed by Appellant Dzhokhar A. Tsarnaev. Number of copies: 9. Certificate of service dated 08/15/2019. [16-6001] (LIM) [Entered: 08/16/2019 10:49 AM]
	* * * * *
8/26/19	SEALED SUPPLEMENTAL BRIEF filed by Appellee US. Number of copies: 9. Certificate of service dated 08/26/2019.. [16-6001] (TS) [Entered: 08/26/2019 12:41 PM]
	* * * * *
8/30/19	SECOND SUPPLEMENTAL BRIEF filed by Appellee US. Certificate of service dated 08/30/2019. Nine paper copies identical to that of the electronically filed brief must be submitted so that they are received by the court on or before 09/03/2019. [16-6001] (DK) [Entered: 08/30/2019 02:43 PM]
	* * * * *
9/25/19	ORDER entered by Juan R. Torruella, Appellate Judge: Authorized Counsel's Unopposed Motion for Second Modification to Protective Order is resolved as follows: paragraph (5) of the Court's October 3, 2018 Order, as modified by the Court's October

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**DATE      PROCEEDINGS**


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25, 2018, Order is further modified as follows: “(5) Only Authorized Counsel, Learned Counsel (Clifford Gardner and Gail K. Johnson), and Mia Eisner-Grynberg and Daniel Habib of the Federal Defenders-NY shall be privy to the content of the material and shall not share it with defendant or other members of the defense team, if any[.]” [16-6001] (TS) [Entered: 09/25/2019 02:09 PM]

\* \* \* \* \*

10/18/19 REPLY BRIEF filed under seal by Appellant Dzhokhar A. Tsarnaev. Number of copies: 9. Certificate of service dated 10/10/2019.. [16-6001] (DPO) [Entered: 10/18/2019 10:00 AM]

10/18/19 REDACTED REPLY BRIEF filed by Appellant Dzhokhar A. Tsarnaev. Certificate of service dated 10/10/2019. [16-6001] (DPO) [Entered: 10/18/2019 10:02 AM]

\* \* \* \* \*

12/12/19 CASE argued. Panel: Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge. Arguing attorneys: Daniel Habib for Dzhokhar A. Tsarnaev and William A. Glaser for US. [16-6001] (DJT) [Entered: 12/12/2019 01:32 PM]

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**DATE      PROCEEDINGS**


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7/31/20    OPINION issued by Juan R. Torruella, Appellate Judge; Rogeriee Thompson, Appellate Judge and William J. Kayatta, Jr., Appellate Judge.    Published.    [16-6001] (DPO) [Entered:    07/31/2020 02:56 PM]

7/31/20    JUDGMENT.    16-6001 Dzhokhar Tsarnaev's convictions on Counts 13, 15, and 18 are reversed, and the district court is directed to enter a judgment of acquittal on those counts.    Dzhokhar Tsarnaev's death sentences on Counts 4, 5, 9, 10, and 14 are vacated, and the matter is remanded to the district court with directions to hold a new penalty-phase trial consistent with the opinion issued this day and with Local Rule 40.1(k)(1) of the District of Massachusetts. [16-6001] (DPO) [Entered:    07/31/2020 03:00 PM]

\*   \*   \*   \*   \*

9/14/20    ORDER entered by Rogeriee Thompson, Appellate Judge.    Upon consideration of the government's assented-to motion to stay mandate, the motion is granted.    The issuance of the mandate is hereby stayed until December 28, 2020.    If within that period a timely petition for writ of certiorari is filed, the stay shall continue until final disposition of such petition by the United States Supreme Court.    Should any petition for writ certiorari be denied, mandate shall issue

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**DATE      PROCEEDINGS**


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forthwith. Counsel for the government is directed to promptly notify the Clerk of this court both of the filing of any such petition for writ of certiorari and its disposition. [16-6001] (GAK) [Entered: 09/14/2020 03:44 PM]

\* \* \* \* \*

4/6/21 ORDER entered by Rogerie Thompson, Appellate Judge: Defendant-appellant's Motion to Seal and Limit Access to Authorized Counsel's Unopposed Motion for Third Modification to Protective Order is granted. The motion for modification is accepted for filing under seal. It is further ordered that defendant-appellant's Unopposed Motion for Third Modification to Protective Order is granted and paragraph (5) of the Court's October 3, 2018 Order is modified as follows: "(5) Only Authorized Counsel, Learned Counsel (Clifford Gardner and Gail K. Johnson), Mia Eisner-Grynberg and Daniel Habib of the Federal Defenders-NY, and Ginger Anders of Munger, Tolles & Olson LLP shall be privy to the content of the material and shall not share it with defendant or other members of the defense team, if any[.]" [16-6001]. CLERK'S NOTE: Docket entry was edited to modify the docket text. (DPO) [Entered: 04/06/2021 09:32 AM]

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**DATE      PROCEEDINGS**

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5/12/21    ORDER entered by Rogeriee Thompson,  
Appellate Judge: The joint motion for mod-  
ification of protective order and defendant-  
appellant's motion to seal the joint motion  
are granted.    [16-6001] (DPO) [Entered:  
05/12/2021 11:35 AM]

\*   \*   \*   \*   \*

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS  
(BOSTON)

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Docket No. 1:13-cr-10200-GAO-1  
UNITED STATES OF AMERICA, PLAINTIFF

*v.*

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

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DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * * *
6/27/13	<u>58</u>	INDICTMENT as to Dzhokhar A. Tsarnaev (1) count(s) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15-18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30. (Attachments: # <u>1</u> JS45) (Catino3, Theresa) (Entered: 06/27/2013)
		* * * * *
10/7/13	<u>112</u>	MOTION to Compel <i>Discovery</i> (Redacted for Public Docket) as to Dzhokhar A. Tsarnaev. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Exhibit B, # <u>3</u> Exhibit C) (Fick, William) (Additional attachment(s) added on 10/9/2013,

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>pursuant to the court's order <u>114</u> # <u>4</u> Sealed Unredacted Motion to Compel # <u>5</u> Sealed Unredacted Exhibit A, # <u>6</u> Sealed Unredacted Exhibit B) (Lyness, Paul). (Entered: 10/07/2013)</p> <p>* * * * *</p>
10/21/13	<u>129</u>	<p>MEMORANDUM in Opposition by USA as to Dzhokhar A. Tsarnaev re <u>112</u> MOTION to Compel <i>Discovery (Redacted for Public Docket)</i> (Weinreb, William) (Entered: 10/21/2013)</p> <p>* * * * *</p>
11/7/13	<u>144</u>	<p>REPLY TO RESPONSE to Motion by Dzhokhar A. Tsarnaev re <u>112</u> MOTION to Compel <i>Discovery (Redacted for Public Docket)</i> (Fick, William) (Entered: 11/07/2013)</p> <p>* * * * *</p>
11/21/13	<u>149</u>	<p>Transcript of Status Conference and Motion Hearing as to Dzhokhar A. Tsarnaev held on November 12, 2013, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 11/21/2013)</p>

DATE	DOCKET NUMBER PROCEEDINGS	
		* * * * *
11/27/13	<u>151</u>	Judge George A. OToole, Jr: ORDER entered granting in part and denying in part <u>112</u> Motion to Compel as to Dzhokhar A. Tsarnaev (1) (Lyness, Paul) (Entered: 11/27/2013)
		* * * * *
1/30/14	<u>167</u>	NOTICE <i>Of Intent</i> by USA as to Dzhokhar A. Tsarnaev (Pel- legrini, Nadine) (Entered: 01/30/2014)
		* * * * *
3/28/14	<u>233</u>	Second MOTION to Com- pel <i>Discovery of Favorable Ev-</i> <i>idence</i> as to Dzhokhar A. Tsar- naev. (Conrad, Miriam) (En- tered: 03/28/2014)
		* * * * *
4/11/14	<u>243</u>	Opposition by USA as to Dzhokhar A. Tsarnaev re <u>235</u> MOTION to Compel <i>Compliance with Automatic Discovery Obligations</i> , <u>233</u> Second MOTION to Compel <i>Discovery of Favorable Evidence</i> (Weinreb, William) (Entered: 04/11/2014)

DATE	DOCKET NUMBER PROCEEDINGS	
		* * * * *
4/17/14	<u>255</u>	Judge George A. OToole, Jr: ORDER entered deny- ing <u>233</u> Motion to Compel as to Dzhokhar A. Tsarnaev (1); denying <u>235</u> Motion to Compel as to Dzhokhar A. Tsarnaev (1) (Danieli, Chris) (Entered: 04/17/2014)
		* * * * *
4/28/14	<u>270</u>	Transcript of Motion Hearing as to Dzhokhar A. Tsarnaev held on April 16, 2014, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 04/28/2014)
		* * * * *
6/13/14	<u>367</u>	Supplemental MEMORAN- DUM in Support by Dzhokhar A. Tsarnaev re <u>233</u> Second MOTION to Compel <i>Discovery of Favorable Evidence</i> (Attach- ments: # <u>1</u> Exhibit)(Conrad, Miriam) (Entered: 06/13/2014)
		* * * * *
6/18/14	<u>376</u>	MOTION to Change Venue as to Dzhokhar A. Tsarnaev. (Clarke, Judy) (Entered:

DATE	DOCKET NUMBER	PROCEEDINGS
06/18/2014)		
* * * * *		
7/1/14	<u>405</u>	Opposition by USA as to Dzhokhar A. Tsarnaev re <u>376</u> MOTION to Change Venue (Pellegrini, Nadine) (Entered: 07/01/2014)
* * * * *		
8/7/14	<u>461</u>	REPLY TO RESPONSE to Motion by Dzhokhar A. Tsarnaev re <u>376</u> MOTION to Change Venue (Attachments: # <u>1</u> Affidavit Declaration, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit, # <u>8</u> Exhibit, # <u>9</u> Exhibit, # <u>10</u> Exhibit, # <u>11</u> Exhibit, # <u>12</u> Exhibit, # <u>13</u> Exhibit, # <u>14</u> Exhibit, # <u>15</u> Exhibit, # <u>16</u> Exhibit, # <u>17</u> Exhibit, # <u>18</u> Exhibit, # <u>19</u> Exhibit, # <u>20</u> Exhibit, # <u>21</u> Exhibit, # <u>22</u> Exhibit, # <u>23</u> Exhibit, # <u>24</u> Exhibit, # <u>25</u> Exhibit) (Clarke, Judy) (Entered: 08/07/2014)
* * * * *		
8/25/14	<u>512</u>	SUR-REPLY to Motion by



DATE	DOCKET NUMBER PROCEEDINGS	
		USA as to Dzhokhar A. Tsarnaev re <u>376</u> MOTION to Change Venue (Weinreb, William) (Entered: 08/25/2014)
		* * * * *
9/5/14	<u>538</u>	Transcript of Status Conference as to Dzhokhar A. Tsarnaev held on August 14, 2014, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/05/2014)
		* * * * *
9/24/14	<u>577</u>	Judge George A. OToole, Jr: OPINION AND ORDER entered denying <u>376</u> Motion for Change of Venue as to Dzhokhar A. Tsarnaev (1); granting in part and denying in part <u>518</u> Motion to Continue as to Dzhokhar A. Tsarnaev (1) (Jury Trial set for 1/5/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr., Final Pretrial Conference set for 12/18/2014 10:00 AM in Courtroom 9 before Judge George A. OToole Jr.); granting in part and denying in part <u>529</u> Motion for Order as to Dzhokhar A. Tsarnaev (1);

DATE	DOCKET NUMBER	PROCEEDINGS
		granting in part and denying in part <u>530</u> Motion to Compel as to Dzhokhar A. Tsarnaev (1); granting in part and denying in part <u>245</u> Motion to Compel as to Dzhokhar A. Tsarnaev (1) (Lyness, Paul) (Entered: 09/24/2014)
		* * * * *
10/10/14	<u>602</u>	MOTION to Compel as to Dzhokhar A. Tsarnaev. (Fick, William) (Additional attachment(s) added on 10/20/2014: # <u>1</u> Exhibit Sealed Exhibit A, # <u>2</u> Exhibit—Letter Re: United States v. Dzhokhar Tsarnaev, Crim. No. 13-10200-GAO (July 25, 2014), # <u>3</u> Exhibit Sealed Exhibit C, # <u>4</u> Exhibit Sealed Exhibit D, # <u>5</u> Exhibit Sealed Exhibit E, # <u>6</u> Exhibit Sealed Exhibit F, # <u>7</u> Exhibit Sealed Exhibit G, # <u>8</u> Exhibit Sealed Exhibit H, Unsealed pursuant to order (docket no. 1749). # <u>9</u> Exhibit Sealed Exhibit I) (Danieli, Chris). Unsealed pursuant to electronic order (docket no. 1627). Modified on 2/11/2016

DATE	DOCKET NUMBER PROCEEDINGS	
		(Abaid, Kimberly). Modified on 3/4/2016 (Danieli, Chris). (Additional attachment(s) added on 9/26/2016: # <u>10</u> Redacted Discovery Letter from Govt., # <u>11</u> Redacted Exhibit-Letter from Defense, # <u>12</u> Redacted Exhibit-Letter from Defense, # <u>13</u> Redacted Exhibit—Letter from Govt., # <u>14</u> Redacted Exhibit-Letter from Govt., # <u>15</u> Redacted Exhibit-Letter from Defense)—pursuant to electronic order (docket no. 1700) (Nicewicz, Craig). Modified on 11/21/2018 (adminn.). (Entered: 10/10/2014)
		* * * * *
10/24/14	<u>618</u>	Opposition by USA as to Dzhokhar A. Tsarnaev re <u>602</u> MOTION to Compel (Weinreb, William) (Entered: 10/24/2014)
		* * * * *
11/4/14	<u>634</u>	REPLY TO RESPONSE to Motion by Dzhokhar A. Tsarnaev re <u>602</u> MOTION to Compel (Fick, William) (Entered: 11/04/2014)

DATE	DOCKET NUMBER PROCEEDINGS	
		* * * * *
11/25/14	<u>675</u>	Judge George A. OToole, Jr: OPINION AND ORDER entered denying <u>602</u> Motion to Compel as to Dzhokhar A. Tsarnaev (1) (Danieli, Chris) Unsealed pursuant to electronic order (docket no. 1627). Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/7/2016 (Danieli, Chris). (Entered: 11/25/2014)
		* * * * *
12/1/14	<u>684</u>	Second MOTION to Change Venue as to Dzhokhar A. Tsarnaev. (Fick, William) (Entered: 12/01/2014)
		* * * * *
12/1/14	<u>686</u>	MEMORANDUM in Support by Dzhokhar A. Tsarnaev re <u>684</u> Second MOTION to Change Venue (Attachments: # <u>1</u> Exhibit 1 (Smith Declaration), # <u>2</u> Exhibit 1a - search terms, # <u>3</u> Exhibit 1b - Globe log and articles, # <u>4</u> Exhibit 1c - Herald log and articles, # <u>5</u> Exhibit 2 (Vidmar Declaration)) (Fick, William) (Attachment 1

DATE	DOCKET NUMBER	PROCEEDINGS
		replaced on 2/19/2015) (Danieli, Chris). Modified on 2/19/2015 (Danieli, Chris). Exhibit 1 (Smith Declaration) replaced with paragraphs stricken and Exhibit 2 (Vidmar Declaration) stricken pursuant to Jan. 2, 2015 Opinion and Order (dkt. no. 887). (Entered: 12/01/2014)
		* * * * *
12/1/14	<u>688</u>	Proposed Jury Instructions by Dzhokhar A. Tsarnaev (Attachments: # <u>1</u> Agreed instructions, # <u>2</u> Agreed instructions) (Bruck, David) (Entered: 12/01/2014)
		* * * * *
12/2/14	<u>702</u>	Motion for Leave to File Document Under Seal (Attachments: # <u>1</u> Exhibit)(Danieli, Chris). Unsealed pursuant to electronic order (docket no. 1627). Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/7/2016 (Danieli, Chris). (Entered: 12/03/2014)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
12/8/14	<u>713</u>	Juror Questionnaire Preliminary Instructions (Danieli, Chris). Unsealed pursuant to electronic order (docket no.1627). Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/7/2016 (Danieli, Chris). (Entered: 12/08/2014)
* * * * *		
12/8/14	<u>715</u>	Motion to Supplement Agreed-Upon Questionnaire Under Seal (Danieli, Chris). Unsealed pursuant to electronic order (docket no. 1627). Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/7/2016 (Danieli, Chris). (Entered: 12/08/2014)
* * * * *		
12/22/14	<u>796</u>	Opposition by USA as to Dzhokhar A. Tsarnaev re <u>684</u> Second MOTION to Change Venue (Weinreb, William) (Entered: 12/22/2014)
* * * * *		
12/30/14	<u>867</u>	SEALED MOTION (Danieli, Chris) Modified on 4/17/2015 (Lyness, Paul). (Additional attachment(s) added on 9/20/2016: # <u>1</u> Redacted Government

DATE	DOCKET NUMBER	PROCEEDINGS
		Motion in Limine re: Waltham Triple Homicide)—pursuant to electronic order (docket no. 1700) (Nicewicz, Craig). Unsealed pursuant to order (docket no. 1749). Modified on 11/21/2018 (adminn.). (Entered: 12/30/2014)
		* * * * *
12/31/14	876	Judge George A. OToole, Jr: ELECTRONIC ORDER entered denying <u>684</u> Motion for Change of Venue as to Dzhokhar A. Tsarnaev (1); denying <u>829</u> Motion to Continue as to Dzhokhar A. Tsarnaev (1). Explanatory opinions will be issued shortly. (Lyness, Paul) (Entered: 12/31/2014)
		* * * * *
1/5/15		ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Day 1 of Jury Selection as to Dzhokhar A. Tsarnaev held on 1/5/2015 at 9:00 AM and 1:00 PM. Jury selection begins in Jury Assembly Room. Court makes introductory remarks to jury panels. Counsel and the defendant introduced. Jury

DATE	DOCKET NUMBER PROCEEDINGS	
1/6/15	<u>914</u>	<p>Panels sworn. Jury panels complete questionnaires.  * * * (Lyness, Paul) (Entered: 01/06/2015)</p> <p>Judge George A. OToole, Jr: ORDER entered denying <u>715</u> Sealed Motion. Unsealed pursuant to electronic order (docket no. 1627). (Danieli, Chris) Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/2/2016 (Abaid, Kimberly). (Entered: 01/06/2015)</p>
1/6/15		<p>* * * * *</p> <p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Day 2 of Jury Selection as to Dzhokhar A. Tsarnaev held on 1/6/2015 at 9:00 AM and 1:00 PM. Jury selection continues in Jury Assembly Room. Court makes introductory remarks to jury panels. Counsel and the defendant introduced. Jury panels sworn. Jury panels complete questionnaires.  * * * (Lyness, Paul) (Entered: 01/06/2015)</p>



DATE	DOCKET NUMBER PROCEEDINGS	
		* * * * *
1/7/15		ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Day 3 of Jury Selection as to Dzhokhar A. Tsarnaev held on 1/7/2015 at 9:00 AM and 1:00 PM. Jury selection continues in Jury Assembly Room. Court makes introductory remarks to jury panels. Counsel and the defendant introduced. Jury panels sworn. Jury panels complete questionnaires. * * * (Lyness, Paul). (Entered: 01/07/2015)
		* * * * *
1/13/15	<u>951</u>	Sealed Motion to Seal Defendant's Proposed Follow-Up Questions Re Voir Dire. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit, # <u>3</u> Exhibit, # <u>4</u> Exhibit, # <u>5</u> Exhibit, # <u>6</u> Exhibit, # <u>7</u> Exhibit). Unsealed pursuant to electronic order (docket no. 1627). (Danieli, Chris) Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/2/2016 (Abaid,

DATE	DOCKET NUMBER	PROCEEDINGS
		Kimberly). (Entered: 01/13/2015)
		* * * * *
1/15/15	963	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Day 4 of Jury Selection as to Dzhokhar A. Tsarnaev held on 1/15/2015 * * * (Lyness, Paul) (Entered: 01/16/2015)
		* * * * *
1/16/15	973	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Day 5 of Jury Selection as to Dzhokhar A. Tsarnaev held on 1/16/2015, (Jury Selection set for 1/20/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 01/16/2015)
		* * * * *
1/21/15	978	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 1/21/2015. Jury panel sworn. The court

DATE	DOCKET NUMBER	PROCEEDINGS
		gives instructions. (Jury Selection set for 1/22/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 01/21/2015)
1/21/15	<u>979</u>	Defense Follow-Up Voir Dire Questions (Third Request). Unsealed pursuant to electronic order (docket no. 1627). (Danieli, Chris) Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/2/2016 (Abaid, Kimberly). (Entered: 01/21/2015)
1/22/15	<u>980</u>	Third MOTION to Change Venue as to Dzhokhar A. Tsarnaev. (Watkins, Timothy) (Entered: 01/22/2015)
		* * * * *
1/22/15	982	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 1/22/2015. The jury panel is sworn. The court gives its instructions. (Jury Selection set for 1/23/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.)

DATE	DOCKET NUMBER	PROCEEDINGS
		* * * (Lyness, Paul) (Entered: 01/22/2015)
		* * * * *
1/23/15	<u>985</u>	Memorandum in Support of Third Motion for Change of Venue. (Attachments: # <u>1</u> Exhibit). Unsealed pursuant to electronic order (docket no. 1627). (Danieli, Chris) Modified on 2/11/2016 (Abaid, Kimberly). Modified on 3/2/2016 (Abaid, Kimberly). (Entered: 01/23/2015)
		* * * * *
1/26/15	<u>988</u>	Transcript of Lobby Conference as to Dzhokhar A. Tsarnaev held on December 30, 2014, before Judge George A. OToole. * * * (Scalfani, Deborah) (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Lobby Conference redacted by parties)-pursuant to Order (docket no. 1749)) (Halley, Taylor). (Entered: 01/26/2015)
1/26/15	989	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>A. Tsarnaev held on 1/26/2015 Jury panel is sworn. The court gives its instructions. (Jury Se- lection set for 1/29/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (En- tered: 01/26/2015)</p> <p>* * * * *</p>
1/28/15	<u>992</u>	<p>Opposition by USA as to Dzhokhar A. Tsarnaev re <u>980</u> Third MOTION to Change Venue (Weinreb, William) (En- tered: 01/28/2015)</p> <p>* * * * *</p>
1/29/15	995	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 1/29/2015. Jury panel is sworn and the court gives its instructions. (Jury Selection set for 1/30/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (En- tered: 01/29/2015)</p> <p>* * * * *</p>

DATE	DOCKET NUMBER	PROCEEDINGS
1/30/15	997	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 1/30/2015. Jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/2/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr..) * * * (Lyness, Paul) (Entered: 01/30/2015)
		* * * * *
2/4/15	1004	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/4/2015. Jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/5/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr..) * * * (Lyness, Paul) (Entered: 02/04/2015)
		* * * * *
2/5/15	<u>1006</u>	SEALED Transcript of Jury Trial Day Four (Empanelment) as to Dzhokhar A. Tsarnaev held on January 15, 2015, before

DATE	DOCKET NUMBER	PROCEEDINGS
2/5/15	<u>1007</u>	<p>Judge George A. OToole.  * * * (Scalfani, Deborah)  Modified on 2/5/2015 (Scalfani, Deborah). Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Four (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)</p> <p>SEALED Transcript of Jury Trial Day Five (Empanelment) as to Dzhokhar A. Tsarnaev held on January 16, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Five (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)</p>
2/5/15	<u>1008</u>	<p>SEALED Transcript of Jury Trial Day Six (Empanelment) as to Dzhokhar A. Tsarnaev held on January 20, 2015, before</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attach- ment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Six (Empanelment) re- dacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)
2/5/15	<u>1009</u>	SEALED Transcript of Jury Trial Day Seven (Empanel- ment) as to Dzhokhar A. Tsar- naev held on January 21, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attach- ment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Seven (Empanelment) re- dacted by parties pursuant to order (docket # 1749) (Halley, Taylor). (Entered: 02/05/2015)
2/5/15	<u>1010</u>	SEALED Transcript of Jury Trial Day Eight (Empanel- ment) as to Dzhokhar A. Tsar- naev held on January 22, 2015, before Judge George A. OToole.



DATE	DOCKET NUMBER	PROCEEDINGS
		<p>* * * (Scalfani, Deborah)  Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Eight (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)</p>
2/5/15	<u>1011</u>	<p>SEALED Transcript of Jury Trial Day Nine (Empanelment) as to Dzhokhar A. Tsarnaev held on January 23, 2015, before Judge George A. OToole.  * * * (Scalfani, Deborah)  Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Nine (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)</p>
2/5/15	<u>1012</u>	<p>SEALED Transcript of Jury Trial Day Ten (Empanelment) as to Dzhokhar A. Tsarnaev held on January 26, 2015, before Judge George A. OToole.  * * * (Scalfani, Deborah)</p>

DATE	DOCKET NUMBER PROCEEDINGS	
		Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Ten (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)
2/5/15	<u>1013</u>	SEALED Transcript of Jury Trial Day Eleven (Empanelment) as to Dzhokhar A. Tsarnaev held on January 29, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah)
		Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Eleven (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)
2/5/15	<u>1014</u>	SEALED Transcript of Jury Trial Day Twelve (Empanelment) as to Dzhokhar A. Tsarnaev held on January 30, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah)
		Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018:

DATE	DOCKET NUMBER	PROCEEDINGS
2/5/15	<u>1015</u>	<p># <u>1</u> Transcript of Jury Trial Day twelve (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)</p> <p>SEALED Transcript of Jury Trial Day Thirteen (Empanelment) as to Dzhokhar A. Tsarnaev held on February 4, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Thirteen (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/05/2015)</p>
2/5/15	1018	<p>* * * * *</p> <p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/5/2015. Jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/6/2015</p>

DATE	DOCKET NUMBER	PROCEEDINGS
2/6/15	<u>1019</u>	<p>09:00 AM in Courtroom 9 before Judge George A. OToole Jr.)  * * * (Lyness, Paul) (Entered: 02/05/2015)</p> <p>SEALED Transcript of Jury Trial Day Fourteen (Empanelment) as to Dzhokhar A. Tsarnaev held on February 5, 2015, before Judge George A. OToole.  * * * (Scalfani, Deborah)  Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Fourteen (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/06/2015)</p>
2/6/15	<u>1021</u>	<p>* * * * *</p> <p>Judge George A. OToole, Jr: OPINION AND ORDER entered denying <u>980</u> Motion for Change of Venue; denying <u>984</u> Motion to Amend; denying <u>993</u> Motion for Leave to File; denying <u>996</u> Motion for Leave to File; denying <u>1003</u> Motion to Stay Jury Selection and Trial Pending</p>

DATE	DOCKET NUMBER PROCEEDINGS	
		Disposition of Second Mandamus Petition as to Dzhokhar A. Tsarnaev (1) (Danieli, Chris) (Entered: 02/06/2015)
		* * * * *
2/6/15	1023	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/6/2015. The jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/9/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 02/06/2015)
2/8/15	<u>1024</u>	SEALED Transcript of Jury Trial Day Fifteen (Empanelment) as to Dzhokhar A. Tsarnaev held on February 6, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Fifteen (Empanelment) redacted by parties pursuant to

DATE	DOCKET NUMBER	PROCEEDINGS
		order (docket # 1749)) (Halley, Taylor). (Entered: 02/08/2015)
		* * * * *
2/11/15	<u>1026</u>	SEALED Transcript of Jury Trial Day Sixteen (Empanelment) as to Dzhokhar A. Tsarnaev held on February 11, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Sixteen (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/11/2015)
2/12/15	1027	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/12/2015. Jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/13/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr..) * * * (Lyness, Paul) (Entered: 02/12/2015)

DATE	DOCKET NUMBER	PROCEEDINGS
2/13/15	<u>1028</u>	SEALED Transcript of Jury Trial Day Seventeen (Empanelment) as to Dzhokhar A. Tsarnaev held on February 12, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Seventeen (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/13/2015)
2/13/15	1030	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/13/2015. Jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/17/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr..) * * * (Lyness, Paul) (Entered: 02/13/2015)

DATE	DOCKET NUMBER	PROCEEDINGS
2/13/15	<u>1034</u>	SEALED Transcript of Jury Trial Day Eighteen (Empanelment) as to Dzhokhar A. Tsarnaev held on February 13, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). Unsealed pursuant to order (docket no. 1749). Modified on 11/21/2018 (adminn, ). (Entered: 02/15/2015)
2/17/15	1040	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/17/2015. Jury panel is sworn and the court gives its instructions. * * * (Lyness, Paul) (Entered: 02/18/2015)
2/18/15	<u>1041</u>	SEALED Transcript of Jury Trial Day Nineteen (Empanelment) as to Dzhokhar A. Tsarnaev held on February 17, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani,



DATE	DOCKET NUMBER	PROCEEDINGS
		Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Nineteen (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/18/2015)
		* * * * *
2/18/15	1048	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/18/2015 Jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/19/2015 11:30 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 02/18/2015)
2/19/15	<u>1049</u>	SEALED Transcript of Jury Trial Day Twenty (Empanelment) as to Dzhokhar A. Tsarnaev held on February 18, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial

DATE	DOCKET NUMBER	PROCEEDINGS
		Day Twenty (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/19/2015)
		* * * * *
2/19/15	<u>1052</u>	SEALED Transcript of Jury Trial Day Twenty One (Empanelment) as to Dzhokhar A. Tsarnaev held on February 19, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Twenty One (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/19/2015)
		* * * * *
2/20/15	1054	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/20/2015. Jury panel is sworn and the court gives its instructions. (Jury Selection set for 2/23/2015 09:00 AM in Courtroom 9 before

DATE	DOCKET NUMBER	PROCEEDINGS
		Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 02/20/2015)  * * * * *
2/23/15	<u>1058</u>	SEALED Transcript of Jury Trial Day Twenty Two (Empan- elment) as to Dzhokhar A. Tsar- naev held on February 20, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attach- ment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Twenty Two (Empanel- ment) redacted by parties pur- suant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/23/2015)  * * * * *
2/24/15	1081	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/24/2015. The jury panel is sworn and the court gives its instruc- tions. <u>1069</u> is GRANTED to the extent the defendant seeks additional time to respond to

DATE	DOCKET NUMBER	PROCEEDINGS
		the motions at issue. On or before February 28, the defendant shall submit by email oppositions to any motions in limine which the parties agree should be resolved prior to opening statements. (Lyness, Paul) (Entered: 02/26/2015)
2/25/15	<u>1075</u>	SEALED Transcript of Jury Trial Day Twenty Three (Empanelment) as to Dzhokhar A. Tsarnaev held on February 24, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Twenty Three (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/25/2015)
		* * * * *
2/25/15	1082	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 2/25/2015. The jury panel is sworn and the

DATE	DOCKET NUMBER PROCEEDINGS	
		court gives its instructions. * * * (Lyness, Paul) (Entered: 02/26/2015)
		* * * * *
2/26/15	<u>1083</u>	SEALED Transcript of Jury Trial Day Twenty Four (Empanelment) as to Dzhokhar A. Tsarnaev held on February 25, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified on 3/5/2015 (Scalfani, Deborah). (Additional attachment(s) added on 12/6/2018: # <u>1</u> Transcript of Jury Trial Day Twenty Four (Empanelment) redacted by parties pursuant to order (docket # 1749)) (Halley, Taylor). (Entered: 02/26/2015)
		* * * * *
3/2/15	<u>1108</u>	Fourth MOTION to Change Venue as to Dzhokhar A. Tsarnaev. (Attachments: # <u>1</u> Exhibit A)(Fick, William) Modified on 3/5/2015 (Lyness, Paul). (Entered: 03/02/2015)
3/2/15	<u>1109</u>	Opposition by USA as to Dzhokhar A. Tsarnaev re <u>1108</u> Fourth MOTION to Change Ven-

DATE	DOCKET NUMBER	PROCEEDINGS
		ue (Weinreb, William) (Entered: 03/02/2015)
		* * * * *
3/3/15	1112	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Selection as to Dzhokhar A. Tsarnaev held on 3/3/2015. Counsel exercise their peremptory challenges. The following jurors are seated: #35, 41, 83, 102, 138, 229, 286, 349, 395, 441, 480, 487, 552, 567, 588, 598, 608, 638 (Jury Trial set for 3/4/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr..) * * * (Lyness, Paul) (Entered: 03/03/2015)
		* * * * *
3/4/15	1114	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/4/2015. The jury is duly empanelled and sworn. Opening statements are made. Testimony of government witnesses' Thomas Grilk, Shane O'Hara, Colton Kilgore, Rebekah Gregory,

DATE	DOCKET NUMBER PROCEEDINGS	
		<p>Sydney Corcoran, and Karen McWaters given. Evidence presented. Motion <u>1080</u> is DENIED. Motion <u>1108</u> DENIED. Motion <u>1103</u> GRANTED. Substantive motion attached to 1103, which does not yet have a docket number, is DENIED. Motion <u>820</u> MOOT. Motion <u>728</u> MOOT. Motion <u>866</u> GRANTED. Jury Trial set for 3/5/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) Modified on 3/4/2015 (Lyness, Paul). Modified on 3/5/2015 (Lyness, Paul). (Entered: 03/04/2015)</p> <p>* * * * *</p>
3/5/15	1119	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/5/2015 Testimony of government witnesses' Frank Chiola, Jeff Bauman, Richard Claflin, James Marinelli, James Tyre, Alan</p>

DATE	DOCKET NUMBER PROCEEDINGS	
		Hern, Lauren Woods, Roseanne Sdoia, Thomas Barrett, William Richard given. Evidence presented. (Jury Trial set for 3/9/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/05/2015)
		* * * * *
3/9/15	1134	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/9/2015. Testimony of government witness Jessica Kensky, Danling Zhou, Matt Patterson, James Bath, Anthony Imel, James Hooley, William Gross, Katelin Harper, Gregory Homel, Christopher Frias. Testimony of Stephen Kimball begins. Evidence presented. (Jury Trial set for 3/10/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) Modified on 3/10/2015 (Lyness, Paul). (Entered: 03/09/2015)



DATE	DOCKET NUMBER	PROCEEDINGS
3/10/15	1135	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/10/2015. Testimony of government witness Stephen Kimball concludes. Testimony of government witnesses' Todd Brown, Jeffrey Rolands, Kristen Koch, Michael Macias, Jason Costello, and Paula Ernst given. Testimony of government witness Sarah DeLair begins. Evidence presented. (Jury Trial set for 3/11/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/10/2015)
		* * * * *
3/11/15	1143	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/11/2015. Testimony of government witness Sarah DeLair concludes. Testimony of government witnesses' Chad Fitzgerald, James Eppard, John DiFava, David

DATE	DOCKET NUMBER	PROCEEDINGS
3/12/15	1144	<p>Sacco, Clarence Henniger, Brendan O'Hurn, Matthew Isgur, and Nathan Harman given. Evidence presented (Jury Trial set for 3/12/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/11/2015)</p> <p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/12/2015. Testimony of government witnesses Michael Cashman, Anthony Grassi, Renee Robinson, Alan Mednick, Eddie Lakkis, Dung Meng, Willilam O'Keefe, Michael Nickerson, Joseph Sullivan given. Evidence presented. (Jury Trial set for 3/16/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/12/2015)</p> <p>* * * * *</p>
3/16/15	1157	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr:</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		Jury Trial as to Dzhokhar A. Tsarnaev held on 3/16/2015. The jury views the boat at an off-site facility. Testimony of government witnesses Joseph Reynolds, John Maclellan, Jeffrey Pugliese, James Floyd, Andrew Kitzenberg, Heather Studley, Francis Hughes given. Evidence presented. (Jury Trial set for 3/17/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/16/2015)
		* * * * *
3/17/15	1161	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/17/2015. Testimony of government witnesses David Henneberry, Stephan Silva, Michael Nealon, Jessica Ulmer given. Evidence presented. (Jury Trial set for 3/18/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * *

DATE	DOCKET NUMBER	PROCEEDINGS
		(Lyness, Paul) (Entered: 03/17/2015)
		* * * * *
3/17/15	<u>1178</u>	Juror Questionnaire. (Danieli, Chris) (Entered: 03/17/2015)
3/18/15	1179	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/18/2015. Testimony of government wit- nesses Robert McCarthy, Mat- thew Hess, Patrick Moynihan, D.J. Fife, Stephanie Waite, Jen- nifer Montgomery given. Testi- mony of government witness Brian Corcoran begins. Evi- dence presented. (Jury Trial set for 3/19/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/18/2015)
		* * * * *
3/19/15	1187	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/19/2015,

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>Testimony of government witness Brian Corcoran concludes. Testimony of government witness Philip Christiano given. Testimony of government witness Kevin Swindle begins. Evidence presented. (Jury Trial set for 3/23/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr..) * * * (Lyness, Paul) (Entered: 03/19/2015)</p> <p>* * * * *</p>
3/23/15	1193	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/23/2015. Testimony of government witness Kevin Swindle concludes. The court denies #865 as to Dr. Matthew Levitt. Testimony of government witness Matthew Levitt begins. Evidence presented. (Jury Trial set for 3/24/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr..) * * * (Lyness, Paul) (Entered: 03/23/2015)</p> <p>* * * * *</p>

DATE	DOCKET NUMBER	PROCEEDINGS
3/24/15	1195	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/24/2015. The court denies document number 729. Testimony of government witness Matthew Levitt conclude. Testimony of government witnesses Colleen Tanguay, David Cahill, Matthew Riportella, Timothy Dowd, Christopher Donahue, Miguel Colon, and Mark Preble given. Testimony of government witness Kimberly Franks begins. Evidence presented. (Jury Trial set for 3/25/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul). (Entered: 03/24/2015)
		* * * * *
3/25/15	1202	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/25/2015. Testimony of government wit-

DATE	DOCKET NUMBER	PROCEEDINGS
		ness Kimberly Franks concludes. Testimony of government witnesses Christopher Derks, Christian Fierabend, Kenneth Benton, Olga LaFond, Muna Shishani, and Heidi Williams given. Evidence presented. (Jury Trial set for 3/26/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/25/2015)
		* * * * *
3/26/15	1214	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/26/2015. Testimony of government witnesses David McCollam, Edward Knapp and Jennifer Hammers given. Evidence presented. (Jury Trial set for 3/30/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 03/26/2015)
		* * * * *
3/30/15	1224	ELECTRONIC Clerk's Notes for proceedings held before

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/30/2015. Testimony of government wit- nesses Katherine Lindstrom, Michelle Gamble, and Henry Nieles given. Government rests. Court reserves decision on <u>1223</u>. Testimony of de- fendant witnesses Michelle Gamble and Gerald Grant given. Evidence presented. (Jury Trial set for 3/31/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (En- tered: 03/30/2015)</p> <p>* * * * *</p>
3/31/15	1228	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 3/31/2015. Testimony of defendants wit- nesses Mark Spencer and Elena Graff given. Evidence pre- sented. Defense rests. The defendant renews his Rule 29A motion after the defendant rested. Court reserved. The</p>



DATE	DOCKET NUMBER	PROCEEDINGS
		<p>court reads a joint stipulation into the record. After the jurors left, the defendant renewed his Rule 29A motion. Court reserved. * * *</p> <p>(Lyness, Paul) Modified on 4/1/2015 (Lyness, Paul). (Entered: 04/01/2015)</p> <p>* * * * *</p>
4/6/15	1242	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/6/2015. The court gives the first part of its charge. Closing statements are given by the parties. After the government rebuttal, defense moves for a mistrial which is denied. The court concludes its charge. Jury to begin deliberating. (Jury Trial set for 4/7/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) Modified on 4/7/2015 (Lyness, Paul). (Entered: 04/07/2015)</p> <p>* * * * *</p>

DATE	DOCKET NUMBER	PROCEEDINGS
4/8/15	<u>1261</u>	JURY VERDICT as to Dzhokhar A. Tsarnaev (1) Guilty on Count 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15-18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30. (Lyness, Paul) (Entered: 04/09/2015)
		* * * * *
4/14/15	<u>1287</u>	Transcript of Jury Trial Day Forty-Six as to Dzhokhar A. Tsarnaev held on April 14, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 04/14/2015)
		* * * * *
4/16/15	<u>1297</u>	SEALED Transcript of Motion Hearing as to Dzhokhar A. Tsarnaev held on April 13, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Unsealed pursuant to order (docket no. 1749). Modified on 11/21/2018 (adminn,.). (Entered: 04/16/2015)
		* * * * *
4/21/15	<u>1306</u>	SEALED Transcript of Lobby Conference as to Dzhokhar A. Tsarnaev held on April 17, 2015, before Judge George A. OToole.

DATE	DOCKET NUMBER PROCEEDINGS	
		* * * (Scalfani, Deborah) Unsealed pursuant to order (docket no. 1749). Modified on 11/21/2018 (adminn.). (En- tered: 04/21/2015)
4/21/15	1307	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/21/2015. Penalty phase begins. The court gives the jury instruc- tions. Government gives its opening statements. Defense to defer their opening state- ment until the presentation of their case. Testimony of gov- ernment witnesses Celeste Cor- coran, Jillian Reny, William Campbell III, William Camp- bell, Jr., and Nicole Gross given. Evidence presented. (Jury Trial set for 4/22/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) Modified on 4/22/2015 (Lyness, Paul). (Entered: 04/21/2015)

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DATE	DOCKET NUMBER	PROCEEDINGS
4/22/15	1315	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/22/2015. Testimony of government witnesses Andrew Collier, Joseph Rogers, John DiFalva, Eric Whalley, Adrian Haslet-Davis, Gary Oliviera, and Jinyan Zhau given. Evidence presented. (Jury Trial set for 4/23/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 04/22/2015)
4/23/15	1324	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/23/2015. Testimony of government witnesses Mark Fuccarile, Heather Abbott, David King, Michelle Gamble and Steven Woolfenden given. Evidence presented. Government rests. (Jury Trial set for 4/27/2015 09:00 AM in Courtroom 9 before

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DATE	DOCKET NUMBER	PROCEEDINGS
		Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 04/23/2015)  * * * * *
4/24/15	<u>1326</u>	SEALED DOCUMENT re <u>867</u> SEALED MOTION (Attachments: # <u>1</u> Exhibit) (Danieli, Chris) Unsealed pursuant to order (docket no. 1749). Modified on 11/21/2018 (adminn, ). (Entered: 04/24/2015)  * * * * *
4/27/15	1347	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/27/2015. Defendant gives its opening in the death penalty phase. Testimony of defendant witnesses Laith Albehacy, Loay Assaf, Abderrazak Razak, Robert Barnes, Gerald Grant, Judith Russell, Gina Crawford, and Robert Ponte given. Evidence presented. (Jury Trial set for 4/28/2015 09:00 AM in Court- room 9 before Judge George A. OToole Jr.) * * * Interpreter name: Bashier Doss-

DATE	DOCKET NUMBER	PROCEEDINGS
		(781) 571-9510, Language: Arabic. (Lyness, Paul) (En- tered: 04/27/2015)
		* * * * *
4/28/15	<u>1349</u>	Transcript of Jury Trial Day Fifty as to Dzhokhar A. Tsar- naev held on April 27, 2015, be- fore Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 04/28/2015)
		* * * * *
4/28/15	1353	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/28/2015. Testimony of defendant wit- nesses Roger Franca, Mark Spencer, John Curran, Kendrick Ball, Brandon Doug- las, Sonya Petri given. Testi- mony of defendant witness Sam Lipson begins. Evidence pre- sented. (Jury Trial set for 4/29/2015 09:00 AM in Court- room 9 before Judge George A. OToole Jr.) * * * Inter- preter name: Claudia F. Azoff, Language: Portuguese.

DATE	DOCKET NUMBER	PROCEEDINGS
4/29/15	<u>1354</u>	<p>(Lyness, Paul) (Entered: 04/28/2015)</p> <p>Transcript of Jury Trial Day Fifty One as to Dzhokhar A. Tsarnaev held on April 28, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Modified the Day of trial (Day 51) on 4/29/2015 (Scalfani, Deborah). (Entered: 04/29/2015)</p>
4/29/15	1360	<p>* * * * *</p> <p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/29/2015. Testimony of defendant witness Sam Lipson concludes. Defense recalls Sonya Petri for additional readings. Testimony of defendant witnesses Michael Sullivan, Laura Lee, Cathryn Charner-Laird, Tracey Gordon, Rebecca Norris, Rachel Otty, Brendan Kells, Tiarrah Dottin given. Testimony of defendant witness Alexa Guevara begins. Evidence presented. (Jury Trial set for 4/30/2015 09:00 AM in Courtroom 9 before Judge</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 04/29/2015)
		* * * * *
4/30/15	<u>1362</u>	Transcript of Jury Trial Day Fifty Two as to Dzhokhar A. Tsarnaev held on April 29, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 04/30/2015)
		* * * * *
4/30/15	1364	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 4/30/2015. Trial is temporarily suspended due to an ill juror. Trial will resume on 5/4/15. (Jury Trial set for 5/4/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 04/30/2015)
		* * * * *
5/4/15	1382	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A.



DATE	DOCKET NUMBER PROCEEDINGS	
		<p>Tsarnaev held on 5/4/2015. Testimony of defendant witnesses Raisat Suleimanova, Naida Suleimanova, Patimat Suleimanova, Shari Suleimanova, Nabeisat Suleimanova and Rosa Booth given. Testimony of defendant witness Alexa Guevara concludes. Evidence presented. (Jury Trial set for 5/5/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * Interpreter name: Larisa Dorfman, Language: Russian. (Lyness, Paul) (Entered: 05/04/2015)</p> <p>* * * * *</p>
5/5/15	<u>1383</u>	<p>Transcript of Jury Trial Day Fifty Four as to Dzhokhar A. Tsarnaev held on May 4, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/05/2015)</p> <p>* * * * *</p>
5/5/15	1387	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 5/5/2015.</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>Testimony of defendant's witnesses Amanda Ranson, Elizabeth Zamparelli, Mirra Kuznetsov, Alexander Niss, Michael Reynolds, Henry Alvarez and Roy Howard given. Evidence presented. (Jury Trial set for 5/6/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * *</p> <p>Interpreter name: Larisa Dorfman, Language: Russian. (Lyness, Paul) (Entered: 05/05/2015)</p>
5/6/15	<u>1388</u>	<p>Transcript of Jury Trial Day Fifty Five as to Dzhokhar A. Tsarnaev held on May 5, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/06/2015)</p> <p>* * * * *</p>
5/6/15	1390	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 5/6/2015. Testimony of defendant's witnesses Elmirza Khuzhugova (by video conference), Jay Giedd, Jennifer Carr-Callison, Eric</p>

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>Traub, and Kevin Roche given. Testimony of defendant witness Mark Bezy begins. Evidence presented. (Jury Trial set for 5/7/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 05/06/2015)</p> <p>* * * * *</p>
5/7/15	1391	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 5/7/2015. Testimony of defendant witness Mark Bezy concludes. Evidence presented. (Jury Trial set for 5/11/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 05/07/2015)</p>
5/7/15	<u>1393</u>	<p>Transcript of Jury Trial Day Fifty Six as to Dzhokhar A. Tsarnaev held on May 6, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/07/2015)</p> <p>* * * * *</p>

DATE	DOCKET NUMBER	PROCEEDINGS
5/7/15	<u>1398</u>	Transcript of Jury Trial Day Fifty Seven as to Dzhokhar A. Tsarnaev held on May 7, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/07/2015)
		* * * * *
5/11/15	1406	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 5/11/2015. Testimony of defendant witness Helen Prejean given. Defendant rests. The government begins their rebuttal case. Testimony of government witness Michelle Nicolet and John Oliver given. The government rests. (Jury Trial set for 5/13/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 05/11/2015)
		* * * * *
5/13/15	1416	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 5/13/2015.

DATE	DOCKET NUMBER	PROCEEDINGS
		<p>The court begins its charge to the jury. Closing arguments are made by the parties. The court concludes its charge to the jury. Jury Begins deliberations. (Jury Trial set for 5/14/2015 09:00 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 05/13/2015)</p>
		* * * * *
5/14/15	<u>1418</u>	<p>Transcript of Jury Trial Day Fifty Nine as to Dzhokhar A. Tsarnaev held on May 13, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/14/2015)</p>
		* * * * *
5/14/15	1421	<p>ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 5/14/2015. Jury continues their deliberations. (Jury Trial set for 5/15/2015 08:30 AM in Courtroom 9 before Judge George A. OToole Jr.) * * * (Lyness, Paul) (Entered: 05/14/2015)</p>

DATE	DOCKET NUMBER PROCEEDINGS	
		* * * * *
5/15/15	<u>1433</u>	ELECTRONIC Clerk's Notes for proceedings held before Judge George A. OToole, Jr: Jury Trial as to Dzhokhar A. Tsarnaev held on 5/15/2015. Jury conclude their deliberations. Jury notes 1-5 are attached as a pdf document * * * (Lyness, Paul). Modified on 5/18/2015 (Lyness, Paul). (Entered: 05/18/2015)
5/15/15	<u>1434</u>	Redacted Penalty phase JURY VERDICT. (Lyness, Paul) (Lyness, Paul). (Entered: 05/18/2015)
		* * * * *
6/24/15	<u>1480</u>	Judge George A. OToole, Jr: ORDER entered. JUDGMENT as to Dzhokhar A. Tsarnaev (1), Count(s) 1, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is

DATE	DOCKET NUMBER PROCEEDINGS
	<p>deferred until 9/22/15. The fine is waived.; Count(s) 10, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 11, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 12, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms).</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 13, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms).</p> <p>No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 14, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms).</p> <p>No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 15-18, Upon the jury's</p>



DATE	DOCKET NUMBER PROCEEDINGS
	<p>verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.;</p> <p>Count(s) 19, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.;</p> <p>Count(s) 2, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 20, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 21, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 22, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5,</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.;</p> <p>Count(s) 23, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.;</p> <p>Count(s) 24, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 25, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 26, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 27, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms).</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>ment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 28, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 29, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>9/22/15. The fine is waived.; Count(s) 3, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 30, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 4, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms).</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 5, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 6, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 7, Upon the jury's verdict, the defendant is</p>

DATE	DOCKET NUMBER PROCEEDINGS
	<p>sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 8, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived.; Count(s) 9, Upon the jury's verdict, the defendant is sentenced to death on Counts 4, 5, 9, 10, 14, and 15. (See Judgment and Commitment for additional imprisonment terms). No period of supervised release. The defendant is assessed \$3,000.00 which</p>



DATE	DOCKET NUMBER PROCEEDINGS	
		is due forthwith. The determination of restitution is deferred until 9/22/15. The fine is waived. (Lyness, Paul) (Entered: 06/25/2015)
		* * * * *
9/8/15	<u>1512</u>	Transcript of Jury Trial Day One (A.M. Session) as to Dzhokhar A. Tsarnaev held on January 5, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
9/8/15	<u>1513</u>	Transcript of Jury Trial Day One (P.M. Session) as to Dzhokhar A. Tsarnaev held on January 5, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
9/8/15	<u>1514</u>	Transcript of Jury Trial Day Two (A.M. Session) as to Dzhokhar A. Tsarnaev held on January 6, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
9/8/15	<u>1515</u>	Transcript of Jury Trial Day Two (P.M. Session) as to Dzhokhar A. Tsarnaev held on January 6, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)

DATE	DOCKET NUMBER	PROCEEDINGS
		khar A. Tsarnaev held on January 6, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
9/8/15	<u>1516</u>	Transcript of Jury Trial Day Three (A.M. Session) as to Dzhokhar A. Tsarnaev held on January 7, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
9/8/15	<u>1517</u>	Transcript of Jury Trial Day Three (P.M. Session) as to Dzhokhar A. Tsarnaev held on January 7, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
9/8/15	<u>1518</u>	Transcript of Jury Trial Day Twenty-Five (Motion Hearing) as to Dzhokhar A. Tsarnaev held on March 2, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
9/8/15	<u>1519</u>	Transcript of Jury Trial Day Thirty-Three as to Dzhokhar A. Tsarnaev held on March 16, 2015, before Judge George A.

DATE	DOCKET NUMBER	PROCEEDINGS
		OToole. * * * (Scalfani, Deborah) (Entered: 09/08/2015)
		* * * * *
9/25/15	<u>1528</u>	Transcript of Jury Trial—Day Twenty-Seven as to Dzhokhar A. Tsarnaev held on March 4, 2015, before Judge George A. OToole. * * * (Scalfani, Deb- orah) (Entered: 09/25/2015)
9/25/15	<u>1529</u>	Transcript of Jury Trial—Day Twenty-Eight as to Dzhokhar A. Tsarnaev held on March 5, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/25/2015)
9/25/15	<u>1530</u>	Transcript of Jury Trial—Day Twenty-Nine as to Dzhokhar A. Tsarnaev held on March 9, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/25/2015)
		* * * * *
9/29/15	<u>1533</u>	Transcript of Jury Trial—Day Twenty-Six as to Dzhokhar A. Tsarnaev held on March 3, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/29/2015)
		* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
9/30/15	<u>1537</u>	Transcript of Jury Trial—Day Thirty as to Dzhokhar A. Tsar- naev held on March 10, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/30/2015)
9/30/15	<u>1538</u>	Transcript of Jury Trial—Day Thirty-One as to Dzhokhar A. Tsarnaev held on March 11, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 09/30/2015)
10/5/15	<u>1544</u>	Transcript of Jury Trial—Day Thirty-Two as to Dzhokhar A. Tsarnaev held on March 12, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/05/2015)
10/5/15	<u>1546</u>	Transcript of Jury Trial—Day Thirty-Four as to Dzhokhar A. Tsarnaev held on March 17, 2015, before Judge George A. OToole. * * * (Scalfani, Deb- orah) (Entered: 10/05/2015)

DATE	DOCKET NUMBER	PROCEEDINGS
10/13/15	<u>1559</u>	Transcript of Jury Trial - Day Thirty-Five as to Dzhokhar A. Tsarnaev held on March 18, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/13/2015)
10/13/15	<u>1560</u>	Transcript of Jury Trial—Day Thirty-Seven as to Dzhokhar A. Tsarnaev held on March 23, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/13/2015)
10/14/15	<u>1564</u>	Transcript of Jury Trial—Day Thirty-Six as to Dzhokhar A. Tsarnaev held on March 19, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/14/2015)
10/16/15	<u>1566</u>	Transcript of Jury Trial - Day Thirty-Eight as to Dzhokhar A. Tsarnaev held on March 24, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/16/2015)

DATE	DOCKET NUMBER	PROCEEDINGS
10/16/15	<u>1567</u>	Transcript of Jury Trial—Day Thirty-Nine as to Dzhokhar A. Tsarnaev held on March 25, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/16/2015)
		* * * * *
10/19/15	<u>1569</u>	Transcript of Jury Trial—Day Forty as to Dzhokhar A. Tsar- naev held on March 26, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/19/2015)
		* * * * *
10/26/15	<u>1573</u>	SEALED Transcript of Lobby Conference as to Dzhokhar A. Tsarnaev held on March 31, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) Unsealed pursuant to order (docket no. 1749). Mod- ified on 11/21/2018 (adminn,). (Entered: 10/26/2015)
		* * * * *
10/28/15	<u>1575</u>	Transcript of Jury Trial—Day Forty-Two as to Dzhokhar A. Tsarnaev held on March 31, 2015, before Judge George A.

DATE	DOCKET NUMBER	PROCEEDINGS
		OToole. * * * (Scalfani, Deborah) (Entered: 10/28/2015)
		* * * * *
10/29/15	<u>1580</u>	Transcript of Jury Trial—Day Forty Three as to Dzhokhar A. Tsarnaev held on April 6, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/29/2015)
10/29/15	<u>1583</u>	Transcript Jury Trial—Day Forty Four as to Dzhokhar A. Tsarnaev held on April 7, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/29/2015)
		* * * * *
10/29/15	<u>1587</u>	Transcript of Jury Trial—Day Forty Five as to Dzhokhar A. Tsarnaev held on April 8, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 10/29/2015)
		* * * * *
11/5/15	<u>1592</u>	Transcript of Status Confer- ence as to Dzhokhar A. Tsar- naev held on April 9, 2015, be- fore Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 11/05/2015)

DATE	DOCKET NUMBER PROCEEDINGS	
		* * * * *
12/14/15	<u>1603</u>	Transcript of Jury Trial—Day Forty-Seven as to Dzhokhar A. Tsarnaev held on April 21, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 12/14/2015)
		* * * * *
12/28/15	<u>1609</u>	Transcript of Jury Trial—Day Forty-Eight as to Dzhokhar A. Tsarnaev held on April 22, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 12/28/2015)
		* * * * *
1/5/16	<u>1611</u>	Transcript of Jury Trial—Day Forty-Nine as to Dzhokhar A. Tsarnaev held on April 23, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 01/05/2016)
		* * * * *
1/25/16	<u>1624</u>	Transcript of Jury Trial—Day Forty-One as to Dzhokhar A. Tsarnaev held on March 30, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 01/25/2016)



DATE	DOCKET NUMBER PROCEEDINGS	
		* * * * *
5/10/16	<u>1659</u>	Transcript of Jury Trial Day Thirty-Three (Jury View) as to Dzhokhar A. Tsarnaev held on March 16, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/10/2016)
5/10/16	<u>1660</u>	Transcript of Jury Trial Day Sixty as to Dzhokhar A. Tsarnaev held on May 14, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/10/2016)
5/10/16	<u>1661</u>	Transcript of Jury Trial Day Sixty-One as to Dzhokhar A. Tsarnaev held on May 15, 2015, before Judge George A. OToole. * * * (Scalfani, Deborah) (Entered: 05/10/2016)
		* * * * *
	1668	Sealed filing [not on public docket]
		* * * * *
7/25/16	<u>1679</u>	Transcript of Jury Trial—Day Fifty Three as to Dzhokhar A. Tsarnaev held on April 30, 2015, before Judge George A. OToole. COA Case No. 16-6001. * * *

DATE	DOCKET NUMBER	PROCEEDINGS
		(Scalfani, Deborah) (Entered: 07/25/2016)
		* * * * *
11/21/16	<u>1701</u>	Transcript of Jury Trial Day Fifty-Eight as to Dzhokhar A. Tsarnaev held on May 11, 2015, before Judge George A. OToole. COA Case No. 16-6001. * * * (Scalfani, Deborah) (Entered: 11/21/2016)
		* * * * *
11/13/19	<u>1779</u>	Redacted second search war- rant. Released pursuant to E- Order 1778. (Halley, Taylor) (Entered: 11/13/2019)
		* * * * *

[Photos of 2013 Boston Marathon finish-line area]







## [Tsarnaev's computer records]

Sony Vaio Laptop (1R6) - Selected User Files			Filesystem record date in Local Time
Path on 1R6 Sony Vaio	Created in Local Time		
Users\Anzor\Desktop\Documents\WebCam Media	2/27/11 11:49 AM		2/27/11 3:00 PM
Users\Anzor\Desktop\Nasheed\Sahabaa Nasheed - YouTube.flv	8/29/11 10:56 PM		8/29/11 10:56 PM
Users\Anzor\Desktop\Nasheed\Ommy Felestin - Nasheed by Meshary al Aarada - YouTube.flv	8/29/11 10:57 PM		8/29/11 10:57 PM
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Users\Anzor\Desktop\Nasheed\Rasool Allah Inspiring Words Of Truth! - YouTube.flv	8/29/11 10:57 PM		8/29/11 11:05 PM
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Users\Anzor\Desktop\Nasheed\Commander Khattab - YouTube.mp3	8/29/11 11:05 PM		8/29/11 11:07 PM
Users\Anzor\Desktop\Nasheed\Great Jihad Anasheed (Nasheed 2009) - YouTube.mp3	8/29/11 11:05 PM		8/29/11 11:07 PM
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Users\Anzor\Desktop\Nasheed\Mishary al Arada - Dust is my bed (nasheed) [Muslim Ummah] - YouTube.mp3	8/29/11 11:06 PM		8/29/11 11:07 PM
Users\Anzor\Desktop\Nasheed\Must Hear - YouTube.mp3	8/29/11 11:06 PM		8/29/11 11:07 PM
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Users\Anzor\Desktop\Nasheed\Rasool Allah Inspiring Words Of Truth! - YouTube.mp3	8/29/11 11:06 PM		8/29/11 11:07 PM
Users\Anzor\Desktop\Nasheed\Sahabaa Nasheed - YouTube.mp3	8/29/11 11:07 PM		8/29/11 11:07 PM
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\\Users\\Anzor\\Downloads\\music\\nasheed\\The Best Islamic Song (nasheed) very emotional.mp3	1/28/12 6:29 PM	1/28/12 6:42 PM
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[al Qaeda magazine accessed by Tsarnaev]



INSPIRE



**26** **May our souls be sacrificed for you!**  
Shaykh Anwar al-'Awlaki

<b>Abū Basir Interview 13</b> The leader of AQAP answers various questions pertaining to the jihād in the Arabian Peninsula.	<b>Make a bomb in the Kitchen of your Mom 33</b> A detailed yet short, easy-to-read manual on how to make a bomb using ingredients found in a kitchen.	<b>Six calls of al-Anfāl 54</b> A look into the calls from Allāh in al-Anfāl in light of the verses beginning with 'O You who Believe'.
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## Letter from the editor

Allāh ﷻ says: (And inspire the believers to fight) [al-Anfāl: 65]. It is from this verse that we derive the name of our new magazine. The word used in the verse is "*harid*" which is commonly translated as incite. However, the word should properly be translated as inspire, motivate, or encourage. The word *harid* in Arabic carries none of the negative connotations that the English word "incite" carries. To the contrary, it actually has the opposite meaning. The authoritative Arabic lexicon "*Taj al-Arus*" quotes the classical Arabic language scholar al-Zajjāj as saying that the verb *harid* comes from the adjective *hārid*, which means "a person or a being that is perishing." Therefore, he says that when you inspire someone towards something using the verb *harid*, you are saying that unless they do what you are inspiring them to do they would perish. So the word *harid* is an inspiration that saves a person and guides them towards what is good for them. *Harid* is the word used in the above-mentioned verse. According to this meaning by al-

Zajjāj, Allāh is commanding His Messenger ﷺ to save the believers from perishing by inspiring them to fight. This meaning is supported by another verse in Qur'ān where Allāh ﷻ says: (O you who believe! Respond to the call of Allāh and His Messenger when they call you to what will give you life) [al-Anfāl: 24]. Imām al-Qurtubī states that this verse is referring to jihād. It is jihād that gives this nation life. We survive through jihād and perish without it. Our history is a testimony to that.

This Islāmic Magazine is geared towards making the Muslim a *mujāhid* in Allāh's path. Our intent is to give the most accurate presentation of Islām as followed by the *Ṣalaf as-Ṣāliḥ*. Our concern for the *ummah* is worldwide and thus we try to touch upon all major issues while giving attention to the events unfolding in the Arabian Peninsula as we witness it on the ground. Jihād has been deconstructed in our age and thus its revival in comprehension and endeavor is of utmost importance for the Caliphate's manifestation.



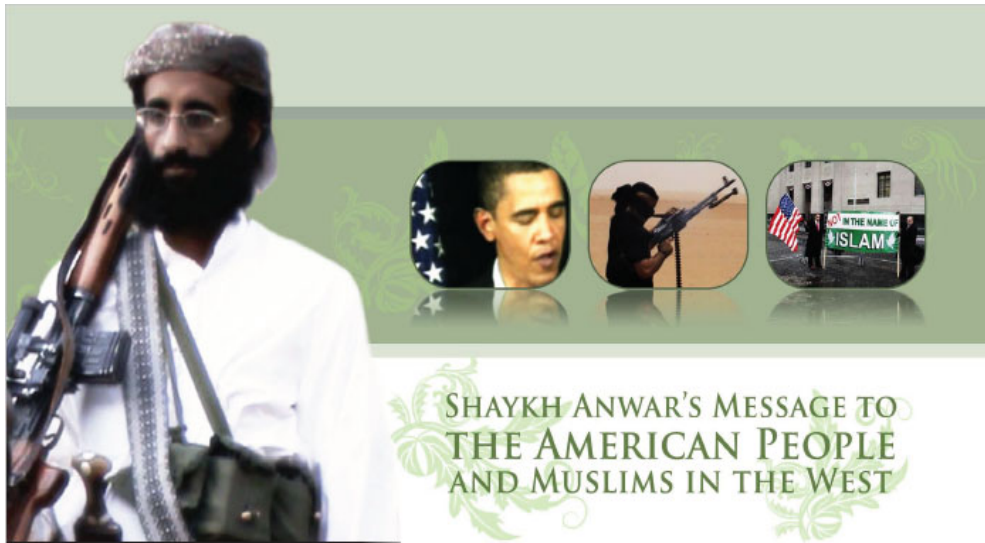
Under the media foundation of al-Malahem, we present the first magazine to be issued by the al-Qā'idah Organization in the English language. In the West; in East, West and South Africa; in South and Southeast Asia and elsewhere are millions of Muslims whose first or second language is English. It is our intent for this magazine to be a platform to present the important issues facing the *ummah* today to the wide and dispersed English speaking Muslim readership. We also call upon and encourage our readers to contribute by sending their articles, comments or suggestions to us.

We ask Allāh ﷻ to assist us in this endeavor and to guide you and us towards the truth. ■

Supp. App. 41

INSPIRE		...AND INSPIRE THE BELIEVERS »	
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All praise is due to Allāh and may peace and blessings be upon His Messenger Muḥammad, his family, and his companions.<sup>1</sup>

Peace be upon those who follow the guidance.

To the American people I say:

Do you remember the good old days when Americans were enjoying the blessings of security and peace? When the word 'terrorism' was rarely invoked, and when you were oblivious to any threats? I remember a time when you could purchase an airline ticket from the classified section of your local or college newspaper, and use it even though it was issued to a different name because no one would bother asking you for an ID before boarding a plane. No long lines, no elaborate searches, no body scans, no sniffing dogs, no taking off your shoes and emptying your pockets.

You were a nation at ease.

But America thought that it could threaten the lives of others, kill and invade, occupy and plunder, and conspire without bearing the consequences of its actions. 9-11 was the answer of the millions of people who suffer from American aggression. And since then America has not been safe. And nine years after 9-11, 9

<sup>1</sup> The following is a transcription of the Shaykh's message that was originally sent to CNN.

years of spending, and nine years of beefing up security, you are still unsafe even in the holiest and most sacred of days to you, Christmas Day.

So do you expect to transgress against others and yet be spared retribution?

Your decision makers: the politicians, the lobbyists, and the major corporations are the ones gaining from your foreign policy, and you are the ones paying the price for it.

Following 9-11, The American people gave George W. Bush, unanimous backing to fight against the *mujahidin*, and gave him a blank check to spend as much as needed to fulfill that objective. The result? He failed, and he failed miserably. So if America failed to defeat the *mujahidin* when it gave its president unlimited support, how can it win with Obama who is on a short leash? If America failed to win when it was at its pinnacle of economic strength, how can it win today with a recession at hand?

The simple answer is: America cannot and will not win. The tables have turned and there is no rolling back of the worldwide jihad movement. On the eve of 9-11 it was Afghanistan alone. Today it is Afghanistan, Pakistan, Iraq, Somalia, North Africa, the Arabian Peninsula, and the list is growing.

How many body bags are American families willing to



receive? How much more can the US treasury handle? 9-11, the war in Afghanistan and Iraq, and then operations such as that of our brother `Umar al-Farūq which could have not cost more than a few thousand dollars end up draining the US treasury billions of dollars in order to give Americans a false sense of security. For how long can the US survive this war of attrition? What benefit is it to the American people to suffer for the sake of supporting Israel, and what benefit is it to the American people to suffer for the sake of the al-Saūd family and the gulf monarchs?

Our brother `Umar al-Farūq `Abdul Muṭṭalib, has succeeded in breaking through the security systems that have cost the US government alone, over 40 billion dollars since 9-11.

Obama has promised that his administration would be one of transparency. But he has not fulfilled his promise. His administration, tried to portray the operation of brother Nidāl Hassan, as an individual act of violence from an estranged individual. The administration practiced a control on the leak of information concerning the operation in order to cushion the reaction of the American public. Until this moment the administration is refusing to release the emails exchanged between myself and Nidāl. And after the operation of our brother `Umar al-Farūq the initial comments coming from the administration were looking the same: another attempt at covering up the truth. But al-Qa`idah cutoff Obama from deceiving the world again, by issuing their statement claiming responsibility for the operation.

However, we are transparent and open in proclaiming our message to the world. Our objective is to bring back Islām to life. We seek to remove the tyrannical and parasitical rulers of the Muslim world, and replace them with men of God, who know the difference between right and wrong, good and evil. We seek to apply the rule of Qur`an and make the word of Allāh ﷻ supreme over all other, and God willing, we will strive to achieve these goals with all what we posses, and we will fight to

the last man against whoever stands in our way. We, the Muslims, do not have an inherent animosity towards any racial group, or ethnicity. We are not against Americans for just being American; we are against evil, and America as a whole has turned into a nation of evil. What we see from America is the invasion of two Muslim countries, we see Abū Ghraib, Baghram and Guantanamo bay. We see Cruise missiles and cluster bombs, and we have just seen in Yemen the death of 23 children and 17 women. We cannot stand idly in the face of such aggression, and we will fight back and incite others to do the same.

I for one, was born in the US, and lived in the US for 21 years. America was my home. I was a preacher of Islām involved in non-violent Islāmic activism. However, with the American invasion of Iraq and continued US aggression against Muslims, I could not reconcile between living in the US and being a Muslim, and I eventually came to the conclusion that jihād against America is

binding upon myself, just as it is binding on every other able Muslim.

Nidāl Hassan was not recruited by al-Qa`idah; Nidāl Hassan was recruited by American crimes, and this is what America refuses to admit. America refuses to admit that its foreign policies are the reason behind a man like Nidāl Hassan, born and raised in the US, turning his guns against American soldiers. And the more crimes America commits, the more *mujāhidīn* will be recruited to fight against it.

The operation of our brother `Umar al-Farūq `Abdul Muṭṭalib was in retaliation to American cruise missiles and cluster bombs that killed women and children in Yemen.

It is true that we are facing the arsenal of the greatest army on earth with our simple modest means, but victory is on our side. Victory is on our side because there is a difference between us and you. We are fighting for a noble cause. We are fighting for God and you are

### ☆ NIDĀL HASSAN WAS RECRUITED BY AMERICAN CRIMES

fighting for worldly gain. We are fighting for justice because we are defending ourselves and our families and you are fighting for imperialistic goals. We are fighting for truth and justice and you are fighting for oppression. You have your B52s, your apaches, your Abrams, and your Cruise missiles and we have small arms and simple Improvised Explosive Devices, but we have men who are dedicated and sincere, with hearts of lions.

And blessed are the meek, for they shall inherit the world.

Americans need to stop looking at themselves from their own lens but look at themselves from the lens of the world. They will then see the ugly face of America. America is not despised only by Muslims but by many millions of people around the world and in America itself. America may be obstinate in believing that the animosity of a few million Muslims wouldn't really harm them. They would say we have the most powerful army in the world and we have the strongest economy in the world. But don't you think that such a belief is a bit outdated? Don't you think that such a belief was more suitable to days of patriotism that swept over America following 9-11 than it is now, with the American army admitting its inability, and the American economy going through intensive care? But imperial hubris is leading America to its fate: A war of attrition. A continuous hemorrhage that would end with the fall and splintering of the United States of America.

If George W. Bush is remembered by getting America stuck in Afghanistan and Iraq, it's looking like Obama wants to be remembered as the president who got America stuck in Yemen. Obama has already started his war on Yemen by the aerial bombings of Abyan and Shabwa. By doing that, he has waged a publicity campaign for the *mujahidin* in Yemen, and within days accomplished for them the work of years. As the popularity of the *mujahidin* in Yemen skyrocketed, the popularity of Obama in America plummeted.

The corrupt Yemeni government officials and some of the tribal chiefs who claim to be your allies are having a ball these days. The word being passed around among them is that this is the time to extort the gullible American. Your politicians, military and intelligence officers are being milked for millions. They are giving you big promises and handing you big bills. Welcome to the world of Yemeni politicians.

I would like to close my message to you with an invitation to Islam. We were all created by God on this earth to worship Him, and then after death it is either Paradise or Hellfire for eternity. So the matter is not one

to take lightly. It is your future. I invite you to read the book of Allah ﷻ, the Qur'an. You do not have to take anyone's word for it; decide for yourself whether it is the truth or not.

**To the Muslims in America I have this to say:** How can your conscience allow you to live in peaceful coexistence with a nation that is responsible for the tyranny and crimes committed against your own brothers and sisters? How can you have your loyalty to a government that is leading the war against Islam and Muslims? The Muslim community in America has been witnessing a gradual erosion and decline in core Islamic principles, so today many of your scholars and Islamic organizations are openly approving of Muslims serving in the US army to kill Muslims, joining the FBI to spy against Muslims, and are standing between you and your duty of jihad. Slowly but surely, your situation is becoming similar to that of the embattled Muslim community of Spain, after the fall of Granada.

**Muslims of the West:** take heed and learn from the lessons of history. There are ominous clouds gathering in your horizon. Yesterday, America was a land of slavery, segregation, lynching and Ku Klux Klan. And tomorrow it will be a land of religious discrimination and concentration camps.

Do not be deceived by the promises of preserving your rights from a government that is right now killing your own brothers and sisters. Today, with the war between Muslims and the West escalating, you cannot count on the message of solidarity you may get from a civic group or a political party, or the word of support you hear from a kind neighbor or a nice co-worker. The West will eventually turn against its Muslim citizens.

Hence, my advice to you is this: you have two choices: either *hijra* or jihad. You either leave or you fight. You leave and live among Muslims or you stay behind and fight with your hand, your wealth and your word. I specifically invite the youth to either fight in the West or join their brothers in the fronts of jihad: Afghanistan, Iraq, and Somalia. I invite them to join the new front, Yemen, the base from which the great jihad of the Arabian Peninsula will begin, the base from which the greatest army of Islam will march forth. The Messenger of Allah ﷺ said: «An army of twelve thousand will come out of Aden-Abyan and they will give victory to Allah and His Messenger and they are the best between me and them»

In closing I pray that Allah ﷻ guides us to the truth and grants us steadfastness on the Straight Path.

And may peace and blessings be upon His Messenger, his family and companions.

FOLDOUT SUPP. APP. V 1 PAGE 46




FOLDOUT SUPP. APP. V 1 PAGE 47

FOLDOUT SUPP. APP. V 1 PAGE 48

## [Tsarnaev's pre-bombing text messages]

## Jahar Tsarnaev iPhone 3 SMS Conversation 11/6/2012

Date	Time (EST)	From	To	Content
11/6/2012	10:30:59 PM	8572475112		Elections are whatever, I want the lesser of two evils to win which would be Obama but either way they're shaytan ass niggas, puppets of the system, killing Muslims is the only promise they will fulfill

**Jahar Tsarnaev iPhone 5 iMessage Conversation 12/25/2012**

Date	Time (EST)	From	To	Body
12/25/2012	12:56:08 AM	[REDACTED]	8572475112	What's your plan?
12/25/2012	12:56:16 AM	[REDACTED]	8572475112	Stay at Dartmouth or transfer out?
12/25/2012	12:56:16 AM	[REDACTED]	8572475112	Yale?
12/25/2012	12:56:16 AM	[REDACTED]	8572475112	MIT?
12/25/2012	12:56:16 AM	[REDACTED]	8572475112	Harvard?
12/25/2012	12:56:16 AM	[REDACTED]	8572475112	Have you thought about what school?
12/25/2012	12:56:29 AM	8572475112	[REDACTED]	One more semester and I'm prolly gonna transfer
12/25/2012	12:56:56 AM	8572475112	[REDACTED]	Not prolly most definitely

**Jahar Tsarnaev iPhone 5 iMessage Conversation 12/25/2012**

Date	Time (EST)	From	To	Body
12/25/2012	12:57:45 AM	[REDACTED]	8572475112	Oxford?
12/25/2012	12:58:12 AM	[REDACTED]	8572475112	Or are all those schools too easy for you?
12/25/2012	12:58:18 AM	8572475112	[REDACTED]	Nah not ivy
12/25/2012	12:58:24 AM	[REDACTED]	8572475112	Ivy schools are a FORCE
12/25/2012	12:58:24 AM	[REDACTED]	8572475112	"Oh shit he's going to Harvard!! That's crazy" none other reason than this
12/25/2012	12:58:24 AM	[REDACTED]	8572475112	No point in going there other than to look good
12/25/2012	12:58:27 AM	8572475112	[REDACTED]	Something manageable
12/25/2012	12:58:47 AM	8572475112	[REDACTED]	Not for working slaving myself and crying myself to sleep

**Jahar Tsarnaev iPhone 5 iMessage Conversation 12/25/2012**

Date	Time (EST)	From	To	Body
12/25/2012	1:00:02 AM	[REDACTED]	8572475112	Niggas need to understand you don't ivy school to be successful
12/25/2012	1:00:04 AM	8572475112	[REDACTED]	I'm trying to go to an ivy for masters tho not gonna lie
12/25/2012	1:00:29 AM	[REDACTED]	8572475112	What you want to be?
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Sniper?
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Pyro?
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Engineer?
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Knowledge to become imam?
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Biologist? That shit cray

**Jahar Tsarnaev iPhone 5 iMessage Conversation 12/25/2012**

Date	Time (EST)	From	To	Body
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Wtf
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Imam Tsarnaev then?
12/25/2012	1:00:32 AM	[REDACTED]	8572475112	Spy??
12/25/2012	1:01:03 AM	8572475112	[REDACTED]	I wanna bring justice for my people

**Jahar Tsarnaev iPhone5 iMessage Conversation 1/28/2013**

<b>Date</b>	<b>Time (EST)</b>	<b>From</b>	<b>To</b>	<b>Content</b>
01/28/2013	11:36:12 PM	8572475112	[REDACTED]	Come may I'm out
01/28/2013	11:36:31 PM	[REDACTED]	8572475112	Oh yeah you getting yourself s wifey
01/28/2013	11:36:38 PM	[REDACTED]	8572475112	Good shit
01/28/2013	11:36:52 PM	8572475112	[REDACTED]	We'll idk about that but we'll see
01/28/2013	11:37:04 PM	[REDACTED]	8572475112	I think it's a lil too early
01/28/2013	11:37:20 PM	[REDACTED]	8572475112	I don't even know if I want I get married bro
01/28/2013	11:37:58 PM	8572475112	[REDACTED]	Lol yea I know, I'm just tryina finish school
01/28/2013	11:38:46 PM	[REDACTED]	8572475112	To*
01/28/2013	11:39:02 PM	8572475112	[REDACTED]	I mean there's 1 other option bro
01/28/2013	11:39:11 PM	8572475112	[REDACTED]	Highest level of Jannah
01/28/2013	11:39:17 PM	[REDACTED]	8572475112	Ihe only good thing about having a wife is the pussy is halal
01/28/2013	11:39:20 PM	8572475112	[REDACTED]	If ya know what I mean
01/28/2013	11:39:26 PM	[REDACTED]	8572475112	Jihad?
01/28/2013	11:39:28 PM	[REDACTED]	8572475112	I really am down for that Jihad life though
01/28/2013	11:39:28 PM	[REDACTED]	8572475112	I've been thinking about that lately
01/28/2013	11:39:28 PM	[REDACTED]	8572475112	Lol yeah true true
01/28/2013	11:40:10 PM	8572475112	[REDACTED]	Yea with your desires c'mon son
01/28/2013	11:40:19 PM	8572475112	[REDACTED]	Don't be hot over the phone
01/28/2013	11:41:03 PM	8572475112	[REDACTED]	Lol be for that man!



**Jahar Tsarnaev iPhone5 iMessage Conversation 1/28/2013**

<b>Date</b>	<b>Time (EST)</b>	<b>From</b>	<b>To</b>	<b>Content</b>
01/28/2013	11:41:06 PM	[REDACTED]	8572475112	And it's affecting my future plans
01/28/2013	11:41:17 PM	[REDACTED]	8572475112	I don't even know if I want to go to college
01/28/2013	11:41:20 PM	8572475112	[REDACTED]	I'm with you on this one im wanna talk to you in person sometime soon
01/28/2013	11:41:36 PM	[REDACTED]	8572475112	Aight we gotta chill sometime man
01/28/2013	11:41:36 PM	[REDACTED]	8572475112	I'm trying to study Islam or the Quran
01/28/2013	11:41:36 PM	[REDACTED]	8572475112	No bueno
01/28/2013	11:41:36 PM	[REDACTED]	8572475112	I didn't get the chance to chill with you over the break
1/28/2013	11:42:22 PM	8572475112	[REDACTED]	Yo man that's sound good do that
01/28/2013	11:42:32 PM	8572475112	[REDACTED]	But you have to go to school in medina somewhere
01/28/2013	11:42:46 PM	8572475112	[REDACTED]	For now read a lot of Islamic literature
01/28/2013	11:43:20 PM	[REDACTED]	8572475112	There has to be Islamic schools other than at medina
01/28/2013	11:43:41 PM	[REDACTED]	8572475112	If not, then I gotta save up my money and go there
01/28/2013	11:43:42 PM	8572475112	[REDACTED]	I mean like there are other schools but not in America
01/28/2013	11:43:44 PM	[REDACTED]	8572475112	You're looking at a future imam

**Jahar Tsarnaev iPhone5 iMessage Conversation 1/28/2013**

<b>Date</b>	<b>Time (EST)</b>	<b>From</b>	<b>To</b>	<b>Content</b>
01/28/2013	11:43:44 PM	[REDACTED]	8572475112	When you coming back for break?
01/28/2013	11:44:12 PM	8572475112	[REDACTED]	Inshallah
01/28/2013	11:45:41 PM	8572475112	[REDACTED]	Idk ill be back either this weekend or next weekend ill let yu know
01/28/2013	11:46:39 PM	8572475112	[REDACTED]	But for now, all I'm saying is go to college or just chill and educate yourself
01/28/2013	11:46:57 PM	8572475112	[REDACTED]	I got a plan ill tell yu later about it
01/28/2013	11:48:00 PM	[REDACTED]	8572475112	I prefer jihad then an imam lol. I'm not a very good public speaker. And damn we definitely gotta chill bro.
01/28/2013	11:49:09 PM	8572475112	[REDACTED]	But imam tho? That's gonna be a lot of studying

## [Tsarnaev's pre-bombing tweets]



The screenshot shows a Twitter profile for a user named Ghuraba (@Al\_firdausIA). The profile picture is a composite image featuring a green and white flag with Arabic calligraphy and a black silhouette of a bird. The background image of the profile is a large, brightly lit mosque at night, with green laser lights illuminating the sky. The profile statistics show 8 tweets, 9 following, and 151 followers. The tweets are as follows:

- Tweet 1 (13 Mar 2013):** It's our responsibility my brothers & sisters to ask Allah to ease the hardships of the oppressed and give us victory over kufr #islam #dua (13 retweets, 20 likes)
- Tweet 2 (12 Mar 2013):** Dua is truly the weapon of the believer, pray for the oppressed it is your duty #islam #muslim (4 retweets, 4 likes)
- Tweet 3 (11 Mar 2013):** Ghuraba, means strangers. Out here in the west, we should stand out among the nonbelievers as one body #islam (1 retweet, 3 likes)
- Tweet 4 (11 Mar 2013):** strive to be a better muslim, be greedy with your time, devote most of it to the Almighty for it is his satisfaction that you need #islam (2 likes)
- Tweet 5 (10 Mar 2013):** LISTEN TO ANWAR AL AWLAKI'S (A SHARAH) (A) THE MORE AFTER SENSE, you will gain an unbelievable amount of knowledge #islam #muslim (2 retweets, 4 likes)
- Tweet 6 (10 Mar 2013):** I want the highest levels of Jannah, I want to be able to see Allah every single day for that is the best of pleasures #islam #alfirdaus (2 likes)

Below the tweets, it says "Ghuraba followed Islam, Jahar, Daily Hadiths and 6 others". At the bottom, there are two small images: one of a mosque dome and another of a green and white flag with Arabic calligraphy.



@J\_tsar Tweet  
3/20/2013 – 9:25PM PST



**Jahar**

@J\_tsar



 Follow

Evil triumphs when good men do nothing



RETWEETS

1,163

FAVORITES

630



9:25 PM - 20 Mar 2013

[Photo of Tsarnaev taking bombing position]



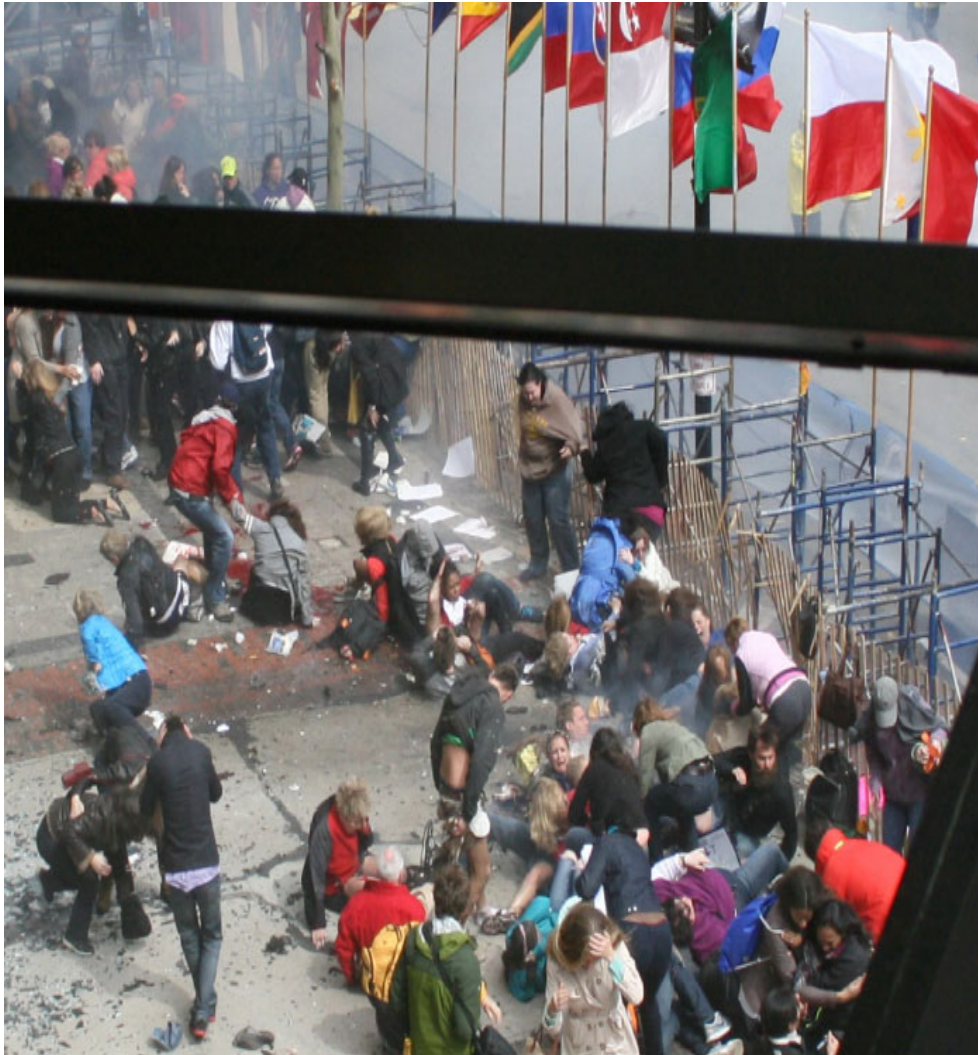


[Photos of bombing aftermath]







































[Photos of shrapnel fragments  
from Martin Richard's autopsy]













[Tsarnaev's post-bombing tweets]

## @J\_tsar Tweet

4/15/2013 – 5:04PM PST



**Jahar**  
@J\_tsar



 Follow

Ain't no love in the heart of the city, stay  
safe people



RETWEETS   FAVORITES  
**5,462**   **2,164**



5:04 PM - 15 Apr 2013

@J\_tsar Tweet  
4/15/2013 – 8:13PM PST

@MelloChamp and they what "god hates  
dead people?" Or victims of tragedies? Lol  
those people are cooked

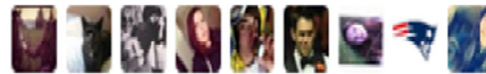


RETWEETS

581

FAVORITES

229



8:13 PM - 15 Apr 2013

@J\_tsar Tweet  
4/16/2013 – 10:43PM PST



**Jahar**  
@J\_tsar



 Follow

I'm a stress free kind of guy



RETWEETS

7,216

FAVORITES

2,695



10:43 PM - 16 Apr 2013

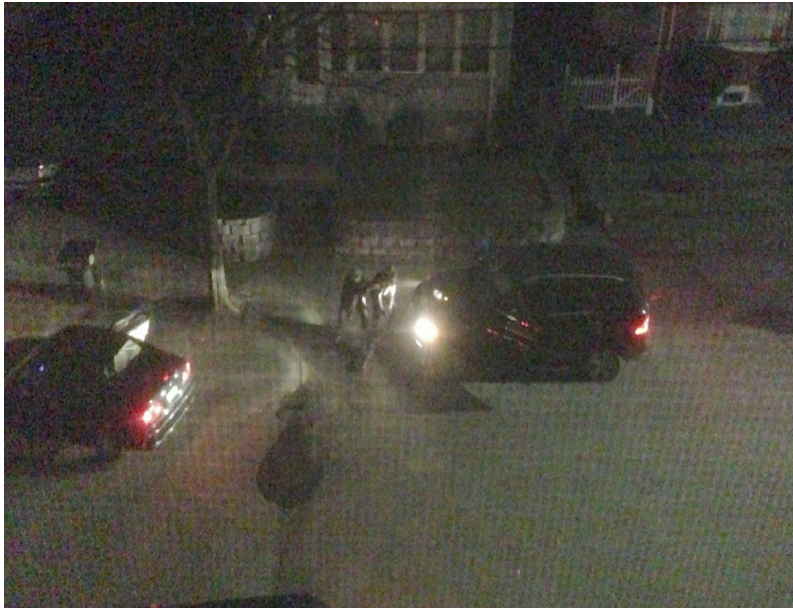
## [Tsarnaev's post-bombing text messages]

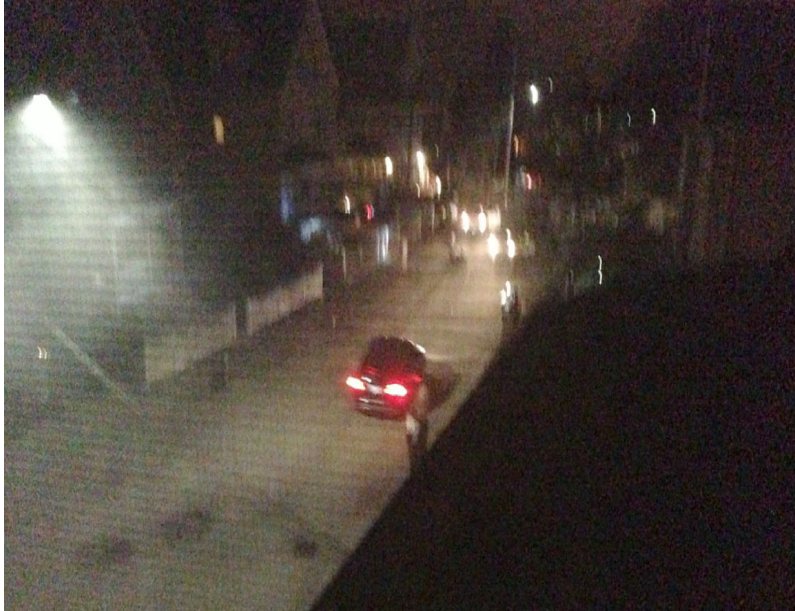
Selected Text Messages on 4/18/13 retrieved from Dias Kadyrbayev's iPhone

DATE	TIME (EDT)	FROM	TO	TEXT
4/18/2013	8:30:01 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	zaed
4/18/2013	8:36:01 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	yo bro
4/18/2013	8:41:52 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	Wasup
4/18/2013	8:42:08 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	pick me up please
4/18/2013	8:42:40 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	Sorry man I'm in Boston
4/18/2013	8:42:40 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	Where r yu?
4/18/2013	8:43:03 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	in my crib
4/18/2013	8:43:11 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	i am tryna go to umass
4/18/2013	8:43:28 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	Please
4/18/2013	8:43:43 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	yo bro
4/18/2013	8:44:06 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	u saw the news?
4/18/2013	8:44:20 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	Yea bro I did
4/18/2013	8:44:34 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	for real?
4/18/2013	8:44:46 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	I saw the news...
4/18/2013	8:44:48 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	Better not text me my friend
4/18/2013	8:44:48 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	Lol
4/18/2013	8:45:00 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	u saw urself in there?
4/18/2013	8:45:10 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	ahaha...
4/18/2013	8:45:43 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	hahaha
4/18/2013	8:46:56 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	If yu want yu can go to my room and take what's there :) but ight bro Salam aleikum
4/18/2013	8:47:47 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	whats wrong with u?
4/18/2013	8:48:05 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	haha ;)
4/18/2013	8:49:04 PM	Jahar (857) 247-5112	DIAS (508) 287-5846	Can't right now man
4/18/2013	8:49:15 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	vk bro
4/18/2013	8:52:20 PM	DIAS (508) 287-5846	Jahar (857) 247-5112	please

**[Photos of Tsarnaev engaging law-enforcement officers in Watertown and driving SUV toward them]**









**[Photo of boat where Tsarnaev hid]**

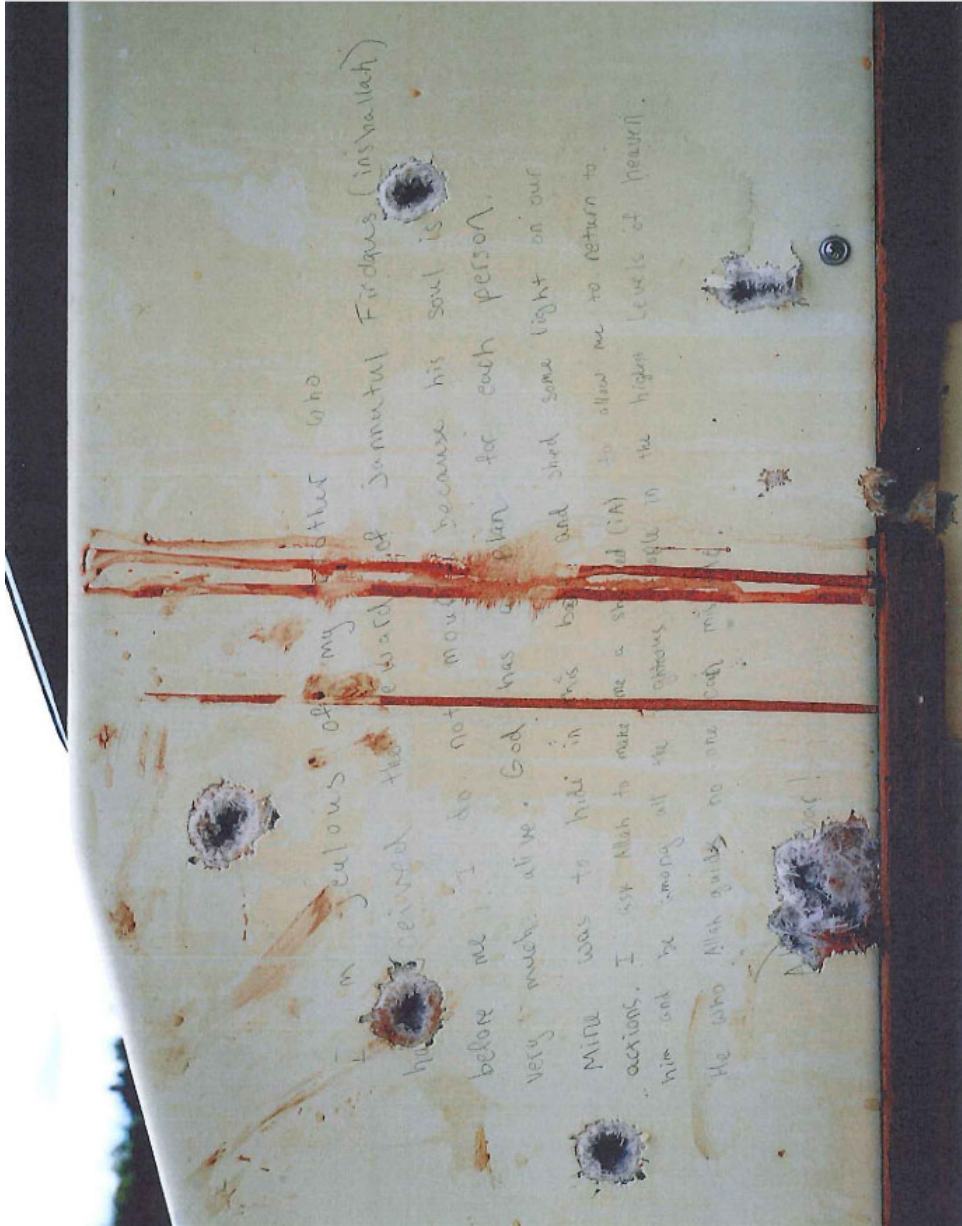




[Photo of Tsarnaev's boat carving]

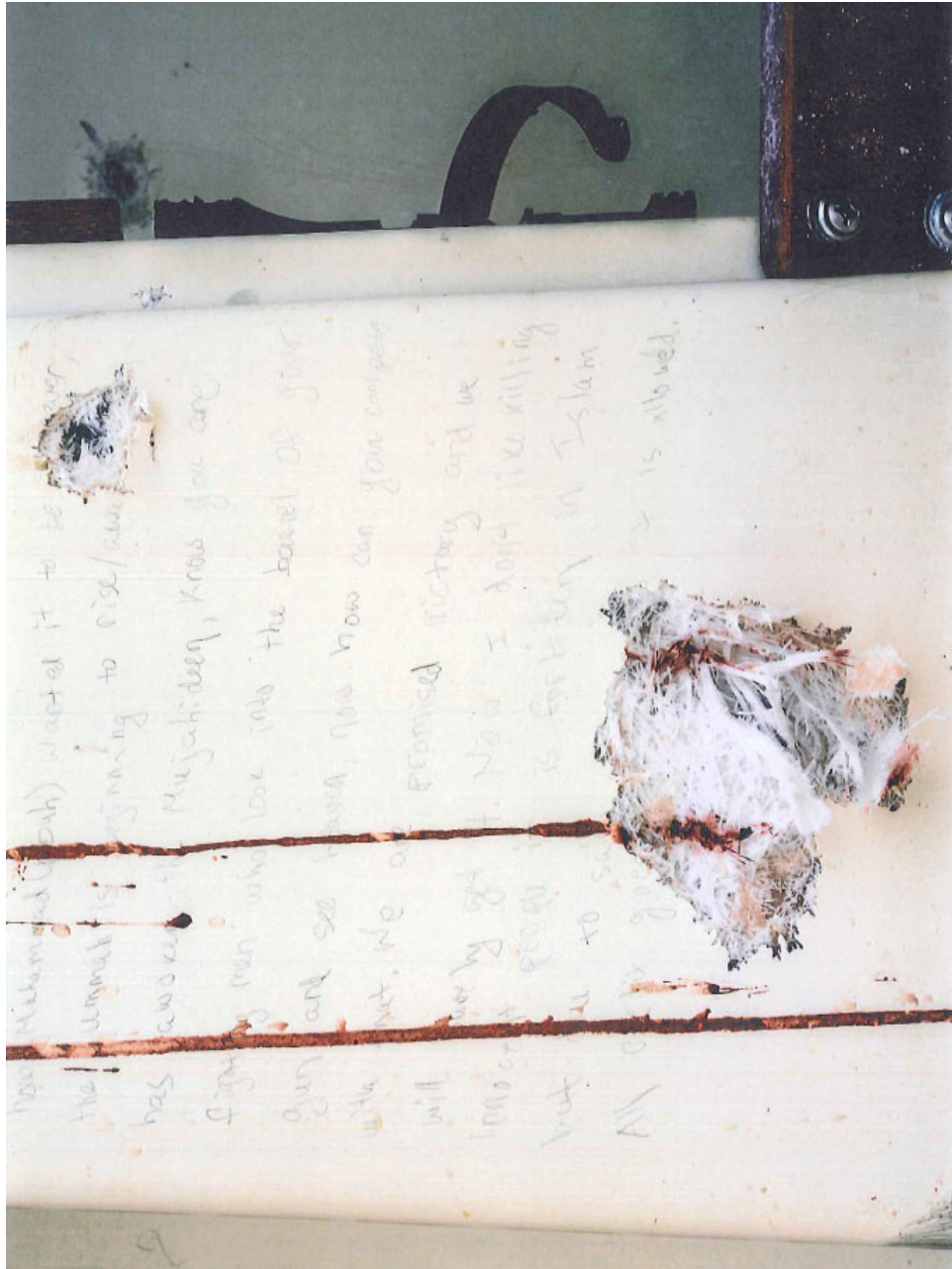


**[Photos of Tsarnaev's boat message]**



I bear witness that  
 there is no God but Allah  
 and that Muhammad is his  
 messenger. His actions came  
 with a message and that  
 is I Hala h. The U  
 Government is killing our innocent  
 civilians. Most of you already  
 know that. It's a mess. I can't  
 stand to see such evil go unpunished.  
 Muslims are one body. You must  
 all join us all, well at least that  
 has Muhammad (pbh) wanted it to be. However,  
 the ultimate is beginning to rise/awake.





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. 10, 2015  
9:35 a.m.

---

**JURY TRIAL—DAY THIRTY**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

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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

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- and -

CLARKE & RICE, APC

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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

\* \* \* \* \*

[30-48]

Q. Is this the blood that was kind of trailing down  
from the top of the note down?

A. Yes.

Q. Does it appear as if the blood was on top of the writ-  
ing?

A. Yes.

Q. So the writing was done before the blood came down?

A. Yes.

MR. CHAKRAVARTY: For convenience of reading, can we go to 830, please?

Q. I'll read this panel and ask if I read it correctly. "I'm jealous of my brother who ha"—then there's a hole—"ceived the reward of the jannutul Firdaus inshallah before me. I do not mourn because his soul is very much alive. God has a plan for each person. Mine was to hide in his boat and shed some light on our actions. I ask Allah to make me a shahied (iA) to allow me to return to him and be among all the righteous people in the highest levels of heaven. He who Allah guides no one can misguide. A"—then there's a hole—"bar!" Did I read that correctly?

A. Yes.

MR. CHAKRAVARTY: Can we go back to 826?

Q. Does that accurately reflect what's here?

A. Yes.

MR. CHAKRAVARTY: Go to 827, please.

Q. Is this the part of the boat that separated the first [30-49] portion of the writing with this portion?

A. Yes.

Q. And is this similar to the first portion of the writing that there's some blood stains as well as some holes throughout the note?

A. Yes.

MR. CHAKRAVARTY: Go to Exhibit 830, Page 2.

Q. I'm going to read this transcription and ask if I read it correctly. "I bear witness that there is no God but Allah and that Muhammad is his messenger." Then there's a hole. "R actions came with"—another hole—"a"—another hole—"ssage and that is"—hole—"ha illalah. The U.S. Government is killing our innocent civilians but most of you already know that. As a M"—and then a hole—"I can't stand to see such evil go unpunished. We Muslims are one body, you hurt one, you hurt us all, well at least that's how Muhammad (pbuh) wanted it to be"—hole—"ever. The ummah is beginning to rise/awa," and then there's a hole. Did I correctly read that portion?

A. Yes.

MR. CHAKRAVARTY: Can we go to 828, please?

Q. In 828, does the first two lines that we just read appear on Exhibit 828, so this is a continuation of the same portion of writing?

Yes.

[30-50]

MR. CHAKRAVARTY: Can we go to 830, Page 3, please?

Q. And shaded out are the two lines we just read?

A. Correct.



Q. “ . . . has awoken the mujahideen, know you are fighting men who look into the barrel of your gun and see heaven, now how can you compete with that. We are promised victory and we will surely get it. Now I don't like killing innocent people it is forbidden in Islam but due to said”—hole—“it is allowed. All credit goes”—then there's big hole. Did I read that correctly?

A. Yes.

Q. After you cleared the boat, what did you do with this information that you had learned from the—reading the inside of the hull?

A. I immediately told an FBI agent.

Q. What were you and the remainder of the EOD teams doing after you exited the boat?

A. We continued to clear the backyard and surrounding areas.

Q. Was that scene secured?

A. Yes.

Q. And then did the FBI ultimately come over and process that scene?

A. Yes.

MR. CHAKRAVARTY: Thank you.

CROSS-EXAMINATION BY MR. BRUCK:

\* \* \* \* \*

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., Mar. 4, 2015  
9:16 a.m.

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**JURY TRIAL—DAY TWENTY-SEVEN**

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\* \* \* \* \*

[27-23]

\* \* \* \* \*

With that, then, we'll proceed to the next stage with  
the opening statements. The government will begin.

MR. WEINREB: Good morning.

THE JURORS: Good morning.

MR. WEINREB: Nearly two years ago, on Marathon Monday, the defendant, Jahar Tsarnaev, rounded the corner onto Boylston Street and began walking towards the Boston Marathon finish line. It was about 2:30 in the afternoon. The race had started about six hours earlier, and the sidewalks were packed with spectators. The Red Sox game had just ended, and people were pouring out of Fenway Park, making the crowds even bigger. There were people from all over the world and all walks of life—men, women, boys, girls—all loudly cheering on the runners. And because Marathon Monday falls on Patriots' Day, the school holiday, there were plenty of families enjoying the special day with their children.

But the defendant wasn't there to watch the race. He had a backpack over his shoulder, and inside that backpack was a homemade bomb. It was the type of bomb favored by terrorists because it's designed to tear people apart and create a bloody spectacle. It was a sealed pressure cooker about this wide and this high, and it was filled with explosive powder and [27-24] thousands of pieces of tiny shrapnel: nails, tacks, and little BBs. The purpose of that type of bomb is to shred flesh, shatter bone, set people on fire, and cause its victims to die painful, bloody deaths and permanent disfigurement.

The defendant's goal that day was to maim and kill as many people as possible, so he took his time figuring out where to plant his bomb. He began walking slowly down towards the finish line with his brother, Tamerlan, who was also carrying a bomb in his own knapsack. They walked a little ways together, and then they split up.

Tamerlan continued all the way down to the finish line and planted his bomb there in a crowd of people. The defendant waited a bit and then started walking in the same direction. He decided to stop in front of a crowded restaurant called Forum, and to place his bomb right behind a row of children who were standing on a railing by a curb—the curb watching the race.

One of those children was an eight-year-old boy named Martin Richard who was watching the race with his family. No one noticed the defendant plant the bomb because there was nothing out of the ordinary to see. He just got there, slipped his backpack onto the ground, and stood there looking at the backs of those children. He pretended to be a spectator, but he had murder in his heart, although you wouldn't have known it just to look at him.

[27-25]

The defendant looked and acted like a typical young adult, but the evidence will show that he wasn't. He had a side to him that he kept hidden, even from his closest friends. When he was with his friends, he hung out and played video games. But when he was by himself, he read terrorist writings and listened to terrorist lectures. Those writings and lectures convinced him that he should kill innocent Americans in order to punish the United States for mistreating Muslims in other countries. And by doing so, he thought he would earn a place in paradise, which explains what happened next.

The defendant stood there for nearly four minutes directly behind the row of children who were watching the race. Dozens of people stood around him, and dozens more were behind him in the Forum restaurant enjoying

a meal with friends, cheering on the runners, or just enjoying the day. Then when the defendant had given his brother, Tamerlan, enough time to get into place, he called Tamerlan on the phone and spoke to him for about 20 seconds. About ten seconds later, Tamerlan detonated his bomb. A few seconds after that, the defendant walked briskly back the way he had come, leaving his own bomb behind him on the ground. When he was a safe distance away, he detonated the bomb by remote control.

The explosions from the two bombs were terrifying. They made a defining roar and created fireballs several stories high. The air filled with the smell of burning sulphur and [27-26] people's screams. Pieces of the pressure cookers and thousands of pieces of tiny shrapnel were propelled with huge force in every direction. Some of them landed hundreds of feet away.

The defendant's bomb exploded in the middle of a crowd of people. Pieces of the pressure cooker and bits of shrapnel tore through them, shredding their flesh and severing their arteries. The explosion deafened many of them and set others on fire. Some of them were blinded. Many had a leg or a foot blown off their bodies, and some bled to death on the pavement while the defendant ran away.

One person the defendant murdered that day was Martin Richard. As I said earlier, he was one of the children standing on the railing watching the race. Martin was eight years old. He was at the marathon with his father, Bill Richard; his mother, Denise; his six-year-old daughter [*sic*], Jane; and his 11-year-old brother, Henry. They were all standing together waiting for a family friend to cross the finish line.

The bomb tore large chunks of flesh out of Martin's body. As the smoke cleared, Denise Richard found her little boy lying on the ground and tried to comfort him. She could only half see him because the bomb had permanently blinded her in one eye. Martin bled to death on the sidewalk as she looked helplessly on. Bill Richard, who had been blown into the street, came back to the curb and reached out to Jane to pick [27-27] her up off the sidewalk. When she tried to stand up, she fell down again because her leg was no longer attached to her body.

Another person the defendant murdered that day is Lingzi Lu, a student at Boston University. She was a 23-year-old known for her kindness and her passion for music. She was at the marathon with her friend, Danling. They just happened to be walking by the Forum restaurant when the bomb went off. That blast knocked Danling to the ground. When she opened her eyes, she saw a man in front of her missing his leg. She looked down to see if her own legs were still there, and she saw that her insides were coming out of her stomach, so she used her hands to push them back in. She looked around to find her friend and saw her lying a few feet away. Lingzi was screaming in pain and terror, but Danling couldn't hear her because the bomb had deafened her. Danling never saw her friend again because Lingzi, like Martin Richard, bled to death on the sidewalk.

A third person the defendant murdered that day was Krystle Marie Campbell. Krystle was 29 years old. She was at the finish line with her good friend, Karen Rand. They were there to cheer on Karen's boyfriend, who was running the race. Krystle was killed by the

bomb that the defendant's brother set off. It burned her skin, filled her with shrapnel, and opened gaping wounds in her legs and torso. It also knocked her friend, Karen Rand, to the ground and blew off Karen's leg. [27-28] Karen held Krystle's hand tight as the life drained out of her body.

Now, even though the defendant's brother set off the bomb that killed Krystle Campbell, the defendant is still responsible for her death. That's because he and his brother were partners in crime. They planned these crimes together, and they carried them out together. The defendant knew that his brother's bomb was going to kill people, just like he knew his own bomb was. That's exactly what he wanted to have happen.

As soon as those bombs went off, Boylston Street erupted into chaos. The wounded lay on the sidewalk in pools of their own blood, wondering if they were going to live. Others fled the scene. But in the midst of the chaos, some people sprang into action. Police officers, medical personnel, family members and friends of the dead and dying, many of them jumped in to offer aid. There were a lot of heroes that day, and you'll hear from some of them.

What was the defendant doing while people were frantically trying to save the wounded from bleeding to death on the street? We know the answer because he was caught on a surveillance tape. Just 20 minutes after he set off that bomb on Boylston Street, while paramedics were still giving CPR to Martin Richard in a futile attempt to try to save his life, the defendant drove to the Whole Foods in Central Square and [27-29] purchased a gallon of milk. You'll see him on the surveillance tape walking into the Whole Foods, going over to



the milk counter, shopping for the milk, choosing which one to buy, going back to the counter, calmly paying for it, and walking out of the store. You'll even see him come back a minute later and decide to exchange that milk for a different type of milk.

And what did he do after that? While victims of the bombing lay in the hospital and learned that they would have to have their limbs chopped off to save their lives, the defendant pretended that nothing had happened. He went back to UMass Dartmouth, where he was enrolled as a sophomore. He hung out with his friends and partied. He went to the gym and played video games. He posted a message on Twitter that said, "I'm a stress free kind of guy." He acted like he didn't have a care in the world.

The defendant acted that way because he believed that what he had done was good, was something right. He believed that he was a soldier in a holy war against Americans and that he had won an important victory in that war by killing Martin Richard, Lingzi Lu, and Krystle Campbell. And he also believed that by winning that victory, he had taken a step toward reaching paradise. That was his motive for committing these crimes.

How do we know that? We know it in part because the defendant wrote out an explanation of why he committed these [27-30] crimes. The police found that writing when they arrested him, and you will see it later on in court. This is part of what the writing said: "I ask Allah to make me a shahied to allow me to return to him and be among all the righteous people in the highest levels of heaven. Allah Akbar." "Shahied" means martyr, and "Allah Akbar" means God is great.

The defendant wrote, “The U.S. government is killing our innocent civilians, but most of you already know that. I can’t stand to see such evil go unpunished. We Muslims are one body. You hurt one, you hurt us all. The ummah is beginning to rise. We are promised victory, and we will surely get it.” “Ummah” is a word that people with the defendant’s beliefs use to describe the Muslim people.

The defendant wrote, “Now, I don’t like killing innocent people. It is forbidden in Islam. Stop killing our innocent people, and we will stop.”

The defendant carried out an attack on the Boston Marathon because he believed that the United States government is the enemy of the Muslim people. He believed that punishing America by killing innocent young women and children would cause America to stop targeting Muslim terrorists overseas and help win him a spot in heaven. And you will hear evidence of how he acquired that belief. He acquired it by reading books, listening to songs, and watching videos that were created by other terrorists, and they convinced him that he should become [27-31] a terrorist too.

The defendant’s transformation into a terrorist took place over a year or two. In 2011, he started reading terrorist writings and posting online messages about the persecution of Muslims. In 2012, he started listening to terrorist lectures and songs. He told one of his friends that he had a plan to reach paradise. In 2013, he created an online identity that he used to spread radical Muslim ideas. He said that people don’t take notice when Muslims die over there, meaning overseas, but if something happens over here, meaning in America,

then everybody takes notice. He also said that he knew how to make a bomb.

You will hear that the defendant had terrorist writings, videos, and lectures on his laptop computer, on his iPod and on CDs in his car. We will show you many of those writings and videos during the trial, and you'll hear evidence that reading those kinds of writings and listening to those lectures, watching those videos, is a common way that young adults like the defendant turn into terrorists themselves.

One of the things the defendant had on his computer was a virtually complete set of *Inspire Magazine*. That is a magazine published in English by a group that calls itself al-Qaeda in the Arabian Peninsula. The goal of *Inspire Magazine* is to do just that: to inspire young men like the defendant to become terrorists and to encourage them to attack [27-32] western countries, regardless of whether they're associated with a terrorist organization.

It's filled with stories of terrorists who punished America by killing innocent people, and it treats them as glorious heroes. It gives instructions on the best way to commit attacks so as to terrify people and kill as many people as possible.

One of the issues in *Inspire Magazine* that the defendant had on his computer contained instructions for making a bomb out of a pressure cooker filled with explosive powder and shrapnel. It recommends placing it in a crowded area to maximize its deadly effect. The defendant and his brother began accessing those instructions around Christmas of 2012. Later, the defendant's brother bought pressure cookers to hold the

explosive powder and remote-control cars that were turned into remote-control detonators. They filled the bombs with explosive powder emptied from ordinary fireworks, as well as nails, tacks, and BBs to make them more deadly.

A few months before the marathon bombing, the defendant got a 9-millimeter handgun. He told a friend of his named Stephen Silva that he needed a gun, so Silva got him a Ruger semiautomatic pistol with the serial number filed off. Silva will be a witness in this case, and he'll testify about giving the Ruger to the defendant.

It is clear that the defendant intended to use the [27-33] Ruger because on March 20th, 2013, just about a month before the marathon attack, he and his brother drove to the Manchester firing range in New Hampshire to practice shooting. The defendant rented two 9-millimeter pistols, just like the Ruger, and purchased four boxes of ammunition, and then he and his brother spent about an hour on target practice.

After bombing the marathon on April 15th, the defendant maintained his double identity. He acted normal around his friends. He pretended to them that he hadn't even been at the Boston Marathon, and he continued reading the terrorist writings and listening to the terrorist lectures on his computer. For example, you'll hear evidence that on April 16th, the day after the bombing, the defendant opened up the copy of *Inspire Magazine* on his computer that contained instructions for building pressure cooker bombs and pipe bombs; and then you'll hear that a few days later, he and his brother exploded several pipe bombs and another pressure cooker bomb, this time in Watertown.

Now, I want to go back to April 15th and talk about what happened after the bombings over the next few days on Boylston Street. As soon as the bombs exploded, police officers halted the marathon midway and everyone—made everyone leave the scene. Bomb technicians began checking for additional bombs. Ambulances came and took the wounded to hospitals. And then the long, painstaking process of gathering [27-34] evidence began.

Three consecutive blocks of Boylston Street were roped off and treated as a crime scene. FBI agents and hundreds of other federal, state, and local law enforcement officers donned special clothing and began scouring the area for evidence. Among all the blood and human remains, they found shredded cloth from the backpacks, pieces of the exploded pressure cookers, and wires and batteries from the remote-control devices used to detonate them.

And they found hundreds of pieces of shrapnel, little nails, tacks, and BBs. They found them on the street, they found them inside buildings, on the tops of roofs, and ER doctors found them on the bodies of the victims they were treating at the hospital, in their hair, in their clothing, and in their bloody wounds. The police also collected surveillance tapes from businesses on Boylston Street and elsewhere, and photos and videos from members of the public who had been there watching the race.

Now, as I said earlier, the defendant exploded his bomb right in front of a restaurant called Forum, and that restaurant has a surveillance camera that is right over the door of the restaurant, and it happened to be pointing directly at the place where the defendant

placed his bomb. The surveillance tape shows the defendant walk up to that spot. He's got a backpack slung over his shoulder. And the moment he [27-35] gets there, he dips his shoulder, and after that, you never see the backpack on his back again. But photographs show that it's at his feet.

It shows him stop right behind Martin Richard and the other children who are lined up on the railing watching the race. It shows him stand there looking at them and looking over their heads at the runners. Then it shows him make the phone call to his brother. A few seconds later, everyone in the Forum snaps their head to the left, towards the finish line, as the first bomb explodes. Almost immediately, the defendant begins walking rapidly in the other direction. As soon as he reaches a safe distance, his bomb explodes.

That video revealed that the defendant was one of the bombers, but the FBI didn't know who the defendant was. They had a face but not a name. So they started looking at all the other surveillance tapes, seeing if they could find him walking up to that spot. And they did find him, and they found him walking with another man, who turned out to be the defendant's brother, Tamerlan. Tamerlan also had a backpack on. So now the FBI had two suspected bombers. They had two faces but still no names.

Three days passed while the FBI and other law enforcement officers worked around the clock trying to identify who the two men in the video were. At the end of three days, they decided it was time to ask the public for help. So on [27-36] Thursday, April 15th [*sic*], at 5 p.m., almost exactly three days after the bombings occurred, the FBI published some of those surveillance

videos and still photos from the surveillance videos on its website, and they had a press conference where they asked members of the public to call in if they had any idea who those two men were.

News stations broadcast those videos and those photos all around the country and around the world. A few hours later, at 8:45 p.m., the defendant got a text from his good friend, Dias Kadyrbayev.

Dias texted, “You saw the news?”

The defendant texted back, “Yeah, bro, I did.”

Dias texted, “For real?”

The defendant texted back, “I saw the news. Better not text me, my friend. LOL.”

Dias texted, “You saw yourself in there?”

The defendant didn’t answer directly. He just texted back, “If you want, you can go to my room and take what’s there.” That’s exactly what Dias did. He and two other of the defendant’s friends went to his dorm room at UMass Dartmouth. They searched it, and they found a backpack containing fireworks that had been partially emptied of their explosive powder. They took that backpack, and they threw it into a Dumpster to get rid of the evidence, but fortunately the police later were able to recover it. They also took the defendant’s [27-37] laptop computer and brought it back to their apartment in New Bedford.

Meanwhile, the defendant and his brother went out in search of another gun. They drove by the MIT campus, which was close to their apartment, and they saw a police officer sitting in his cruiser next to a building. The police officer was named Sean Collier. He was a

27-year-old from Somerville. Students loved him because he was a friendly guy and took an active role in campus life.

A surveillance video shows what happened next. Now, unfortunately, the surveillance camera that took this video was very far away. It was on top of a very high building, the distance from where the car was, and it was so far away that the human figures in it appear tiny. It's impossible to see their faces or exactly what they're doing with their hands. Even so, it shows enough for you to be certain, in conjunction with other evidence that I'll tell you about, that the defendant and his brother killed Officer Collier.

The video shows two men walk through the courtyard and round the corner where Sean Collier is sitting in his cruiser. So they round one corner, walk all the length of the building, walk around the corner right to the cruiser. As soon as they reach the car, they open the door.

A few seconds later you can see a young man ride his bicycle right by the cruiser. The man on the bike was an MIT [27-38] graduate student named Nate Harman. He'll testify that as he rode by, he saw a man leaning into the driver's side of the cruiser, and he startled him. The man looked up in surprise and looked directly into Mr. Harman's face, and Mr. Harman's description of the man matches the defendant exactly.

At the same time the video shows the two men standing by the side of the car, a student working in an office that had a window right above where the cruiser was parked called MIT's version of 911 and reported hearing six possible gunshots from below. Shortly after the



call was made, the video shows the two men, the defendant and his brother, run away from the car back the way that they came. Five minutes later, fellow officers responded to the scene and found Officer Collier dead in his cruiser.

The evidence will show that the defendant and his brother used the defendant's Ruger, the one that he had gotten from his friend, to execute Officer Collier by shooting him in the head at point-blank range twice in the side of his head and once right between the eyes. They also shot him three times in his right hand. Then they tried to steal his gun from his holster, but they couldn't get the holster lock to open, so they gave up, and they fled the scene.

You'll know they tried to steal his gun from his holster because the holster had a two-stage lock to prevent the gun from being pulled out by someone else. The first stage is [27-39] easy to open, but the second one isn't, especially if you're not the person wearing the holster. When other officers found Officer Collier in his cruiser, they saw that the first stage of the lock had been opened, but the second was still closed, and they also saw that the gun and the holster were covered with blood, as if somebody had been yanking at it, while the rest of his utility belt was clean.

Now, because the surveillance camera was so far away, you can't see the defendant and his brother do the actual shooting. So the video doesn't reveal whether the defendant pulled the trigger, whether his brother pulled the trigger, or whether they both did, but it doesn't matter. They both murdered him. And other evidence, which I'll talk about in a few minutes, leaves

no doubt that they are the ones who killed Officer Collier and that they did it with the defendant's gun.

After murdering Officer Collier, the defendant and his brother got back into their Honda Civic, which was loaded with additional bombs, another pressure cooker bomb, like the one that had exploded on Boylston Street, and at least four pipe bombs. Their plan was to drive to New York City, but they needed a different car, one that couldn't be traced back to them or the murder of Sean Collier, so they drove in to Boston to find one.

About 20 minutes later, they found what they were looking for: a young Chinese man named Dun Meng, who was [27-40] sitting in a leased Mercedes SUV next to the AutoZone in Brighton reading a text message on his cell phone. The defendant and his brother drove up in their Honda Civic, and the defendant's brother got out. He went over to the passenger side of Mr. Meng's car, and he knocked on the window, and he signaled to Mr. Meng to roll it down. When Mr. Meng did, the defendant's brother reached inside, opened the lock, opened the door, and got into the car, and then he pointed the defendant's gun in Mr. Meng's face.

He demanded that Mr. Meng give him all of his money, and Mr. Meng did, but he only had \$40 on him. The brothers wanted more, so the defendant's brother told Mr. Meng to start driving, and the defendant followed in the Honda Civic. A nearby surveillance camera captured both cars driving away from the scene.

They kept driving until they got to a quiet block in Watertown, and then they parked, one behind the other. The defendant got out and transferred all of the bombs from the Honda into the trunk of the Mercedes. Then

he, himself, got into the backseat of the Mercedes, and the three of them drove to an ATM in—a Bank of America ATM in Watertown Square. When they got there, the defendant took Mr. Meng's ATM card, demanded his password, and robbed him of \$800 by using the ATM machine to withdraw it from Mr. Meng's bank account. That \$800 was still inside the defendant's wallet when he was arrested [27-41] the next day.

After robbing Mr. Meng, the defendant and his brother drove Mr. Meng to a Shell station on Memorial Drive in Cambridge. They got there about 12:15 a.m. The defendant and his brother had murdered Sean Collier less than two hours earlier, and their terrified carjacking victim was still inside the car. Even so, the first thing the defendant did when they got to the gas station was to leave his brother inside the Mercedes with Mr. Meng and go inside the Shell station to buy snacks. You'll see him shopping for those snacks on the Shell station video. He takes his time. He's not concerned. He makes sure he's getting exactly what he wants.

But then things took a bad turn for the defendant. While he was inside the Shell station shopping for snacks, Mr. Meng realized that this might be his last chance to escape before the defendant and his brother have no longer any use for him. So in a flash, while the defendant's brother's hands were occupied programming the GPS, Mr. Meng undid his seatbelt with one hand, opened the door with the other, jumped out of the car, and sprinted across the street to the Mobil station. You'll see him on a surveillance camera springing across the street and entering the Mobil station. And when

he gets there, you'll see the terrified look on his face, and you'll hear it in his voice on the 911 tape.

After Mr. Meng called 911, the police responded to the [27-42] Mobil station and they interviewed Mr. Meng. They got all the information about the Mercedes, and they began tracking its location in real time using the GPS system in the car. By that time, the defendant and his brother had driven back up to that block in Watertown where they had left the Honda Civic. The defendant had gotten back into the Honda Civic, his brother remained in the Mercedes, and they had begun driving back in the direction of Boston in the two cars.

The GPS tracking system in the Mercedes revealed that it was moving south on Dexter Avenue, which is a quiet, residential street in Watertown. A Watertown police officer named Joe Reynolds heard on his police radio that the Mercedes was wanted in a carjacking, and he began driving north on Dexter Avenue. He had no idea that the two people driving the cars were the Boston Marathon bombers.

As Officer Reynolds drove north on Dexter, the defendant and his brother were driving south. The defendant was in the Honda. He was in the lead. The defendant's brother was in the Mercedes. He was following. As the two cars drove past Officer Reynolds, Officer Reynolds made a U-turn and began following them.

The defendant decided to turn onto Laurel Street, which is another quiet residential street in Watertown, and his brother followed him. It was nearly one in the morning. The houses lining both sides of the street were dark and quiet. [27-43] The street wasn't well lit.

The defendant stopped his car in the middle of the street and got out, and his brother followed his lead and did the same. As soon as Officer Reynolds turned onto Laurel Street to follow them, they fired a bullet through his windshield, trying to kill him. Officer Reynolds backed up a short distance, got out of his car, and began shooting back.

Another Watertown police officer, Sergeant John MacLellan, was on the street within seconds. As soon as he turned onto Laurel Street, the defendant and his brother tried to kill him too. They shot at him with the defendant's gun while he was still in his car. Rather than back up, he put his car into drive, got out, and let it roll slowly down the street towards the brothers so that he and Officer Reynolds could take cover behind it. And that's what they did. They walked behind it, shooting as they went.

The defendant and his brother did everything in their power to kill those two officers. They shot at them with the defendant's Ruger, and they began throwing pipe bombs at them. Two of those bombs exploded within feet of the officers. Two others failed to detonate. Eventually, the defendant hurled a pressure cooker bomb at the officers. It exploded with a thunderous boom and created a massive fireball. Shrapnel rained down on the officers and blew in the homes on Laurel Street where the residents were cowering in terror.

A third Watertown police officer, Sergeant Jeffrey [27-44] Pugliese, arrived on the scene. He ran around the backs of some houses to get as close to the defendant and his brother as he could. The defendant's brother saw Sergeant Pugliese in the side yard of the house and began shooting at him. Sergeant Pugliese just stood

there and shot back. Eventually, the defendant's brother ran out of ammunition. He began walking rapidly down the street towards Officer Reynolds and Sergeant MacLellan. Sergeant Pugliese ran after him. He tackled him and tried to handcuff him. Officer Reynolds and Sergeant MacLellan jumped in.

While they were doing that, the defendant got back into the Mercedes, which was pointing away down the street, turned it around, and began driving at the three officers at top speed trying to mow them down. He must have known they were trying to arrest his brother, but he cared more about killing them than he cared about his brother's life.

Officer Reynolds and Sergeant MacLellan saw the car coming. They jumped off and took cover and told Sergeant Pugliese to do the same, but Sergeant Pugliese didn't. He grabbed the defendant's brother by his belt and tried to drag him out of the way of the coming Mercedes. At the last possible second, when the Mercedes was almost on top of him, Sergeant Pugliese rolled to the side. The defendant ran right over his brother and dragged his body about 50 feet down the street. He sideswiped Officer Reynolds' cruiser, which shook [27-45] his brother's body loose, and continued driving away at top speed.

As he sped by, other officers who had responded to the scene and were waiting down there at the end of the street, began shooting at the Mercedes. One of them was an MBTA officer named Richard Donohue. Officer Donohue was shot in the thigh by a stray bullet. It severed an artery, and he began bleeding heavily. Other officers tried to stanch the flow of blood, but it was impossible. Officer Donohue lost so much blood

that he stopped breathing and nearly died. Fortunately, paramedics arrived, quickly got him to a hospital where doctors were able to save his life.

The defendant drove a few more blocks and then ditched the Mercedes in the middle of the street. He made his way through the quiet, sleeping neighborhood to a house with a dry-docked boat in the backyard. The boat was a good size. It was about 22 feet long, about 8 feet wide, and it was up on a trailer, and it was covered with a tarp. It was still the end of winter, and it was covered with a tarp to protect it from the elements. It must have struck the defendant as a good place to hide out while the police searched for him.

Although the defendant had been shot and was bleeding, he still had his wits about him. He smashed the cell phone that he had used to call his brother right before they detonated the bombs. He also smashed his other cell phone. By [27-46] smashing those phones, he destroyed some of the evidence of what he had done, such as text messages between him and his brother that were stored on his phone. He also made it impossible for the police to use the GPS devices in the phones to figure out his location. Once he had smashed the phones, he took out Dun Meng's ATM card, which he still had, and he tried to hide it, along with the smashed phones, in a kind of ditch by where the boat was. But, again, the police searched the area and found it later.

Once he had destroyed and hidden the evidence, he climbed into the boat and hid. Meanwhile, the police cordoned off a whole section of Watertown where they knew the defendant might be hiding, and they searched all night and all the next day, but they couldn't find him. When they finally decided to call off the search for the

day, David Henneberry, the man who owned the boat, went outside to check on it. Mr. Henneberry saw that the tarp covering the boat was loose, and he climbed a short ladder to investigate. When he lifted the tarp to look inside, he saw the defendant lying there, so he went back into his house and called 911.

The police showed up quickly and surrounded the boat. Several officers saw what they considered suspicious movement and fired on it. That triggered a barrage of shots at the boat. Then hostage negotiators arrived and tried to talk the defendant into surrendering. Eventually they succeeded. The [27-47] defendant climbed out of the boat, and the police arrested him.

That's when the police found the writing I mentioned earlier, the one where the defendant explained that he had bombed the marathon to punish America for mistreating Muslim people. He had written that explanation in pencil on an inside wall of the boat while he was hiding inside of it, and you will see the writing itself, the pencil he used to write it, and other evidence that was found in the boat.

Meanwhile, officers had been combing Laurel Street and Dexter Streets for evidence. One of the first places they looked was the Honda Civic that the defendant had been driving. When the defendant escaped from Laurel Street in the Mercedes, he left the Honda Civic behind. On the floor of the Civic, on the driver's side, right beneath the defendant's feet where he had been driving, officers found two bloody white gloves. DNA analysis shows that the blood on those gloves came from Officer Collier. That is one of the ways you will know that the defendant and his brother are the ones who killed Officer Collier.



Another piece of evidence found in the Honda was the defendant's key ring, which had a UMass Dartmouth tag on it, and his car key, the same key he had used to drive the Honda to Laurel Street. Those items also were bloody, and once again, DNA analysis shows that the blood came from Officer Collier. That's yet another way you'll know that the defendant helped [27-48] kill Officer Collier that night.

Officers also found the defendant's Ruger, a BB gun that looks exactly like a Ruger, and 54 spent Ruger casings, meaning shells from bullets that had been fired from the Ruger. All of the Ruger casings were matched by a ballistics expert to the defendant's Ruger.

Now, six Ruger casings were also found at the MIT crime scene, three inside the cruiser and three outside of it. A ballistics expert examined those, and they also matched the defendant's Ruger. And that's yet another way you will know that the defendant and his brother murdered Officer Collier that night using the defendant's gun.

You're going to see all of the ballistics evidence, you'll hear from the ballistics expert, and you'll hear from the DNA expert who examined the gloves and the key ring.

Shrapnel from the bombs the defendant used on Laurel Street and pieces of the pressure cooker were found everywhere. They were inside people's cars, on their front lawns, in their backyards, on their roofs, even inside their homes. Slugs from the Ruger were also found inside people's homes, some of them embedded in their—in their interior walls. We will show you maps, diagrams, photographs of them.

Now, you've heard me talk a lot about the defendant's brother, Tamerlan, but you won't be seeing him in the courtroom. That's because the defendant killed him by running [27-49] him over with this Mercedes. Tamerlan's bullet wounds also contributed to his death. But even though Tamerlan won't be in the courtroom, this case involves him too. That's because he and the defendant were partners. They agreed to do these crimes together, and they carried them out together.

The judge will instruct you that when two people agree to commit a crime together, they're guilty of conspiracy. And the defendant is charged with three counts of conspiracy: conspiracy to use a weapon of mass destruction, conspiracy to bomb a place of public use, and conspiracy to destroy property with explosives.

The defendant is also charged with many substantive counts of using a weapon of mass destruction, arming a place of public use, and destroying property with explosives. And he's charged with many counts of using guns and explosives to commit violent crimes. Even though he and his brother played different roles in each of these crimes, they are both equally guilty of committing them because they carried them out as partners.

Now, what do I mean when I say they were partners? I don't mean that they did exactly the same thing. That's not required for the defendant to be guilty under the law. What I mean is that each one played a role in committing the crime. For example, the defendant—the defendant planted one bomb at the marathon, and his brother planted the other one. The [27-50] defendant got his—got a gun from his friend, Stephen Silva, and his brother stuck it in Dun Meng's face. The defendant took Dun Meng's ATM card and password and

robbed him of \$800. The defendant's brother told Dun Meng where to drive. The defendant threw bombs at the police in Watertown and handled the ammunition while his brother fired shots at the officers. And both brothers together murdered Officer Sean Collier and tried to steal his gun.

So even though Tamerlan Tsarnaev is not here, we will be offering evidence about his role in these crimes, but the focus is going to be on the defendant. That's because this is his day in court. He's the one the government has to prove guilty, not his brother. It's important for you to hear all the evidence against the defendant so that at the end of the trial you have what you need to find him guilty. It's far less important for you to hear all the evidence against the defendant's brother. In the end, it doesn't matter what role each of them played, so long as you find that they were partners and carried out these crimes together.

Now, as you can tell from what I've said, there's a lot of evidence in this case. Some of the witnesses are just going to talk about how and where things were found. Others will simply testify that things are what they appear to be. We need to call those witnesses because you need to have confidence in the evidence, but we'll do our best to streamline [27-51] its—its introduction into evidence and make that go as fast as possible, if we can.

I want to conclude just by telling you a bit about the order in which we're going to present the government's case. We'll start with the marathon bombings and the collection of evidence at the marathon crime scenes. We'll show you some of the surveillance video, photos and—photos from the people who were at the—the marathon before the bombs went off that the FBI used to

identify the defendant and his brother as suspects in the bombing.

Then we'll put on evidence of what the defendant did in the days after the bombings and of the manifesto he wrote on the inside wall of the boat. Next we'll put on evidence of the events on April 18th and 19th, how the FBI published photos of the defendant and his brother on their website and held the press conference; how the defendant and his brother then murdered Officer Collier, carjacked, kidnapped, and robbed Dun Meng, and tried to kill police officers in Watertown with gun—with a Ruger and with bombs.

After hearing about all the evi- —the events that led up to the defendant's arrest, you'll hear about all the evidence that was collected from the Watertown crime scene and analyzed by the experts, including the bloody gloves, the bloody car keys, the Ruger, and all the ballistics evidence. You'll also hear about evidence collected from the defendant's [27-52] residence in Cambridge and from his dorm room at UMass Dartmouth.

One of the most important pieces of evidence is the defendant's laptop computer, the one that his friends took from the dorm room. The police got that computer and analyzed it. As with a lot of people, the defendant's computer is a window into his life, especially into the part of him that he kept mostly hidden from his friends.

You'll hear a lot of evidence about all of the terrorist materials that were on his computer and the other digital devices that he owned. And you'll hear about other things that the defendant said and wrote that shed light on the sources of his terrorist beliefs. Some of those

are papers he wrote for school, and some are things he wrote to friends and emails and text messages and posted on social media.

You'll also hear from the medical examiners who examined the bodies of the four people the defendant murdered.

MR. BRUENNER: If you could choose number 4, please.

THE COURT: I'm sorry?

MR. BRUENNER: If you could choose 4, please.

THE COURT: Do you want a feed?

Jurors in the back row, just as you see monitors in the front row, there are between your seats a console. You can lift up the monitor, and—actually, it may not be at the very end. I think you may have to look in front.

[27-53]

MR. WEINREB: Each of the medical examiners who examined the people who died in this case will be testifying. And they'll tell you that Sean Collier was killed by multiple gunshot wounds to the brain. Krystle Campbell had blast injuries to her head, neck, body, and limbs. Her back was burned red; and her head, body, and legs were filled with shrapnel. There were gaping wounds in her legs that had drained virtually all of the blood from her body.

Lingzi Lu was cut, battered, and bruised. The bomb that the defendant detonated blew large perforating holes in her legs that caused her to bleed to death. Martin Richard was only 4 feet, 5 inches tall, and he weighed only 70 pounds. Because of his size and

height, the bomb damaged his entire body. The defendant blew large holes into Martin's chest and abdomen, exposing his ribs and organs and eviscerating his bowels. He blew Martin's arm nearly entirely off his body, burned his skin, and drove BBs and nails into his legs. Martin lost so much blood that he had virtually none left in his body by the time he was brought to the morgue. He died at the scene from his wounds.

In the end, the evidence will prove to you beyond a reasonable doubt that the defendant committed all 30 crimes that he is charged with. He murdered Martin Richard, Lingzi Lu, Krystle Campbell, and Sean Collier. He used weapons of mass destruction at the Boston Marathon to terrorize the [27-54] country and to influence American foreign policy. He used guns and bombs in Watertown to continue his campaign of terror, and he did it all because he believed that America needed to be punished for killing Muslims overseas. He did it to advance a cause that he believed in. And he did it because he thought it would help secure him a place in paradise. That is why, at the end of the case, we will ask you to find him guilty of all 30 counts in the indictment. Thank you.

THE COURT: Ms. Clarke?

MS. CLARKE: We meet in the most tragic of circumstances, tragedy in the lives of the victims of the bombings, lives that were lost and torn and shattered: the loss of a precious eight-year-old boy, whose smile captured all of our hearts; a young woman who—with an infectious laugh, who was always there for her friends and her family; a young graduate student whose passion for music was so clear, and she embraced Boston as her

home away from home; and a very fine young police officer whose lifelong dream was to protect and serve.

The circumstances that bring us here today still are difficult to grasp. They're incomprehensible. They're inexcusable. You just heard about the devastation, the loss, and the unbearable grief, and we're going to see it, feel it, and agonize with every witness who comes to talk about what they saw, they felt, and they experienced and what happened to [27-55] them and to those that they love.

For the next several weeks, we're all going to come face to face with unbearable grief, loss, and pain caused by a series of senseless, horribly misguided acts carried out by two brothers: 26-year-old Tamerlan Tsarnaev and his younger brother, 19-year-old Jahar.

The government and the defense will agree about many things that happened during the week of April 15th, 2013. On Marathon Monday, Tamerlan Tsarnaev walked down Boylston Street with a backpack on his back, carrying a pressure cooker bomb, and put it down in front of the Marathon Sports near the finish line of the marathon. Jahar Tsarnaev walked down Boylston Street with a backpack on his back carrying a pressure cooker bomb and placed it next to a tree in front of the Forum restaurant. The explosions extinguished three lives. They unalterably injured and devastated many others.

After their pictures were on television and on the Internet, Tamerlan and Jahar went on a path of devastation the night of April the 18th, leaving dead in their path a young MIT police officer and a community in fear

and sheltering in place. Tamerlan held an unsuspecting driver, Dun Meng, at gunpoint, demanded his money and compelled him, commanded him, to drive while Jahar followed behind.

The evening ended in a shootout. You've heard about it. Tamerlan walked straight into a barrage of gunfire, [27-56] shooting at the police, throwing his gun, determined not to be taken alive. Jahar fled, abandoned a car, and was found hiding in a boat.

There's little that occurred the week of April the 15th—the bombings, the murder of Officer Collier, the carjacking, the shootout in Watertown—that we dispute. If the only question was whether or not that was Jahar Tsarnaev in the video that you will see walking down Boylston Street, or if that was Jahar Tsarnaev who dropped the backpack on the ground, or if that was Jahar Tsarnaev in the boat—captured in the boat, it would be very easy for you: It was him.

So you might say, why a trial?

Now, you've heard several instructions, and when we sat in this courtroom at the table—you may remember that—the judge talked to you about how this is a capital trial. The government has elected to seek the death penalty, and in a capital trial there are two phases—

MR. WEINREB: Objection, your Honor.

MS. CLARKE: —one in which—

THE COURT: Overruled. Go ahead.

MS. CLARKE: —one in which the jury makes a determination of guilt and one in which the jury makes the determination of the appropriate penalty.



The indictment in this case is not that simple. It's 30 counts. You heard the counts described. It's 74 pages [27-57] long. There are complicated federal charges involved. And there will be much for you to analyze and decide.

But the essence of the charges are four sets of criminal acts: the bombings at the marathon that killed three people and injured many others, the murder of Officer Collier, the carjacking, and the shootout in Watertown.

We do not and will not at any point in this case sidestep—attempt to sidestep or sidestep Jahar's responsibility for his actions, but the indictment alleges, and the prosecutor talked with you about why, and we think the question of why is important, and this is where we disagree.

We have a different answer to this question: What took Jahar Tsarnaev from this (indicating), Jahar and his brother—what took Jahar Tsarnaev from this (indicating) to Jahar Tsarnaev and his brother with backpacks walking down Boylston? What took Jahar Tsarnaev from this to this (indicating)?

The government has told you their answer to the question of why, and we ask you to look further. Clearly, Tamerlan Tsarnaev became obsessed with violent Islamic extremism. He became increasingly religious in a radical way. He traveled to Russia in—for six months in 2012 and explored violent jihad with people over there. He became aggressively obsessed with talking about Islam because of his radical views and his insistence that people accept them and agree with them. [27-58] He disrupted services at the mosques here in

Boston where he once fit in. It was Tamerlan Tsarnaev who self-radicalized. It was Jahar who followed him.

The evidence will show that Tamerlan planned and orchestrated and enlisted his brother into these series of horrific acts. Tamerlan Tsarnaev did the Internet research on the electronic components, the transmitter and the receiver you'll hear more about, for the two bombs, and he bought them. Tamerlan Tsarnaev had the Russian-translated version of how to build a bomb on his computer. Tamerlan bought the BBs that were in the shrapnel that were in the pressure cooker and the pipe bombs. Tamerlan bought the pressure cookers. Tamerlan bought the fireworks that went into making the bombs. Tamerlan bought the ammunition. Tamerlan bought both of the backpacks. Rubber gloves with explosive residue on them were found in Tamerlan's car. Tamerlan led the way down Boylston Street. Tamerlan shot and killed Officer Collier. Tamerlan pointed the gun at Dun Meng, demanded his money, commanded him to drive away, telling him, "I just killed a police officer."

You'll hear evidence about computers and the electronic devices, phones, hard drives that were seized in this case, and it will show that Tamerlan spent much of his time on the Internet in death and destruction and images of carnage in the Middle East. Make no mistake, Jahar Tsarnaev's computer had many of the materials that the prosecutor told you [27-59] about: *Inspire Magazine*, "Join the Caravan," a number of extremist materials that you'll hear about. But there will not be any evidence that Jahar downloaded those materials as if he were searching the Internet to find them.

The earliest traces of any extremist materials go back to a thumb drive, a jump drive. You know what I'm talking about? You stick in the computer and you transfer files. The earliest traces of the extremist materials traced back to this thumb drive that has never been found, but forensics can tell you about it. The last traces of attachment—when you stick it into the computer and pull it out, the attachment into the computer—were into Tamerlan's laptop, Jahar's laptop, and a desktop computer that was at the Norfolk Street apartment where Tamerlan and his wife and daughter lived, where the family had lived. The last known attachment was, then, the day that Tamerlan left for Russia for six months in 2012.

So as you hear the computer evidence, please ask: What's the source of the document? Where else was it? Who else had it? Where did it come from? Can I know by the fact that it's on there who put it there and why?

An analysis of the computer evidence will, at baseline, show that both Tamerlan and Jahar's computers had this library of extremist materials, but the evidence will also show you that, while Tamerlan Tsarnaev was looking and immersed in death and destruction and carnage in the Middle East, Jahar [27-60] spent most of his time on the Internet doing things that teenagers do: Facebook, cars, girls. The evidence will also help point you in the direction of understanding the flow of the materials: who got what first, who got the most, and who had the most.

The evidence will not establish, and we will not argue, that Tamerlan put a gun to Jahar's head or that he

forced him to join in the plan, but you will hear evidence of the kind of influence that this older brother had.

MR. WEINREB: Objection, your Honor.

MS. CLARKE: During the period of time—

THE COURT: Very limited evidence, if that, but go ahead.

MS. CLARKE: Thank you, your Honor.

During the period of time when Tamerlan was becoming more radical and traveling to Russia and identifying with violent jihad, the evidence will show you what was happening with Jahar. His parents: his dad, Anzor; his mother, Zubeidat—

THE COURT: I think this is—yeah, I think the family history is not appropriate, as I previously indicated.

MS. CLARKE: His parents left and moved back to Russia. He was a student at UMass Dartmouth, but things were not going very well. His grades were plummeting; he wasn't going to class; and he was in danger of failing out of school. [27-61] And Jahar, in one of those tough times of adolescence, as we all know, became much more vulnerable—

MR. WEINREB: Objection, your Honor.

MS. CLARKE: —to the influence—

THE COURT: No, go ahead.

MS. CLARKE: —of someone that he loved and respected very much: his older brother.

You'll see from the evidence that Tamerlan had a special kind of influence dictated by his age, their culture,

and Tamerlan's sheer force of personality. They committed the acts in April of 2013 that led to death and destruction, and they are inexcusable and for which Jahar must be held responsible. But he came to his role by a very different path than suggested to you by the prosecution: a path born of his brother, created by his brother, and paid by his brother. And unfortunately and tragically, Jahar was drawn into his brother's passion and plan, and that led him to Boylston Street.

The government talked to you about writings that were in the boat where Jahar was found hiding and where he had found a pencil, and those writings are very important to read in their entirety. And you'll see them. You'll get to read them. But essentially what Jahar wrote was, first, he expressed that he was jealous of his brother who had achieved martyrdom and his wish that he would as well. He wrote that he perhaps [27-62] guessed that he was alive so that he could shed some light on their motives, and he wrote words that he had read and heard—read and heard—that the United States was responsible for the suffering of Muslims around the world.

We ask you to carefully evaluate the testimony—and there will be testimony about these writings, not just the writings themselves—but about the writings inside the boat, where they came from, and how deeply rooted they may or may not be.

And at the end of this first phase of the case, we think that you will have the evidence that you need to make the decisions about the 30 counts, about the four sorts of—essence of the criminal charges. We think that you will have the evidence that you need to weigh and analyze and make the decision in the first phase. But there

will be questions that we cannot answer now. There will be questions that we ask you to carry over to the second phase, as the judge has explained.

When we talked to you in voir dire around this table centered in the courtroom, the government, the defense, the Court was here. Most of you acknowledged that you knew something about this case. And most of you said—or many of you said that you had seen images of devastation, and many of you knew about certain events—

MR. WEINREB: Objection, your Honor.

MS. CLARKE: —and people whose lives—

[27-63]

THE COURT: Go ahead.

MS. CLARKE: —were changed.

But none of you would be sitting here today, right now, had you not convincingly and with conviction told us that you can remain open through this phase, that you can hold your questions throughout the trial, and that you can remain open—your hearts and minds open to thinking about the evidence all the way.

Witnesses—many witnesses are about to start to be called, some who work in forensics, some police officers who risked their lives, a number of first responders who cared for victims, a number of victims who were injured, and survivors, eyewitnesses, people that lost loved ones. We're all going to see and listen to their testimony with heavy hearts.

Holding your assurances to us that you can hold your minds open to not only listening to the who, what, where,

and when, but to the how and why, those assurances are going to be tested and going to be very difficult promises to keep. Holding the questions that you have that can't be answered in this phase, holding them open—your hearts and minds open until the second phase will not be an easy task, but that's what you promised when you swore your oath as jurors. That's what the judge expects. That's what our system of justice expects. It's going to be a lot to ask of you to hold your minds and hearts open, but that is what we ask.

[27-64]

Thank you.

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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

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John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Mon., Apr. 6, 2015  
9:59 a.m.

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**JURY TRIAL—DAY FORTY-THREE**

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[43-51]

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We're now going to turn to the closing arguments, or closing statements, by the lawyers. And as I say, when they're finished we'll have some more to say to you about how to deliberate on the evidence.

The order of presentation of the closing statements is the government goes first, followed by the defendant. And if the government wishes, it may have the opportunity for a brief rebuttal. So we'll begin with the government's closing.

Mr. Chakravarty.

MR. CHAKRAVARTY: Just a moment to set up, your Honor?

THE COURT: For the convenience of the reporter, we're going to take a five-minute break. Please, of course, no discussion of any of the matters.

THE CLERK: All rise for the Court and jury. The Court will take a five-minute break.

(The Court and jury exit the courtroom and there is a recess in the proceedings at 11:15 a.m.)

THE CLERK: All rise for the Court and the jury.

(The Court and jury enter the courtroom at 11:31 a.m.)

[43-52]

THE CLERK: Be seated.

THE COURT: Mr. Chakravarty.

MR. CHAKRAVARTY: Thank you, your Honor. The defendant brought terrorism to backyards and to main streets. The defendant thought that his values were more important than the people around him. He wanted to awake the mujahidin, or the holy warriors, and so he chose Patriots' Day. He chose marathon Monday. He chose a family day of celebration. He

chose a day when the eyes of the world would be on Boston, a sporting event celebrating human achievement. He chose a day where there would be civilians on the sidewalks. And he and his brother targeted those civilians, men, women and children, because he wanted to make a point. He wanted to terrorize this country. He wanted to punish America for what it was doing to his people.

So that's what he did. He and his brother killed two young women that day. They killed a little boy. They maimed and permanently disfigured dozens of people. At least 17 amputees. At least 240 were injured. And after they did it, he coolly, not 20 minutes later, went to the Whole Foods to make sure he got the half gallon of milk that he wanted. The next day he went back down to college, joked with his friends, got a workout in. He even went back to Twitter, and he decided to tweet so that everybody knew what he was feeling.

The defendant and his brother did this together. He [43-53] planted one bomb, his brother planted the other. It was a coordinated attack to maximize the terror. Because that was the purpose. And after they did, they went back and they laid low. But three days later, when their faces were all over the news, they sprung back into action, and again in a coordinated style, they went back and they said they needed to build more bombs. They needed to continue with their campaign. But they needed a gun. So they went to MIT and there they saw Officer Sean Collier. They targeted him and they killed him. They tried to get his gun. They couldn't.

Now that their car was captured on camera, now that they couldn't get that extra gun, what did they decide to

do? They needed a new car. So they drove over the bridge from Cambridge into Brighton, and there they found Dun Meng who was on the side of the road. Dun Meng in his Mercedes SUV. And Tamerlan approached from the passenger's side and brandishes the gun and carjacked the vehicle.

Dun Meng didn't even know that the defendant was following closely until they got to Watertown. And in Watertown they transferred some things into the car. The defendant gets into the car. What they didn't realize was that the police would track down that Mercedes so fast. And so where they had been planning to go to New York with all of their bombs, all their guns, they were instead encountered by the Watertown police. And when they did, they made their last [43-54] stand.

And in their last stand—you heard about it and you'll hear more about it today—eventually Tamerlan had run out of bullets and he went and charged at the police. He was subdued. And then the defendant was all alone. And he had choices to make: He could surrender; he could keep driving—get back into the car and keep driving; he could do what his brother did and charge at the police.

But he chose a different path altogether. He chose to get back into the Mercedes, turn it around, use it as a weapon and try to mow down the police officers who had apprehended his brother. He hit his brother. He dragged him. He almost hit Officer Colon. And then he made his escape.

A short while later, about half a mile down the road, he abandoned the Mercedes and he was on foot. He was alone. He was injured. He made his way down a

hill looking for a place for refuge. You heard that there were some blood marks where he was trying to find some place to hide.

Eventually he found the winterized boat with a tarp on it in Dave Henneberry's backyard. When he saw that, he found a place for refuge. But before he climbed into that boat he took his phones, he went behind the shed right next door, and he had the presence of mind to smash his phones, including the phone that he had coordinated the attacks with his brother with. The phone that he had used to talk to his brother after the [43-55] attacks, he smashed that phone. He ditched it behind the shed with his other phone and Dun Meng's bank card. And then without the help of a ladder even he pulls himself up into the boat that you all saw—he pulls himself up into the boat and he lies down and he thinks about what he did and what he was going to do in that boat.

And ultimately, he did what terrorists do after they commit terrorist acts: He wanted his actions to stand for more than what people might think, so he wanted to tell the world why he did what he did. He wanted to take credit. He wanted to justify his acts. And in that boat, when the helicopters were overhead, the sirens were blaring, there were police canvassing, looking for him, he was all alone, and in his voice he chose to write something to the American people.

“I'm jealous of my brother who has received the reward of jannatul Firdaus (inshallah—” remember, that's the highest levels of paradise. “— God willing) before me. I do not mourn because his soul is very much alive. God has a plan for each person. Mine was to hide in his boat and shed some light on our actions. I ask Allah to

make me a shahied—” martyr “—inshallah, to allow me to return to him and be among all the righteous people in the highest levels of heaven.

“He who Allah guides, no one can misguide. Allah Akbar!

“I bear witness that there is no God but Allah and [43-56] that Muhammad is his messenger. Our actions came with a message and that is La illaha illallah.” That’s the statement of faith you heard.

“The U.S. government is killing our innocent civilians, but most of you already know that. As a Muslim, I can’t stand to see such evil go unpunished. We Muslims are one body. You hurt one, you hurt us all. Well, at least that’s how Muhammad (peace be upon him) wanted it to be forever.

“The ummah,” which we know is the Muslim nation, “is beginning to rise and awaken . . . has awoken the mujahideen,” the holy warriors, “know you are fighting men who look into the barrel of your gun and see heaven. Now, how can you compete with that?

“We are promised victory and we will surely get it. Now, I don’t like killing people innocent people. It is forbidden in Islam. But due to said, it is allowed. All credit goes to Allah.”

You’ve all sat through the evidence in this case. You know it better than anyone. The evidence here speaks for itself, and so I’m going to simply present that evidence to you. Some of it. Because pictures speak louder than words, I’m going to direct you to some of the images on your screens. I have a screen here when I want to point something out to you. The evidence I’m

going to show you will give you the confidence to conclude that the defendant did indeed commit each of the [43-57] crimes that are charged in the indictment.

THE COURT: Jurors in the back row, you should get your monitors ready.

They're active now.

MR. CHAKRAVARTY: We'll start with a video of the crime itself, at least the first crime, the marathon bombing.

(Video recording played.)

MR. CHAKRAVARTY: You remember this clip from the timeline video. It was about 2:37 in the afternoon when cameras first captured footage of the defendant and his brother turning onto Boylston Street the day of the marathon. They calmly strolled down the street, each transporting the deadly contents of a pressure cooker bomb concealed in a backpack.

You can tell by the defendant's expressions, by the casual way he walks, that he is entirely untroubled by what he is about to do. That's because the terrorist literature and the lectures and the songs that he had been consuming for over a year had convinced him that what he was going to do was just.

His brother takes position down by Marathon Sports and he waits to coordinate. He's checking his phone. The defendant, on the other hand, is still up by the Forum. After all their planning and preparation, they were looking for the right place to make the impact that they wanted to make. The defendant slung his bomb over his right shoulder, appearing very much like a college student. But that day they felt they [43-58] were

soldiers. They were the mujahidin and they were bringing their battle to Boston.

This is the defendant finally approaching his target. Compared to the crowd at Whiskey's, the crowd was much more dense here. There's a bar behind him, a restaurant. People are having fun. There's cheering, there's clapping. People are egging on the runners. There's a cow bell behind them. There are people coming and going. And in front of him, you can't help but see them, there's a row of children on the barricade.

He puts the bomb down as soon as he gets there right behind that tree. So he's on the grate. Between the tree and him there's no place for people to walk. Nobody was accidentally going to step on his bomb. And there he hovers over it, surveying the crowd, seeing the children again, seeing the Richard family. He's contemplating. He's waiting for his brother to get in position. He's thinking about what he's right about to do, about the plan that he and his brother have set in motion.

It's about this time, 2:48, that he checks his bomb for one last time, and then he gets ready to make his phone call to his brother to tell him that things are a go. He's making his call. Remember, ladies and gentlemen, this was a 19-second call. It coordinates with his phone records. We don't know exactly what he said, but we know what he told his [43-59] brother. He told him he was in position. He told him it was go time.

He thought his cause was more important than the people around him so he picked this place because it would cause massive damage. Look at how thick the people are there. It would cause memorable damage.



He picked this place. And he was waiting for his brother. He's waiting. He knows it's coming. And there it is. He waits for a moment, and then like a salmon upstream, he's on his way up, and right before he leaves the screen he turns his head. This is the defendant running away, pushing people out of the way. He's got places to go.

The fact that he exploded the bombs was devastating. His bomb we have the devastation on video. We didn't dwell on it during the trial but I'm going to play a short clip for you now. I'd just ask you to focus on where the Richards' family is, and I'd ask you to focus on what happens after the explosion.

(Video recording played.)

MR. CHAKRAVARTY: The defendant is over here. He puts down his phone. Bill Richard is here, Denise Richard is over here, and Martin and Jane and Henry are in front.

(Video recording played.)

MR. CHAKRAVARTY: Remember the video that Colton Kilgore shot? Remember, he was the photographer. He [43-60] reflexively just started hitting "record" after the bomb blew up at Scene A. He captured some of the sights and sounds of the chaos and the terror that everybody was experiencing that day. So we're going to play some of that so you can hear it for yourself and bring yourself back to it.

(Audio and video recording played.)

MR. CHAKRAVARTY: That's Rebekah Gregory. Remember how she said she was hoisted into the air, thrown back? She immediately began searching for

her son, despite the fact that bones were sticking out of her hands. Clearly you see her leg. She saw terror on everybody's faces. Finally she heard her son's cries. She was placed into a medically induced coma as a result of the blast. She's had 18 surgeries. Foreign objects are still in her body.

Remember Shane O'Hara? He was the manager at the Marathon Sports right there? He said all he could do was hear screaming and cries. He heard someone say, "Stay with me. Don't leave me." He and others rushed to find materials for tourniquets. He said he never thought he would have to choose who to help, whose life to try to save.

That's Rebekah Gregory right there. And that's Krystle Campbell screaming in pain. She lies dying on the sidewalk.

You'll recall Sydney Corcoran, the young lady who's now a sophomore in college. She was there with her family like [43-61] so many others. She told you what it feels like to feel the lifeblood slipping out of your body. She said she started feeling cold, but peaceful, as the blood left her body.

Karen McWatters, who spent the afternoon with Krystle Campbell, described what a beautiful day it was. She posted a photo on Facebook that she and Krystle took in the public garden a short time earlier. When the bomb went off, Karen saw the smoke, the chaos, confusion. She asked herself whether she was dreaming, if this nightmare was a reality. That's Karen and Krystle.

Officer Frank Chiola was one of the first to respond to Krystle Campbell. He described her injuries in two

words: Complete mutilation. When the explosion happened there was complete silence, he said, and then the screaming began.

And then there was Jeff Bauman. Bauman lost both of his legs. You could see him here with his body torn apart. And as he lay there with what remained of his legs in the air he thought very clearly, “We’re under attack.” And when he later woke up in the hospital, he remembered the man who placed the bomb that blew him up. It was the defendant’s brother, Tamerlan Tsarnaev.

But nobody was able to remember the defendant at Scene B, at the Forum. That’s because he blended in. To be successful, he had to lie in wait trying not to draw attention to himself. This image shows the moment after the defendant [43-62] called his brother to say that they were a go a moment after this. He checked on his bomb and then he made his escape. He swiveled his head around right at the last second, once he was right outside of the blast radius. This is him turning his head just to make sure he has enough space, and then the bomb goes off.

Alan Hern, the teacher from California, recalled how he and his family had been lined up near Martin Richard and Jane Richard and the other children. He said the injuries that he saw were something out of a war zone. He recalled finding his 11-year-old son Aaron on the ground, eyebrows singed. His legs were black. His left thigh was mangled and bloody. “It really hurts, daddy. It really hurts,” he said. Aaron was put on a breathing tube. And he had zipper-like wounds down his legs, BB marks on his abdomen. They found bone fragments of someone else inside his body.

This is the defendant hiding behind the tree looming over the row of children behind whom he placed his bomb. It was a heavy bag. The decision must have weighed on him. But these children weren't innocent to him; they were American. He knew what the bag contained and what it was designed to do. And of all the places that he could have placed this bomb, he placed it right here.

He stood behind it for four minutes. We cut some of that out when we played it a moment ago. Four minutes. He [43-63] watched people come and go. You heard that these children never left. He decided to place it here. Bill Richard then told you what happened to his family. He told you about that morning. He told you about the fact that the marathon was a family tradition and everyone hurriedly left the house in excitement. The children had participated in the youth relay, and they were looking forward to the marathon and the ice cream.

Jane was six years old when the defendant tore her leg from her body. His bomb injured her all the way up from her head, behind her ear, her back, her torso, down to her legs. Bill Richard saw her through the smoke, he smelled a vile smell. He just wanted to get it off his body. You can see her on that video we just saw trying to stand but not having a leg to stand upon. Bill grabbed her and his son Henry. And then do you remember what he told us? He saw his other son through the smoke. He saw Martin Richard. He knew he was dead. He could tell just by looking at him. The defendant had killed him. He could not bear to lose Jane as well, and so he grabbed Jane. And with the help of Matt Patterson, they went to try to stop

Jane's bleeding. They saved her life. Patterson, you'll recall, described Jane's leg looking as though it had just been put through a meat grinder. The defendant blinded Denise Richard, Jane's mother, in one eye. Of course he took Martin.

Jessica Kensky was a nurse. You'll recall she was a [43-64] newlywed who wheeled herself up onto that witness stand. She said the medical tent where she was taken looked like it was treating soldiers on a battlefield. They were war wounds. All she could feel was terror. Sheer terror. She heard animalistic screams. Bomb parts, pieces of steel and dirt had been blown into her body.

She explained that parts of her body had been blown off and she had unbearable burns. Her husband Patrick also lost a leg. Shrapnel had ripped through him, tearing apart his skin and causing infection.

Danling Zhou was Lingzi Lu's friend. They were also at Scene B. They were both international students who had come from China to come to Boston to study at graduate school. They chose to go to the marathon that day to experience something that was classic Boston but had the eyes of the world on it. They made a day of it, shopping, having lunch on Newbury Street, trying to get over to the Prudential Building to get Danling's phone fixed at the Apple store. And as they made their way up Boylston Street, the defendant's bomb went off.

This is Lingzi Lu with her hands over her face. This is Danling Zhou, whose abdomen was ripped apart. She's leaning against the railing. There's Bill Richard,

Henry, Jane, Aaron, Roseanne Sdoia over here. And there are other victims.

Danling told you that her internal organs were spilling out of her body. She had to hold them in. She told [43-65] you that the man she saw in front of her seemed like he was yelling in slow motion. He didn't have a leg anymore. She looked to her friend, Lingzi Lu, who was flailing her arms. Danling thought that she was going to make it, but she didn't. The defendant killed her too.

Dr. Bath said it looked like people had dropped like puzzle pieces in front of the Forum. He tried to help whoever he could but it was too late for Lindsay. Her leg had been flayed open. They tried CPR. You heard Officer Woods and others cleared her airway and she vomited, but by the time the paramedics arrived, it was too late.

Dr. Bath was surrounded by screams, parts of limbs, tissue, burned clothing. Eventually he was able to get a tourniquet on one victim. And that's how others saved others that day. First responders and others were able to get tourniquets on people and they were rushed to the hospital. EMS Director James Hooley told you that 30 people were given red tags.

Do you remember the red, green and yellow tags? The red tags meant that they had life-threatening injuries, that if they didn't get to the hospital in an hour, then they would die. Fortunately, except for Krystle Campbell, Lingzi Lu and Martin Richard, all of them did make it to the hospital. And even so, the defendant and his brother maimed 17 more and injured at least 240 others.

[43-66]

After they fled the scene they decided to lay low for a while. In fact, the defendant acted as if nothing had happened. He bought milk at the Whole Foods, calmly walking up and down the aisles, and he even came back a little later to replace this milk because he didn't get the one that he wanted.

You'll recall his demeanor, his strut walking up and down those aisles. He was just blending back in. He returned to UMass Dartmouth and decided to go to the gym, get a little workout in. This is him joking, laughing with his friend. About an hour later he finishes his workout, just hanging out with his friend.

After the bombing he decided to tweet about it. Remember this one? "Ain't no love in the heart of the city. Stay safe, people." How about this one? "I'm a stress-free kind of guy." Why did he choose to post these things at this time after what he had done?

In the days after the bombing, along with these tweets, the computer evidence and the online social media materials show you that the defendant was publicly pretending to be just like everyone else while inside, in fact, back on his computer, he was accessing the same jihad materials that he had looked at before the bombings: *Inspire* magazine.

In fact, on April 16th, the day after the marathon bombings, he accessed this *Inspire* magazine. This is the one that talks about how to make the pressure cooker bombs and how [43-67] to make pipe bombs. This picture down here is a clip from that portion that you saw that shows how to make the pipe bombs. He opened it up, and a few days later you all know that they

had assembled five pipe bombs, another pressure cooker bomb and the Rubbermaid device.

Also on April 16th, the day after the bombing, the computer evidence shows that the defendant accessed the “Effects of Intention” document. Dr. Levitt talked about that document and he told you that the essence of that document was that if you’re going to engage in jihad, you have to be sincere about it. You have to do it for God; you can’t do it for some other reason. If you want to get the rewards, you have to be sincere.

That same day he also accessed the fall issue of *Inspire* magazine, the second issue. And in that one, among other tips about what to do in jihad, it included a declaration of Anwar al-Awlaki who Dr. Levitt told you about. And Dr. Levitt read this excerpt as he went through the writing on the boat. And this is what he said:

“According to these scholars, we the Muslims are not allowed to terrorize the Israelis or the Americans or the British who are living in safety and security while millions of Muslims are being terrorized by them. We are told to never mind the insecurity of the Palestinian or the Chechen or the Kashmiri. Never mind them. We are simply never allowed to [43-68] terrorize, period. No. We do not agree with that. We say that whoever terrorizes us, we will terrorize them and we will do what we can to strip them of their safety and security as long as they do the same.”

And that’s precisely what the defendant wrote in the boat a few days later: “Stop killing our innocent people and we will stop.”

These were deliberate choices. These were political choices. He thought his values were more important



than everyone else. He was making a statement: An eye for an eye. You kill us, we kill you. That's what he read, that's what he said, and that's what he did.

Witnesses described the 12-block radius that was carved out of the Boylston Street crime scene, the lockdown. The FBI and other agencies gathered evidence. They gathered pieces of pressure cookers, cloth from backpacks, shrapnel from the bombs. They also gathered photographs, surveillance video. The photos in the videos revealed that the defendant and his brother had, in fact, exploded the bombs, although the FBI didn't know who the defendant was, who his brother was. So on Thursday, three days later, April 18th, the FBI released some of the images and asked for the public's help in identifying the bombers.

The photos and the videos were broadcast all over the world. They were accessed millions of times on the FBI's [43-69] website. A few hours later the defendant picks up the phone. He speaks with his brother, and then he returned to Cambridge from UMass. Remember, he went back down to his dorm room with his friends in the intervening three days.

And you know that he came back because Chad Fitzgerald—he was the FBI agent from Atlanta, who was the cell site location specialist—he showed you that the defendant's cell phone pinged down in Dartmouth at first and then came back to Cambridge.

And when he came back, he had this text message exchange with one of his friends, Dias Kadyrbayev. And in it Dias asks him whether he saw the news. And he says, "Yeah, bro. I did." And Dias says, "For real?" The defendant says, "I saw the news. Better not text

me my friend, LOL,” or laugh out loud. “You saw yourself in there?” Dias asks. “If you want, you can go to my room and take what’s there. Salaam alaikum.”

Now that their faces were all over the news, they decided to move on with the rest of their plan. He knew he wasn’t going back. He gave Dias his computer and stuff in his dorm room, including the backpack with the fireworks in them. He and his brother loaded the pipe bombs and explosive powder and the pressure cooker bomb, the CD with the jihad songs on it. They took Tamerlan’s computer, that external hard drive that you heard so much about, the remaining transmitter and [43-70] some identifying documents. They needed these things for what they planned to do next. They were going to go to New York to continue setting off bombs.

Most importantly, they brought the gun that the defendant acquired from his friend Stephen Silva. But there were two of them and they needed two guns. And they only had a Ruger and that pellet gun, which you know looked real. It would probably work to stick somebody up. It couldn’t kill like a real gun. So they decided to go over to the MIT campus. It’s a short drive away from their house in Cambridge.

Chief DiFava told you about Sean Collier that morning—that day—excuse me—that evening, how they chatted that evening and the chief told him to be safe. Officer Collier was working the night shift, and Sergeant Henninger had checked in with him earlier that evening. About 10:20 p.m. the 911 call came in. Some gunshots, some hitting of trash cans.

And you know through surveillance video that the brothers were driving their Honda Civic that night. They may have actually seen Officer Collier parked next to the Koch building as they drove by.

There's the Koch building. They decided to walk all the way around the Koch building and approach him from the rear. They had a plan, they knew exactly what they were going to do, and they just had to execute it.

[43-71]

(Video recording played.)

MR. CHAKRAVARTY: They get to the car. They immediately force open the door. They stick their gun at Officer Collier, then about ten seconds you'll see Nate Harriman come by on his bicycle. There he is.

(Video recording played.)

MR. CHAKRAVARTY: The brake lights go off, then they go back on. The defendant and his brother run away.

This was a purposeful mission. They needed that gun. They had already agreed on how to assassinate him and they did.

We can't tell who shot Officer Collier. That's what we know. We know he was shot in the hand, possibly as he was reaching for the microphone, on the radio. We know he was shot twice in the head at close range. Remember Dr. Robinson explain that there was stippling in the head wounds? He was shot between the eyes. They assassinated him.

You also know that the brothers tried to get the gun from Officer Collier's gun belt but they couldn't. Remember when the officers arrived on the scene, they saw the gun belt. The gun itself had been smeared with blood. And they saw that the first stage of that three-part safety system had been undone. But they didn't know how to get the second and the third stage out, so they left without the gun. They had failed. They had risked being detected, they risked being caught just to get that gun because they needed it for what [43-72] they were going to go do next. They wanted to go out and use the remainder of the bombs that they had built. They wanted to go out in a blaze of glory.

So we don't know who shot Officer Collier but we know that Officer Collier's blood was found on the defendant's car keys in the Honda Civic in the ignition with the UMass Dartmouth fog. We know that Officer Collier's blood was found on the gloves that were found in the floor well of the driver's seat of that same Honda Civic that the defendant was driving that night. We know that Officer Collier was shot with the Ruger that the defendant procured from his friend Stephen Silva. And we know that Nate Harriman, as he passes them in front of the Koch building that day, makes eye contact with the defendant. And you saw the defendant had been leaning in and he comes out and he makes eye contact and then he leaves.

Officer Collier didn't have a chance. You heard his injuries were incompatible with life. Just think about what Nate Harriman told you. He saw the defendant leaning in. So in those few seconds the defendant probably felt Officer Collier's last breaths. He probably heard the gasping or the gurgling that his fellow officers

heard a little while later. That didn't deter him any more than seeing what happened on Boylston Street deter him, because he felt what he was doing was right. He felt he was standing up for others.

They knew their time was short. Frustrated by their [43-73] failure to get the gun, the brothers knew they needed another car, and they went across the bridge and found Dun Meng. Remember how terrified Dung Meng was but how clear-headed he was, how clearly he thought through how was he going to get through this.

And when they got to Watertown, he'd noticed the defendant had been following him the whole way and that both of the brothers moved things from the Honda Civic into the Mercedes SUV. And then they went back into town to try to go get gas and money. Meng describes them talking to each other, like partners, in a foreign language. They were communicating. It was a team.

They went to the ATM in Watertown and the defendant demands Meng's PIN number. He saw the defendant coolly walk into the ATM, take out the money, money he still had in his wallet when he was arrested the next day. The defendant and his brother asked if the car can go out of state, go to New York. And Meng said that it could, in fact, go to New York. He had gone there a couple of times—a few times.

But first, before they made that long drive to New York, they went back to Watertown where the Honda Civic was so they could get that CD, a CD containing those jihad nasheeds on it. Meng said it was a style of music that he had never heard before. And Dr. Levitt

told you what it was. It was portable inspiration, a CD full of songs, chants.

[43-74]

Finally, they go back towards Boston. They need to go to a gas station, so they stop at a gas station that the defendant knew very well. He knew it because it was across the street from Stephen Silva's house. You'll recall that he and Stephen Silva would go there and get smokes occasionally.

He asked Meng how much gas the Mercedes could hold, and they were going to go pay in cash. And then the defendant goes into the store to get some snacks for the long drive to New York.

Now, the snacks seem trivial but they show the defendant and his brother were on their way to New York for purposes of doing something. Not running away. That's Red Bull in his hand. Those are snacks in his hands. They needed their energy for the long drive and for what they were going to do when they got there. They had more bombs and they were going to use them. They were a team. You'll also notice that this hat, it was the same hat the defendant was wearing a little while earlier. They were a team. That's how they rolled.

But Tamerlan turned his attention to the GPS while they were waiting in the car, and that's when Meng acted. He got up—and you saw the terror in his face, you'll see it in a second. And he ran across the street from one gas station to another. This is him pleading to call 911. And that was more significant than we might know because Meng's escape was more [43-75] than just a setback for the defendant and his brother.

Now the police would know the car—the new car that they were driving. So they had to go back to Watertown, they had to ditch the Mercedes, they had to get back into the Civic and then head back off to New York.

And they must not have expected that the police would have reacted as quickly as they did. In Watertown, Officer Joseph Reynolds was the first on-scene. Remember, he passes first the Honda that the defendant was driving, who was in front—he was leading—and behind him was the Mercedes. And they were driving slowly around Dexter Ave. in Watertown. Officer Reynolds passes them, calls it in, and they say, “Wait for backup before you light him up,” before you hit the flashing lights.

But he turns around, he doesn’t light them up yet, he turns around, he starts to approach, and that’s when Tamerlan greets him with gunfire around through the windshield. What did the defendant do then? He didn’t keep going like he didn’t know what was happening. He then stopped, he got out of his car, he got in front of the Mercedes with his brother, and he took his position. They had planned this.

It was the brothers’ last stand. They go into the bag, they pull out bombs, they pull out backpacks, the ammunition, the extra magazines, they pull out their lighter, even the pellet gun. And the police saw two sets of muzzle [43-76] flashes. While one was shooting, the other was lighting and throwing the bombs. Since we know that Tamerlan was shooting many of the rounds of the Ruger, we know that the defendant was the one lighting the fuses for at least two of the pipe bombs.

Sergeant MacLellan saw the defendant throw the second and the third bomb. Remember, he said he threw it like a hook shot as opposed to like a baseball like Tamerlan threw it. He said he threw the second bomb like a hook shot and then, remember, the pressure cooker bomb? He heaved it like this. And you all felt how heavy those are.

The officers probably saw the flashing of the lighter as that second muzzle flashed, but whatever the point, the defendant hurled that pressure cooker bomb, he hurled the pipe bombs. And they were in this together. Officer Reynolds screamed to Sergeant MacLellan to look out. And then Sergeant MacLellan described that explosion. He described how it shook him to his knees. How the explosion was horrendous. The plume of smoke went up about two stories. There was debris being scattered everywhere.

And you saw what happened to the pressure cooker bomb. It shot like a missile, embedded into that Honda where MacLellan had just been standing, where his cruiser had been crashed into that Honda. The lid of the pot had gone two stories up, into a house and into the neighbors' yard.

There were several pauses in the shooting, and now we [43-77] know that they also had to reload. You'll recall the ballistics evidence, Lieutenant Cahill. The Ruger shot 56 rounds that they collected, the casings that they collected. And the three magazines that they had with them, the extended-capacity magazine and the other two magazines, between them could hold 38 rounds. That means they were refilling these magazines and reloading the gun. And it also explains why the defendant's fingerprints are on the ammunition box and also why



there was a half-filled magazine in the Mercedes that they—that the defendant used to escape.

They were partners. Each one was doing their part. This shows the defendant either crouching or getting ready to throw one of the pipe bombs. James Floyd: Remember, he was one of the neighbors there? He was the one with the newborn. He had to take the newborn to the back of the house for safety. And he comes back and he looks out the window. And he said they were—both of the brothers were ducking in and out. You could barely distinguish the two. But he did know that it was the defendant who pulled something out in a book-bag and he threw it. And he showed us.

Sergeant Pugliese, who had been flanking, came from this direction. He felt the debris falling on him. When he emerged from that house, behind that fence, he took aim and he shot at Tamerlan, first directly and then he tried to skip shot him underneath to try to get him at the ankles.

[43-78]

He got Tamerlan's attention, and Tamerlan turned to him and tried to shoot him, and he missed him every time. And after he ran out of bullets, he threw the gun and he charged up the street at the police officers. Tamerlan at that point was done. He wanted to commit suicide by cop. He was ready to get to heaven.

While the defendant—while Tamerlan was ready, the defendant had other plans. He was still behind the Mercedes. And like I said, he didn't go with Tamerlan. He didn't go the other way. He didn't just give up. He got back into the car, he turned it around, and then James Floyd told you what he saw and what he heard.

Despite the fact that there was no one in front of him and he could have escaped, Floyd said that he floored it. He turned around and he floored it. He really floored it—the engine roaring—and he made a beeline for where Tamerlan and Sergeant Pugliese and Sergeant MacLellan and Officer Reynolds were.

The defendant drove from the right side of the road straight for them. They got out of the way just in time, as you saw. The defendant hit the brother, he dragged him down the street. When he hit Officer Reynolds' cruiser, almost striking Officer Colon, Officer Colon saw him. Remember, he saw him driving like this. The defendant still had the presence of mind to avoid the gunfire as he was making his escape and as he was aiming for the police.

[43-79]

Now, at some point during that escape, the defendant got shot. We know because he was bleeding sometime later. And as the police finally subdued Tamerlan, they realized that Officer Donohue had also been shot. Remember Dr. Studley described that he had lost all of his blood by the time that she was treating him. Amazingly, she and others brought him back, and but for the defendant's actions, carjacking this vehicle, the defendant and his brother, that chain of events would not have happened and Officer Donohue would not have been shot. He would not have been seriously injured. That's why it's charged in the indictment, as a result of the carjacking caused serious bodily injury. And that's what happened here.

The defendant abandoned the Mercedes, leaving the Rubbermaid bomb and the other items in it as he fled.

And since he made the decision to drive the police [*sic*], he knew now that he was all alone. His brother was gone. He was injured. He made his way down that hill.

The blood marks you heard, there were some on a bathroom door, on a shed, on a car, and then on the boat itself. David Henneberry's boat, the Slip Away II. The defendant could not have imagined that this was where he was going to write his prophetic statements to the world.

But before climbing in, he wanted to do that one last thing. Remember, he had two phones. He had that burner phone, we call it, which he had just activated that SIM card on that [43-80] Sunday before. He put the SIM card in and he used that phone to talk to his brother about planning the bombing, executing it and then what happened after.

His other phone was the phone he used all the time. It was the phone he was using to talk to his friends. It was the phone that he was using to surf the Internet, to read documents. At his age, he lived on that phone. Even in the video you see him, you see him always fumbling with his phone.

So he had the presence of mind at that stage to smash those phones beyond recognition. He knew those phones could track him, and he knew by smashing those phones neither the FBI, the state police, the Boston police or Watertown nor anybody was going to be able to extract the data that would be useful in the investigation. He takes Dun Meng's card and he throws it down there. That's Dun Meng's card, that's the phone, both phones pulverized.

He was in the boat for a while. And after pulling himself in, he pulled out a life preserver. You saw some of the pictures and you saw the boat. He tried to get comfortable. And he laid there probably thinking he wouldn't survive. He had been hurt. And in those moments of all of the things in the world to say, he chose to write that declaration we saw. He chose to justify what he did.

But even after writing those words, that well thought out, cohesive narrative, he still was angry. People were [43-81] looking for him, he was hiding in this boat, and he was still angry. He was so angry he had to get something. And he had etched into boards on the slat. As if his note wasn't clear enough, he had to emphasize it. "Stop killing our people and we will stop."

He was negotiating the terms of death with America. This is what the defendant was thinking after all he had done that week. In the evening, David Henneberry noticed the blood on his boat. He investigated and saw the defendant lying in it. Minutes later, he was surrounded. At one point the police shot at the boat, not knowing whether the defendant was armed, whether he still had any bombs on him. They threw flash bangs then, hoping—convincing him to give up, and eventually he was arrested.

The investigation of the defendant and his brother lasted two years. You saw that he first started accessing the *Inspire* magazine when they were in—approximately Christmas of 2012. We know both the defendant and his brother were radicalized to believe that jihad was the solution to their problems.

We know that both of them participated in the bombing, the murder of Officer Collier, the carjacking, the robbery of Dun Meng, the standoff with the police in Watertown. The fingerprint evidence showed the defendant's prints in many places that you would expect them: On the driver's side of the [43-82] Honda that he was driving, on the radio where he was listening to his nasheeds. His prints are on the gas tank of the Mercedes where he tried to fill it up with gas. They are also on the front passenger quarter where he, as you see in that picture, was holed up, taking cover in the shootout. They're also on the nasheed CD that was found in the radio of the Mercedes. His prints are on the ammo box that were found on Laurel Street. They're on the Rubbermaid bomb that was found in the back of the Mercedes. They're also on that pellet gun. Tamerlan also left prints where you would expect them.

But the defendant was more careful. Unlike Tamerlan, the defendant had led a double life. To the outside world he showed one face and inside he harbored another. He was careful, just like *Inspire* magazine had taught him to be.

Explosive technicians examined every piece of evidence found in Watertown and on Boylston Street and tried to re-create how the devices were made. You saw that. Who knew that making a bomb was so easy? Well, the terrorists. The publishers of *Inspire* magazine. That's who knew. And they were just hoping, they were wanting, they were asking for some young terrorist to come by and to use their instructions. And that's what the defendant and his brother did.

You heard how there was no explanation for how and where all the pounds of explosives that were necessary

to build all these bombs, where they were purchased or where they were [43-83] built. You heard that there was some trace explosives in the apartment in Cambridge, at 410 Norfolk Street, and there were intact fireworks down at the dorm room in Dartmouth. But given how much explosives were necessary, much more was expected.

Many of the materials that were consistent with those that were used to construct the devices were found at the Norfolk Street apartment where Tamerlan and his family lived and the defendant would visit from time to time, where he had grown up. Some of those materials were found conspicuously in the defendant's bedroom there, where he had spent the weekend before the bombing.

There was the construction paper—the red construction paper, the caulk gun, the gun-cleaning equipment. You also know that from the swipe card data from UMass Dartmouth that he hadn't been down at UMass for days before the bombing.

It's clear that both the defendant and his brother were partners. They both handled the bombs. The evidence shows that the defendant and his brother transported, placed and exploded the bombs on Boylston Street and in Watertown. In addition to the eyewitness testimony, people like James Floyd and Sergeant MacLellan, we know that the defendant committed these crimes, threw the pipe bombs, the big pressure-cooker bomb in Watertown.

The brothers prepared for their attack. They also [43-84] coordinated with each other, as partners do. The investigation revealed that the pressure cookers

were probably bought at Macy's; for the January 31st, purchased from the Square One Mall in Saugus. It was probably Tamerlan although there is no video and it was a cash purchase. But who was he texting just before making that purchase? Who was he talking to earlier that day? The defendant.

Tamerlan bought the backpacks on that Sunday afternoon, the day before the bombing. That same afternoon the defendant went somewhere else to buy that SIM card for his phone. It may have been Tamerlan who bought BB's up in New Hampshire, but there was a box of BB's in the defendant's dorm room down at Dartmouth.

Tamerlan bought the remote control car parts on the Internet, first from Flysky, and then at the other—RC Hobby Car shop for the Spectrum set. And that was a week before the bombings. By that time, a week before the bombings, the defendant and his brother were fully engaged in their conspiracy to plant these bombs. They knew what they were going to do. In fact, the same day as that transmitter purchase, the defendant tweeted this: "If you have the knowledge and the inspiration, all that's left is to take action."

They each had their roles. Around the same time that Tamerlan was ordering that first transmitter, the defendant was [43-85] ordering up a gun from his friend Stephen Silva. Stephen Silva had just come in to a gun, and he said he could let the defendant borrow it for what the defendant said, so he could rob a couple of University of Rhode Island students.

Remember Silva's testimony? Silva had known him since he was a kid. Silva couldn't imagine that the defendant was capable of doing something like this, but he didn't know the jihadi side of the defendant. He took the defendant at his word when in January or February he asked for the gun for the robbery. The defendant also had asked him for the food for the dog, which was a reference to the ammunition for the gun.

And obtaining this gun was the key that the defendant and his brother needed for what happened after the bombings. Without this gun, they wouldn't have been able to kill Sean Collier. Without this gun, they wouldn't have been able to hold up Dun Meng. Without this gun, they wouldn't have been able to shoot at police officers in Watertown. The defendant had done his job well.

Silva didn't know that in March, spring break, the defendant and his brother went back up to New Hampshire to go to the gun range up there. There they practiced shooting 9 millimeters. The defendant paid, and for an hour the two of them spent about \$170 just shooting. It's easy to wonder what they were imagining were targets as they were shooting.

But in this case, ladies and gentlemen, we don't have [43-86] to wonder. We know that they were imagining police officers because that's what they used—that's what they used the gun to actually shoot at.

We've seen other evidence of the defendant's double life. There were sides of himself that he did not show to his friends. Around them, Stephen Silva told you, he was well liked, he would smoke pot, he was cool, he was laid back, but there were signs of another side to him.



Silva mentioned one time the defendant called him an infidel or a kafir, another where the defendant got pissed off when Silva called him a Russian refugee. Silva rarely visited him at his house. The defendant spent most of his other life, the other side, the jihadi side, in the privacy of his bedroom, sometimes with his brother, sometimes with his headphones on. There he descended into violent Islamist extremism.

The computer evidence showed you that since 2011, well before the missing thumb drive that you heard about, he had been accessing these jihad nasheeds and other inspirational media on his laptop. The defendant got the stuff, he read the stuff, he believed the stuff, and he acted on it. That's what the computer evidence shows. He assembled a library. Some of it Tamerlan gave him; some of it he gathered himself. The defendant would put his headphones on and lose himself in the chants, the lectures, the music of jihad. He escaped when he put that music on. And that's why he put it on all of his [43-87] phones, his iPods, his computer, all without his brother.

In fact, even after his brother left for Russia, the defendant was accessing jihadi materials on his computer. He was accessing Anwar al-Awlaki. That's why he went back to Watertown to grab that CD of jihad—nasheeds CD—nasheeds on that CD before they headed to New York. They were doing this together, just like other terrorists. They had decided that justice for them meant they were becoming holy warriors.

The defendant's radicalization started years before, perhaps even in high school. But you saw that no matter when it started, by the time it was Patriots' Day of

2012, the year before the marathon bombings, the defendant had completely internalized Anwar Awlaki's message. He posted this quote: "They will spend their money, and they will regret it, and they will be defeated." Now, none of his friends would know what this means unless they, too, had listened to Anwar Awlaki. That day, he went to the marathon with his friend.

Later, he accessed some of the jihadi materials on his computer. And on Christmas break of 2012, the Christmas before the bombings, he accessed the *Inspire* magazine with the bomb-making instructions on the desktop computer in his bedroom at 410 Norfolk. The computer evidence shows that this complete file, which is the file of that first *Inspire* magazine, was accessed on December 23rd, again on December 26th, and we know he was accessing his own email on that computer.

[43-88]

Of course we also know that he and his brother were planning something then because he said so. This—sorry. The cell site location also showed that he was at the dorm room—excuse me, at the 410 Norfolk Street around Christmas of 2012. This is Chad Fitzgerald.

He even said that he was doing something with Tamerlan—this is Christmas Day back in 2012—doing something with Tamerlan. "I'll hit you up in a bit, bro." Later, talking to that same friend, he explains that he wants to bring justice for his people. This is his mindset at that time.

Later, talking with the same friend in January, he says, "There's one other option, bro. Get the highest level of Jannah." His friend asks whether it's jihad. He says that he's really down with the jihad way of life,

and the defendant said, “Don’t be hot over the phone. LOL. Be for that, man.”

Then finally he says here, January 28th, “I got a plan. I’ll tell you later about it.”

He was conscious of the fact that law enforcement may have actually picked up on his conversation. He was careful. That’s what you do when you live a double life. What they were doing together was starting their plan to bomb the Boston Marathon. What they were doing together was planning to get a gun. What they were doing together was getting ready for what unfolded.

[43-89]

During that time, the defendant starts accessing more websites related to this extremist material, and he creates another alter ego online. He creates this—another Twitter account called Ghuraba. You heard that means stranger. In fact, he says it right here. “Ghuraba means stranger. Out here in the West, we should stand out among the non-believers.”

He talks about the infidels and getting victory over them. He talks about the weapons of the believers. And he talks about Anwar al-Awlaki, and he encourages people, his followers, to listen to Awlaki’s Hereafter series. It worked on him. He said he strives to reach Jannah, or paradise.

We saw from the defendant’s computer witness that around March of 2013 it was the defendant who was accessing Awlaki files on that portable hard drive that was found in Watertown. He wished the Silva twins a happy birthday at the beginning of April, he picked up some pot and then he retreated to the place where he

found comfort, with his headphones on, with his brother, in his bedroom at 410 Norfolk, his black flag on the wall. He had found the solution for his failures. He had opportunities to make different choices along the way. These are the choices that he made, and that's why we're here.

Now, you won't be surprised to know, as the judge already explained to you, that blowing up bombs at the Boston Marathon and the other places is a violation of several federal laws. And the more bombs, the more charges. And while the [43-90] verdict slip may be long and sometimes confusing, you should not be intimidated. Each of the elements are straightforward, and the crimes are, in the end, pretty simple.

Although the defendant's charged with 30 counts, 30 different crimes, many of them overlap. You heard from the instructions how some of them overlap, and they interrelate to each other. There are really only six sets of charges. They involve different crime scenes and different acts.

Many of the charges are interrelated, so that, for example, using a bomb with a firearm together might be a separate charge than just using the bomb or just using the firearm. And using either of those, the bomb, which is technically called a firearm, in the course of one of the conspiracy charges, the conspiracy to use a weapon of mass destruction, conspiracy to bomb a place of public use, and the other conspiracy charge, that each of those is—also constitutes a crime.

Some of the charges involve a conspiracy, and the judge explained that to you, and it's basically when two

or more people agree to do something that the law forbids. That itself is a crime. You don't actually have to go through with it. If you plan to do it, then just that agreement becomes the crime.

In this case, there are three sets of crimes—conspiracy crimes. And they relate to the entire chain of [43-91] events, from the beginning to the end, because this was a terrorist conspiracy; they were trying to inflict terror. The agreement was between the defendant and his brother to engage in this terrorist bombing campaign.

And this chart helps you explain—helps kind of graphically represent how you might want to think about this. I'd suggest to you the best way—the best tool that you're going to have as you deliberate is the verdict slip itself. It lays things out in a step-wise manner. You can answer one question, then move to the next. And it tracks the language in the indictment. And you can use that as a guide.

But just so you have a graphic representation on how to compartmentalize from 30 charges down to about six, put them in this mode. The last conspiracy was maliciously destroying property.

The first set of counts involves the marathon bombing. Judge O'Toole told you that the conspiracy is one way to find liability, and the other way is to find through something called aiding and abetting. When two people who do a crime together, where each has a different goal but they both intend to do the same crime and act in accordance with that plan, that they're equally guilty in the eyes of the law. And that's why the defendant is

guilty for the crimes in front of Marathon Sports just as much as he is for those in front of the Forum.

Each of the two bombs at the marathon killed and [43-92] caused grave risk of harm. Each were weapons of mass destruction and technically constituted what are called firearms.

There's one other element that may not be self-evident, and the judge touched on it, and that's that the place of public use must affect interstate commerce. Clearly the stores, Marathon Sports and Forum, affects interstate commerce. The marathon itself interstate—affects interstate commerce. And “interstate commerce” basically means that they're in the stream of commerce. And that, as you can imagine, is an element because this is federal court.

For some of the other crimes, the interstate commerce element will also come in. That's why—one of the reasons you heard that there was a stipulation that the Mercedes, Dun Meng's Mercedes, that that too had traveled in interstate commerce, because as part of the carjacking you have to find that that had traveled in interstate commerce.

You also heard that the Ruger, the gun, was manufactured out of state, so that too traveled in interstate commerce, again because of one of these elements. And then finally, the ATM card, going in and taking money out of Dun Meng's ATM bank account, which was connected to all the other banks in the country and around the world, that too affected interstate commerce. That's why that information was presented to you.

[43-93]

So the first set of charges, the overall conspiracy; then scene A, these are the substantive counts; then scene B, these are the substantive counts at the Forum.

Then there are the charges of the murder of Sean Collier, Counts 16 through 18. Those involve using the firearm in order to commit the crime of violence. They're based on the fact that in the course of the conspiracy they used that gun so that they could continue their campaign of terror. And since we've said from the beginning it doesn't matter who pulled the trigger, both the defendant and his brother are equally guilty of committing this crime.

Third, you have the use of the—to skip over the robbery for a second, you have the use of the gun and the bombs in Watertown. These are the charges related to how this defendant and his brother tried to kill the police officers in Watertown. It's hard to imagine how Officer Donohue actually survived and how more officers weren't injured, but for each pipe bomb that had exploded, the pressure cooker bomb and the use of the Ruger—each of those provides a basis for another criminal charge.

And you'll see that these crimes, as you'll see in the verdict slip, they're couplets. So when you use one of these device—a firearm in the course of commanding another crime of violence, then that itself is a crime, and that's why you'll see two pairs of charges for each of those for [43-94] Watertown.

And then finally, the robbery of Dun Meng. He was charged with carjacking Dun Meng's car, and the fact

that Officer Dick Donohue was seriously injured as a result of that carjacking.

Many of the charges involve the use of a firearm, one of the bombs and the Ruger, in conjunction with the other charges that I mentioned. Because of this, you'll have to go through and assess whether each of the bombs that exploded was used and whether the Ruger was carried, brandished—which the judge explained means shown—or discharged, because the evidence in this case is that all of those things happened. Even though these charges capture similar conduct, they involve different elements, and for that reason, the defendant is guilty of those crimes as well.

The defendant and his brother teamed up to terrorize a region in 2013. They bought bags full of bombs, planned to kill even more, and by the end, they had murdered four people, they had maimed 17, and they wounded hundreds, more than 240 others. Martin William Richard, Krystle Marie Campbell, Lingzi Lu, and Officer Sean Collier are no longer with us. This is the result of the defendant's choice to be a terrorist hero, to make a statement. These were choices that he was proud of, and it devastated the lives of those who survived.

This is how the defendant saw his crimes.

[43-95]

(Audio and video recording played.)

MR. CHAKRAVARTY: But this is the cold reality of what his crimes left behind.

(Photographs displayed.)

MR. CHAKRAVARTY: Officer Collier was shot five times, at least three shots in the head, two from



close range. One shot was between the eyes. He died of his gunshot wounds.

Krystle Campbell received massive blast injuries to her lower extremities. Parts of her body were shredded from the bomb. She lived for up to a minute while the blood seeped out of her body onto the pavement. She told her friends that her legs hurt, and she died from loss of blood.

Lingzi Lu received mass injuries all over her body. She didn't even plan to be there on that day. Her leg was torn open, transecting her blood vessels. She bled out as emergency responders performed CPR on her.

And Martin Richard. His entire body was shattered. It was broken, eviscerated, burned. There wasn't a part of this boy's body that wasn't destroyed.

You'll probably never forget Bill Richard. At one point he said, as only he could, "I guess we were just unlucky that day." But there was nothing about this day that was a twist of fate. This was a cold, calculated, terrorist act. This was intentional. It was blood thirsty. It was to make a point. It was, "Tell America that we will not be terrorized by [43-96] you anymore. We will terrorize you. We will punish you."

The Richard family happens to pass—their path happened to cross the defendant's that day, and the defendant made them pay. He was there to punish.

Each of the 30 criminal charges capture the criminal conduct that the defendant and his brother did. The defendant ran away from Boylston Street. He ran away from Officer Collier's killing at MIT. He fled the scene in Watertown, and he hid in that boat, and he

penned his last justification, taking credit and being proud of what he had done.

Now, ladies and gentlemen, finally, it's the time to hold him accountable, to find him responsible for each of the charges in the indictment. We ask you to do that now.

THE COURT: I think, in light of the hour, we'll take a lunch recess at this point.

So, jurors, we'll take the lunch recess as normal. We'll resume, I guess, at two o'clock to give everybody comfortable time.

Please, no discussion of the case, obviously, until you've heard the rest of what we have to present today. And I'm sure you'll find other things to talk about and engage your interest during the lunch. Enjoy the lunch, and we'll see you at two o'clock to continue the matter.

THE CLERK: All rise for the Court and the jury. The Court will take the lunch recess.

[43-97]

(The Court and jury exit the courtroom and there is a recess in the proceedings at 12:53 p.m.)

THE CLERK: All rise for the Court and the jury.

(The Court and jury enter the courtroom at 2:14 p.m.)

THE CLERK: Be seated.

THE COURT: All right. We're ready to continue with the defendant's closing.

Ms. Clarke.

Are you using the CART computer?

MR. FICK: I think it's all set up, your Honor. Thank you.

MS. CLARKE: Good afternoon.

THE JURORS: Good afternoon.

MS. CLARKE: In the past few weeks, we have come face-to-face with tragedy, suffering and grief in dimensions that none of us could imagine possible. We would never have thought that this devastation would touch our lives so directly.

We've heard words, we've heard screams, and we've heard cries. We've seen shocking videos; we've seen horrific photos; we've seen the clothes of young Martin Richard. We've seen the faces of people who live daily the pain and devastation that we only witnessed.

For this destruction, suffering and profound loss, there is no excuse. No one is trying to make one. Planting [43-98] bombs at the Boston Marathon one year and 51 weeks ago was a senseless act.

Jahar Tsarnaev followed his brother down Boylston Street carrying a backpack with a pressure cooker bomb in it and put it down in front of the Forum restaurant, knowing that within minutes it would explode. Three days later, Tamerlan Tsarnaev murdered Officer Collier, and Jahar was right there with him.

Within a half an hour or so, Tamerlan—this is giving me feedback—Tamerlan Tsarnaev held a gun to Dun Meng's head, demanded him to drive, and Jahar followed in the Honda. He took the ATM card, he took the code, and he stole \$800 from Dun Meng's ATM account. Jahar was part of a shootout in Watertown. We know that his brother had the Ruger P95 because he

was shooting at the police. We know that Jahar had a BB gun.

Still, he hurled explosives at the police, and when he saw his brother walk into a hail of gunfire shooting, clearly determined to go out in a blaze of glory, he ran to the Mercedes and escaped as police riddled the Mercedes with bullets. And he ran over his older brother, the brother that he loved, and the brother that he followed.

When I talked with you almost—just over a month ago, I said to you the evidence would bear out all of the events that I just talked about and that they just talked [43-99] about. And it has. I said to you that we would not disagree with this evidence or dispute it, challenge it, and we haven't. I said to you that it was inexcusable, and it is. And Jahar Tsarnaev stands ready, by your verdict, to be held responsible for his actions.

I also told you that while we agreed with the prosecution on a lot, mostly the big questions in this case—the who, what, where and when—we very much disagreed about the why. In order to fully understand what happened on April the 15th, 2013, and the four days that followed it, it's important to know who did what and why it was done. Tamerlan and Jahar were brothers, but they're both individual people who thought differently, acted differently and had a very different role in the conspiracies charged.

The prosecution must believe that this is important to understand their varying roles because they made an issue of it and attempted to bring you evidence that Jahar Tsarnaev was an equal partner with his brother

and that he self-radicalized himself. This is simply not true.

What you heard from the government, and you heard it again today—they made the bombs, they killed Officer Collier, Tamerlan didn't always lead down Boylston Street, they said to Dun Meng certain things—when the evidence is that Tamerlan built the bombs, Tamerlan murdered Officer Collier, Tamerlan led and Jahar followed, and Tamerlan talked always to [43-100] Dun Meng. You remember his testimony.

So let's talk a little bit about what the evidence does show in terms of roles. Who researched building the bombs? Who bought the necessary materials? Who planned this series of horrific events? And I see you don't have notes, so I won't give you exhibit numbers, but I want to show you some exhibits and talk with you about some of the exhibits.

We know that Tamerlan did Internet research about the electronic parts. And you can see it here. The radio transmitter receiver, the radio transmitter, the transmitter receiver, the radio, all on April the 7th. You can see it; I think it's—is it on your screens? The fireworks firing system. Tamerlan did that research.

Tamerlan's computer—and if we could pull up the next one.

Tamerlan's computer had a Russian translation of the *Inspire* magazine. Remember that, the *Inspire* magazine, bomb-making instructions. He had a sort of value-added Russian translation on his computer which advised search the Internet with the terms “radio detonator” and “mobile detonator.” There was a Russian

language set of instructions on Tamerlan's computer, and this is in evidence with the translations.

The second document was telling people how to construct these bombs without blowing themselves up. Also, when you're making the bomb, get rid of all the metal things, [43-101] as they might detonate the powder. Work only with wooden and plastic things; for example, you should not use a metal bucket and all that is connected to it. That was on Tamerlan's computer. Those bomb-making instructions were not on Jahar's computer.

Tamerlan bought the pressure cookers. Now, we heard evidence and I think we saw the GPS maps of the January 31st purchase of pressure cookers. Today the prosecutor suggested to you that perhaps Tamerlan bought them. Of course Tamerlan bought them because here's what we know: Tamerlan is at the—he stops at 7:45 p.m. up north of—here's Saugus, but up north, and then he comes back and he stops at 8:13 p.m., and the pressure cookers are purchased at 8:38 p.m. So he's on the road at 7:45, stopping at 8:13 and buying the pressure cookers at 8:38 p.m.

Where was Jahar? He was in Dartmouth during those time periods. It's not that it might have been Tamerlan buying the pressure cookers; it was Tamerlan buying the pressure cookers. Jahar was in Dartmouth. Well, his telephone was in Dartmouth. Now, I don't know too many 19-year-old folks who leave their phones and go without them. In fact, the prosecutor made the point of that, how they always carry their phones. And here's Jahar with an outbound text and data usage on his phone making it impossible for him to have been

where the pressure cookers were bought and when the pressure cookers [43-102] were bought.

Tamerlan bought the—you saw with Agent Knapp's testimony that the agent that brought us the mock-up of the pressure cooker bombs, and he showed you the car—how the car would be used—the parts of the radio-controlled car would be used. Tamerlan brought—bought a radio—the Rally Monster truck. On February the 8th, it was shipped to his house. And we can show what he purchased at the bottom of the receipt.

Can you pull it up?

MR. FICK: No.

MS. CLARKE: Well, the bottom of the receipt shows—there we go—purchasing the Rally Monster—Off-Road Rally truck. It has rechargeable batteries being purchased and transmitters being purchased. Tamerlan bought those.

Tamerlan bought the BBs that were loaded into the bombs. Now, that was another one of those series of GPS maps, and then Jerry Grant, who testified, showed where Jahar's phone was.

Here is the GPS that shows Tamerlan's journey that day, and I want you to hang on in your head for a moment, if you can. The first stop was at Keller Street in Manchester, New Hampshire. Walmart in Keller Street in Manchester, New Hampshire. There's a receipt for the purchase of BBs at 3:22 p.m. Keller Street. And then there's a stop at Bedford, New Hampshire, and then there's a stop in Amherst, New [43-103] Hampshire, and another purchase of BBs at the Amherst, New Hampshire, stop. The purchase was in the—at 5:36 p.m. And then there's another stop in Hudson. So

there's a stop on Keller Street, Bedford, Amherst, and Hudson.

Now, you remember Tamerlan Tsarnaev's wallet that was found in the back of the Honda on Watertown. In his wallet were a variety of receipts that we helped put into evidence. And one of the documents in his wallet was this, with Walmart and telephones, Hudson, New Hampshire; Keller Street; Bedford. He had his notes in his wallet of where he had gone to purchase the BBs.

Where was Jahar? Again, he was in Dartmouth. Data usage on his phone, an outbound text on his phone at about the same times that the purchases were being made.

It's not that possibly Tamerlan bought these items; he did. Jahar wasn't with him.

Tamerlan bought the additional electronics on April the 8th. There's a receipt, RC Cars of Boston, that was found in one of the cars parked on Norfolk Street. And it's in Tamerlan's name, RC Cars of Boston. And I think it was Agent Knapp who again told you that that was a purchase of an additional transmitter and receiver. Tamerlan did that.

Tamerlan searched online for the Boston Marathon. The prosecution argued to you that Jahar selected the marathon. Tamerlan did. Tamerlan searched the Boston Marathon before the [43-104] Boston Marathon. There are no such searches on Jahar's computers. This is Tamerlan's Samsung laptop.

Tamerlan bought the backpacks. He—again in that wallet, there's a Target receipt for purchase of the backpacks.



Have you got that, Bill?

Here's the—it's in the wallet. You'll see a picture of all of the items that were in the wallet, and you'll have the wallet as well, but in the wallet is the Target backpack purchase. And here's the picture of Tamerlan leaving the store. He was alone.

Now, the prosecution introduced a lot of evidence found at the Norfolk Street apartment, and you would think that they gave it to you because it's related in some way to bomb making. But what didn't they bring to you? Whose prints were all over those items?

Now, the cross-examination of Elena Graff, who was—it's a first for her. She's an FBI fingerprint analyst called by the defense to testify about fingerprints, and the cross-examination [*sic*] is some fingerprints disappear. So all of Jahar's fingerprints disappeared, and Tamerlan's stayed on there. You know who made these bombs. It was Tamerlan.

We know from Elena Graff that Tamerlan's prints were on the glass jar with the nails in it. Tamerlan's prints were on the caulk gun. Tamerlan's prints were on—well, you'll find this caulk gun in several places. I think actually [43-105] physically in evidence, but you won't be able to find fingerprints on it. I wouldn't be able to. But prints were on it. And it's also in the interactive. Remember that exhibit that you can click on and see the room and click on a button and it shows you what was found where? It's also in that exhibit. Tamerlan's prints were on the tape. Tamerlan's prints were on the solder gun. In fact, in Tamerlan's wallet was a Home Depot receipt for the purchase of that solder gun.

Tamerlan's prints were on the tape inside the toolkit. Tamerlan's—and this is just a larger picture. You can see the little ring of tape where they found Tamerlan's prints and the toolkit. Tamerlan's prints are on a set of pliers in the toolkit. Tamerlan's prints were on the gun-cleaning kit. And Tamerlan's prints were on the wiring book.

So the items of evidence that the prosecut- —and the government—that the investigation seized from Norfolk, those items were seized because somebody thought they were relevant to bomb making. And whose prints were on them all? Tamerlan's. Whose prints were not? Jahar's.

Elena Graff, though, FBI fingerprint analyst, also told you that Tamerlan's prints were found on two items of evidence seized on Boylston Street. The cardboard was seized from what they called Scene A, the first bomb, and the paper inside an exploded backpack seized at what they call Scene B, the second bomb; and Tamerlan's prints were found on the [43-106] cardboard, and Tamerlan's prints were found on the paper. Whose prints were not found? Jahar's.

There was a transmitter found at Watertown that Elena Graff also analyzed, and this was the lab photo of it sort of dismantled. Tamerlan's prints were found on the transmitter.

There was a pressure cooker lid. And you may remember the picture. It's like it landed far away and in somebody's backyard, the pressure cooker lid. Tamerlan's prints were found on it.

We know that explosive residue was found on a set of rubber gloves found in Tamerlan's car. Remember the

agent testified about that being residue? Found in Tamerlan's car.

And notably missing was any residue found in Jahar's dorm room where he did live. There was some explosive residue found in Norfolk where he didn't live. And contrary to what Agent Imel—you may remember his testimony early in the days of this case—contrary to his suggestion that Tamerlan didn't always lead down Boylston, he did.

So let's be honest about what the evidence actually shows. We are not asking you to excuse the conduct, but let's look at the varying roles. Tamerlan shot and killed Officer Collier. The prosecution argued they didn't know who did that murder. We know. We know. Let's look at the evidence of what we know.

First, he confessed to Dun Meng that "I just killed a [43-107] policeman." He confessed. You probably remember this video, and I don't think we have to play it again. The prosecution played it for you. This is that—that—you've got the distant surveillance and then the up-close surveillance. Oh, they're playing it.

(Video recording played.)

MS. CLARKE: Very clearly—if you can stop it, Bill.

Very clearly, two people walk up to the driver's side of Officer Collier's car. Two people. Very clearly. I mean, to the extent anything is very clear, but you can see two figures, one in front of the other, walking up to Officer Collier's car.

Now, Nate Harman, the MIT student who came in, rides by on his bicycle not long after this. He rides by

on his bicycle. Remember, he's going home. It's a little late, and he's going to bike on home. And what Nate Harman said is, "I only saw one person." And that one person was who? Jahar. And that one person stood up—had the yellow on his sweatshirt and stood up, and they locked eyes for a moment. That was the only person that Nate Harman saw.

So where was Tamerlan? If Jahar is standing up and looking at Nate Harman, where is Tamerlan? As the door opens—you know, here's the car, and the door opens—there's a V. Here's Jahar standing, looking at Nate Harman. Where is Tamerlan? He's got to be squatted down trying to get [43-108] Officer Collier's gun. And getting Officer Collier's gun would put blood on your hands or blood on the gloves that you were wearing.

Now, remember those gloves were found in the driver's side floor with blood on them? Whose blood? Officer Collier's blood. Officer Collier's blood was found on the keys, so the gloves were used to start the car.

Where were the—where was Tamerlan's personal belongings found?

And I don't know if we have it. Exhibit 879.

Where was Tamerlan's personal items found? Right behind the driver's seat in the Honda. The bloody gloves are found on the driver's side. Tamerlan's wallet was found on the backseat driver's side.

Now, the prosecution put on Stephen Silva to say that Jahar asked him for a gun. But pretty clearly that gun went to who? Tamerlan.

In addition to the confession that he gave to Dun Meng, Tamerlan did what? He searched the Ruger P95 on the Internet. He had the gun at Watertown. He shot at the police at Watertown. He threw the gun at the police at Watertown. Tamerlan had that Ruger the entire time. Tamerlan is the one who murdered Officer Collier. Whose prints were found on the magazine that went in that gun? Tamerlan's.

Now, what does any of this matter when we know that [43-109] Jahar walked down Boylston Street with a bomb in a backpack and put it down in front of the Forum restaurant? When he was beside his brother when his brother murdered Officer Collier? When we know that when Tamerlan held Dun Meng hostage, Jahar took money out of his account; and we know that Jahar hurled bombs at the police? What does any of what I just discussed with you matter?

It matters because you're entitled to know the full picture. It matters because it's important for us at this stage to tell you as much as we could. We don't deny that Jahar fully participated in the events, but if not for Tamerlan, it would not have happened.

There's some other things that we should talk about, and one is radicalization. The government wants you to believe that Jahar was self-radicalized essentially from high school; that he was a young extremist in the making; that he was a young jihadi in high school in the making; that his tweets were jihadi; and that he attended the 2012 marathon, I guess, because he was planning it that much in advance.

They brought you Stephen Silva to suggest that there was a debate in the world history class and Jahar took some extreme position. He didn't.

They continued to flash up onto the screen but when going through the computers a paper called "The Predator War"—you'll see it—in which there was a discussion of the [43-110] use of drones. And what they seemingly just simply deny is that was a class assignment, and instead use it to try to promote that Jahar was a young jihadi in the making.

The government introduced the black Islamic flag and a picture of Jahar in front of it suggesting self-radicalization and suggesting perhaps a connection to a terrorist group. They just played, to tug on your heart-strings, some nasheeds while looking at the flag, suggesting that there's something ominous or wrong about that flag. Their own expert, their own expert, Matthew Levitt, said there's nothing radical about that flag. Some groups have adopted it, but there is nothing radical about the flag. It is a religious flag.

The government argued to you through Stephen Silva, again, that Jahar went to the 2012 marathon. Now, going back that far, it's hard to convince somebody you weren't where they say you were that long ago. But we did the best we could to provide you circumstantial evidence, and I think the circumstantial evidence is pretty strong that he wasn't there.

There is, in evidence, again, one of the swipe card sheets from UMass Dartmouth on April 15th in the afternoon, about four o'clock. Jahar goes in to Maple Ridge Hall, which was the dorm he was in first year.

At about five o'clock, he tweets, "I'm about to sleep for 20 hours." That sounds like a 19-year-old to me.

April 16th, the next day, the day of the 2012 [43-111] marathon, at 6:42 in the morning he tweets—and you've seen this tweet quite a lot, actually—"They will spend their money, and they will regret it, and they will be defeated." Now, that—everybody debated the source of that and what that meant and the context of it.

At 8:38 in the morning, Jahar tweets, "Hmm. Get breakfast or go back to sleep? This is always a tough one." It sounds like a teenager. At 8:45 he tweets, "Sleep after breakfast is so much sweeter." At 8—at 10:56, he uses his access card to come back into the dorm. At almost—12:46, almost one o'clock, he's tweeting again.

At 1:30 in the morning—again, only the teenagers can do it—he uses his access card to enter his dorm again. The likelihood that this kid, who was sleeping and eating breakfast and going back to sleep and about to sleep for 20 hours, drove to Boston and went to the 2012 marathon is slim. I don't know what it means if he did, but it sure doesn't look like he did.

The government suggested to you deep and self-radicalization by the—remember the Al\_Firdausia account, the seven tweets over a two-day period of time? Look at them. There is no promotion of violence in there. There's no promotion of extremism in there. Looking back, somebody can always say that you must have been thinking something evil at the time. There isn't. And regardless, it went for two days [43-112] and ended. Jahar lost interest in it.

The government then suggested that Jahar's regular Twitter account—and you may remember the agent that testified and Ms. Conrad who cross-examined him about the tweets. And they're suggesting that all of these tweets had some ominous, evil context to them. The agent didn't bother to investigate rap songs, to investigate Nas' and Eminem and Lil Wayne and to investigate that the quotes from poems, from horoscopes, from Comedy Central, instead telling you that this is some evidence of a jihadi in the making. The entire tweet is in—it's Exhibit 3,000. It's a thick document. And it's in evidence, and you can look.

And the government really cherry-picked the tweets that they showed you and left out the ones where it was pretty much teenage, adolescent sort of tweeting about girls and missing class and not doing homework and sleeping.

If we look in the context of the allegation of self-radicalization, let's look at Jahar's Internet-browsing history. Remember Mark Spencer, the computer guy that came in and testified? And here's Jahar's browsing history. The leading candidate is—not candidate, the leading browsing search was Facebook. The next one was VK, which is the Russian Facebook. This is a kid doing kid things. This is an adolescent—this is a teenager doing teenage things.

The government suggested to you that a representative [43-113] sample of the documents on Jahar's computer were all jihadi, and they selected a few files from 500,000 items and thousands of files on a computer and brought them to you. We do not deny that he had these extremist materials on his computer. But let's be honest about how prominent they were in his life and when.



The library of extremist materials—you remember the hard drive found in Watertown—we called it the Laurel hard drive—and it was found inside a computer bag that had Tamerlan’s high school graduation certificate, a travel document that—for Tamerlan. It had Tamerlan’s computer in it. That computer bag had the hard drive in it.

And what we brought to you was very clear evidence through Mark Spencer that that hard drive was formatted by Tamerlan’s Samsung; that hard drive was loaded—all of those documents on that hard drive came from Tamerlan’s Samsung laptop.

There was a lot of discussion about complete *Inspire*. That’s the one that has “How to Build a Bomb in the Kitchen of Your Mom” in it. A lot of discussion about that. A lot of times you were shown that document.

But we tried to trace the history of it for you. We know that Tamerlan got his—activated Windows on his laptop. I hope you’re computer friendly, but after listening to how much you know about people from computers, I think we may want [43-114] to never use one again.

But complete *Inspire* was on—let me start this way: Tamerlan’s laptop opened Windows on December the 21st.

Have you got that, Bill?

MR. FICK: Hang on.

MS. CLARKE: Do you remember Mark Spencer showed you a PowerPoint-slide-looking thing that had Tamerlan’s laptop, the Sony and the HP? And it

showed when Windows was opened on all of those. Essentially what that means is that's when the computer—somebody got it and started it up and began to use it. And Tamerlan's laptop was—Windows was loaded—

Have you got it here?

Windows was loaded on Tamerlan's laptop on December 21st, 2011. The complete *Inspire* went onto Tamerlan's laptop on December 21st, 2011, almost immediately. And then we can show you the flow of this complete *Inspire* magazine because it goes from Tamerlan's laptop, which is the Samsung—there's an attachment of the Patriot—the now-missing Patriot thumb drive—to the laptop on January 21st. And remember, January 21st is the day that Tamerlan left for Russia.

The file was created—complete *Inspire* was created on that Patriot thumb drive from the Samsung, and then it attached—the Patriot attached then to the Sony, and the file was created on the Sony. So it came from Tamerlan's laptop to the Patriot thumb drive to Jahar's laptop. That is the course [42-115] of the complete *Inspire* magazine. It does not mean that Jahar did not have it, but we need to understand who was leading and who was following.

The government made a—well, we also have a chart of the other *Inspire* magazines, you know, because the one was how to build a bomb in the kitchen of your mom, and then there were these other *Inspire* magazines, and they follow essentially the same path. The Samsung attaches to the missing Patriot thumb drive on January the 21st, the complete *Inspire* is created, and the attachment also creates the remaining *Inspires*, and they go onto the Sony, and you can see the time, 6:22, 6:24, 6:24,

25, 25. They go from the Samsung to the Patriot to the Sony.

Now, the government made a big deal about the HP desktop at Norfolk and, in fact, today said that Jahar accessed jihadi materials over the Christmas break on that HP. I have no idea where that evidence comes from or where that suggestion comes from. We do know that at, like, two in the morning on January the 1st, Jahar accesses his email on that. He's clearly home for Christmas break. The testimony that we heard about that HP was that everybody in the household used it, that it was open, and that it was clear there were multiple users. And I don't know why we would suggest today that it was Jahar accessing those materials and not Tamerlan.

Two thumb drives were found, one in the dorm room and one in the Crapo landfill. Remember those? They both had [43-116] extremist materials on them. But what else did they also both have on them? Katherine Tsarnaev, Tamerlan's wife's paycheck stub and a rental application in her name. Those thumb drives, fairly clearly, came from Tamerlan.

Let's talk for just a minute about Jahar's actions after the bombing because the government makes a big deal about buying the milk and going to the gym. It is bizarre. It's about as bizarre as going back into the Mobil station to put the Doritos back down when Tamerlan comes and says, "Hurry up." It's about as disconnected as that.

I think what it really shows is that, overall, he bought into his brother's plan and his brother's actions and, as

the boat writing suggests, was convinced they were right.

We should talk about the writings in the boat. We should talk about these. You won't find them on the verdict form, but you will find them in the evidence. The prosecution sort of paints the picture of calm reflection inside the boat and that Jahar had time to think and plan out what he was doing.

Remember how he got there? He had gotten into the Mercedes, fled into a hail of gunfire, the windshield bullet-riddled. There's a series of these Mercedes pictures. But you can see the bullets right at the driver's—you can see a picture where the bullets lodged into the headrest. There wasn't time for calm reflection.

[43-117]

You've seen the boat. He's in the boat, and he's bleeding, and you've seen the pictures in the boat of the blood all over. And what does this 19-year-old do? He tries to tell why they did what they did. It wasn't like it was written out and ready to be distributed. It wasn't like it was a message to the world. It was this 19-year-old's attempt to write about why they did what they did.

And what does he say? "I'm jealous of my brother who has received the reward of paradise. He's gone." And he tries to explain why they did what they did. What he doesn't write in here is what you might think a violent jihadi might write: "Death to America." He doesn't write that. He doesn't write—he doesn't write, "Curse to America." He knew it all along that it was wrong to take innocent lives, and he says that. But he

expressed the very twisted belief, the very twisted belief, that his actions would make a difference.

The government tried to tie these writings to *Inspire* magazine and some of the other extremist materials. It's not on your verdict form to find, but if you look at those other materials, maybe some of the ideas expressed are in there, but the language is not. That's up to you to judge. And we don't know whether he got that, those ideas, from *Inspire* magazine or from his brother.

Finally, I'd like to talk with you for just a few minutes about the four minutes on Boylston. The government —  
[43-118]

Is that in your way?

THE COURT: It's blocking my view of the—some of the lawyers.

MS. CLARKE: How's that?

THE COURT: That's much better. Thank you.

MS. CLARKE: The government argued to you in opening statement, and again now, that there were four minutes, and Jahar could have changed his mind. They argued to you that Jahar went to that location to target children. They argued to you in opening that after reaching—after talking with his brother, he reached a safe distance and detonated the bomb. There were families there.

And who got killed and who got hurt and who escaped was inexplicable, and Jahar's actions inexcusable, but for what he saw when he arrived at that tree—and I'm going to play that video again for you to see if there was

any indication that he walked up to that spot and targeted children. I think you'll see on the clip on the video that Jahar walks up and the selection was made because it was a tree. So let's . . .

(Video recording played.)

MS. CLARKE: You see him walking up.

(Video recording played.)

MS. CLARKE: Okay. Thank you, Bill.

You can judge for yourselves, but the video appears that he walks up and he stops at the tree, not at the children. [43-119] The backpack was already down by the time of the 2:48 p.m. photo that the government has shown us several times. There was movement by people going and coming. It does not make it better, but let's not make his intent any worse than it was.

The government told you in opening statement that Jahar was—when he got a safe distance away, he detonated the bomb. We heard no evidence of how the second bomb was detonated and by whom. The evidence does not show that he was a safe distance away. You've watched it again a couple of times in the prosecution's argument. What the evidence does show is that he was dangerously close when the bomb exploded.

I'm going to stop in just a couple of minutes. And the prosecutor has an opportunity to get back up here and to hammer home their story again. We spent our time in this phase of the case trying to correct misimpressions and trying to complete the picture as best we could, given the issues that you have to decide in this phase.

You now have to answer a whole lot of questions. There are 30 complicated charges. The judge spent over an hour instructing you about them. The indictment is long. The instructions are long. The verdict form is 30 pages—31 pages long with a lot of questions for you to answer, for you to discuss, for you to hear from each other about, for you to express your opinions about. And we know that you will do that thoughtfully and truthfully because it's your job and it's your [43-120] responsibility to do it.

You've heard just a very little bit about who Jahar was before April the 15th, 2013. You've heard a very little bit of evidence in this phase of the case about that. He was 19. You've seen that while he bought into the plan and bought into the beliefs and passion that drove the plan and has now changed many, many lives forever, including his own, he was an adolescent and also doing adolescent things. He was searching Facebook. He was tweeting his friends. He was texting his friends. The prosecution says this was a double life. He was an adolescent drawn into a passion and belief of his older brother and still living a teenage life. He was flunking out of school, and he was making up lame excuses about why he was failing.

You also know from the one person who testified in this phase, Stephen Silva, the one person who knew Jahar before April 15, 2013, testified and told you that he never met Tamerlan, but he was controlling and strict, and Jahar never would introduce him to Tamerlan.

In the next phase of this case, you'll learn a lot more. We ask you to hold your minds open. We asked you that in the beginning of this case, to hold your minds

open to what more there is to hear, to what more there is to learn, and to what more there is to understand.

We know that in the face of the heartbreak you've [43-121] watched and listened to and felt, and the horrific crimes that you've been exposed to over the last month, that that is not an easy task, but we ask you to do it.

And now when you go back to the jury room, we are not asking you to go easy on Jahar. We are not asking you to not hold him accountable and responsible for what he did. The horrific acts that we've heard about, the death, destruction and devastation that we've heard about deserve to be condemned, and the time is now. I know, and we know, that by your verdict, you will do what is right and what is just, and your verdict will speak the truth.

Thank you very much.

THE COURT: The government has the opportunity for a brief rebuttal.

MR. WEINREB: So now you've heard the defense all spelled out for you. The defendant may be guilty, but his brother is even more guilty. The thing is, that's not a defense. That's just the defendant's effort to dodge full responsibility for what he did.

Ms. Clarke told you in her opening statement that the defendant wasn't going to try to sidestep responsibility for what he did in this case, but that is exactly what he is trying to do. His defense is that his brother was the real criminal and he was just going along to get along; that his brother did mostly everything, he was just present.



[43-122]

Now, there's nothing wrong with him making that argument. He's entitled to try to pin the blame on somebody else if that's what he wants to do. But you should see that for what it is. It's an attempt to sidestep responsibility; not to take responsibility.

It's up to you to hold the defendant fully responsible. You should find him guilty because he is guilty. His own actions make him guilty. And the things that his brother did on his behalf also make him guilty. Don't be distracted by arguments about what the defendant did versus what his brother did. It makes no difference. They were partners in crime. These crimes were a two-man job. Each one of them had a role to play, and each one of them played a critical role in each of the crimes. They were co-conspirators. They were partners. And that makes them equally guilty of what they did.

Let's take the death of Officer Collier. Ms. Clarke said that Tamerlan Tsarnaev is the one who shot him. But there's no evidence of that in this case. That is a perfect example of an effort to sidestep responsibility; not to take responsibility.

The video doesn't show who fired the fatal shots, but it does show that the defendant and his brother walked right up to that car. They approached it from behind, they walked right up to the door, and they yanked it open. They knew exactly [43-123] what they were going to do. They must have planned it ahead of time. It was a cold-blooded execution. And they couldn't have done it without the defendant's Ruger.

The defendant leaned his whole body into the car, and that's what Nate Harman saw less than ten seconds later when he rode by on his bicycle. He said he saw the defendant leaning all the way inside, as if he were trying to get something. The defendant had either shot Officer Collier or was trying to get his gun or both.

Officer Collier's blood was on the defendant's key-chain, the one he was using to drive the car that night, and the gloves with Officer Collier's blood on them were at his feet, the feet of the driver's side where he had been driving the car.

There should be no doubt in your mind that the defendant and his brother are equally guilty of shooting Officer Collier, no matter who pulled the trigger.

Ms. Clarke says that Tamerlan Tsarnaev confessed to the killing when he said to Dun Meng, "You heard about the—you know about the murder at MIT? I did that." Well, what else was he going to say? He was the only one talking to Dun Meng. Dun Meng didn't even know there was another person in the picture.

She points out that Tamerlan Tsarnaev's prints were on the cartridge in the gun, as if that proved that he's the one [43-124] who shot Officer Collier. But Dun Meng told you that when Tamerlan pointed the gun at him, he pulled the cartridge out of the gun to show it to him, to show him that the gun was loaded, and that happened after the murder of Officer Collier, that's when his fingers were on that cartridge, that you know about.

She also pointed out that he searched the word "Ruger" on the Internet, but he didn't search that until March of 2013, and the defendant had already gotten the gun in January or February.

My point here isn't to try to prove to you that Jahar Tsarnaev pulled the trigger, because as we told you candidly from the beginning, we don't know who pulled the trigger. My point is simply to point out that this is all an effort to dodge responsibility; not to take responsibility. It's an effort to keep trying to point the finger at somebody else, even if there's no evidence of it, because the truth is the defendant isn't here—isn't trying to accept responsibility for what he did; he's trying to avoid full responsibility for what he did.

Let's take Watertown as an example. According to Ms. Clarke, the evidence shows that Tamerlan Tsarnaev fired every bullet out of that Ruger at the police in Watertown. But is that really what the evidence shows? It seems unlikely. After all, the Ruger belonged to the defendant. He, just a month or two earlier, had paid \$150 up at the Manchester firing [43-125] range with his brother to practice firing a 9-millimeter pistol. And when he did that, he listed himself as an intermediate-level shooter. He helped kill Officer Collier in order to get a second weapon. It's obvious that both of them intended to be firing guns that night. That was the whole point of killing Officer Collier. That's the whole point of training to use the Ruger.

Sergeant MacLellan, and James Floyd, the civilian you heard from, both testified they were 100 percent sure that both the defendant and his brother were throwing bombs, and it makes sense that when one of them was throwing bombs, the other one was providing cover with the Ruger.

But does it really matter? Does it really matter whether both of them were shooting the gun? Even if Tamerlan Tsarnaev was holding the Ruger the entire

time, the defendant was clearly doing his part. He was lighting bombs and throwing them in an effort to kill the police officers, or at least to keep them at bay. He threw the pressure cooker bomb. Have no doubt about that. He was getting ammunition out of the bag to reload the Ruger, and you know that because his fingerprints were found on the ammunition box. In Watertown, just like at the marathon, just like during the kidnapping of Dun Meng, the defendant and his brother were full partners. They are equally guilty.

And think about—more about Watertown, something [43-126] that Ms. Clarke didn't even mention to you. The three-point turn the defendant made after his brother had already been tackled and was on the ground. He tried to kill three police officers by running over them. The Mercedes was pointed in the other direction, away from the officers. He could have just driven that way and escaped. But instead, he made a U-turn, and he floored it, driving directly at those officers.

And why did he do it? He did it in the hopes of killing three more police officers and almost doubling their body count. Once again, the defense doesn't want you to believe that. They don't want you to focus on that because it doesn't fit in with their portrait of the defendant as just a passive follower. But when the defendant attempted those murders, Tamerlan was out of the picture. The defendant was acting entirely on his own. It shows you how independent he was. It shows you how personally committed he was, so committed that he was willing to run over his own brother in order to kill a few more police officers before it was all over.

Let's talk about the carjacking and the robbery. It's true, according to Dun Meng, Tamerlan Tsarnaev

did most of the talking in the car, but the defendant, as always, played a crucial role. When the time came, he's the one who demanded Dun Meng's ATM card and robbed him of \$800. That money was still in his wallet the next day. And it wasn't until the [43-127] defendant left the car that Dun Meng was able to escape. Like all the other things the brothers did that night, this was a two-man job. They needed both of them to pull it off, and the moment the defendant was out of the picture, the plot fell apart. Tamerlan wasn't able to do it on his own. He needed his brother's help. And the defendant, he needed Tamerlan's help. That's what it means to be partners.

Who built the pressure cooker bombs and the pipe bombs? The defense says it was entirely Tamerlan, but the evidence suggests otherwise. Both brothers had the instructions for building the bombs on their computers. You heard that a lot of explosive powder was needed to build those bombs, and you know that a bunch of emptied-out fireworks were found in the defendant's backpack that his friends removed from his dorm room and threw out that night.

There certainly is evidence that the bombs may have been built, at least in part, at 410 Norfolk Street, and it's true that Tamerlan lived there full-time in 2013, but the defendant stayed there on holidays and during the summer. He didn't have to spend a lot of time there to help build those bombs.

It's also true that Tamerlan's fingerprints were found on things all over his own apartment, but that's what you would expect from somebody who lived in an apartment full-time. And you wouldn't expect to see

the same thing from somebody who was [43-128] just there on holidays and on weekends.

Also, as you heard from the fingerprint expert, the presence of somebody's fingerprint on something means that they touched it, but the absence of somebody's fingerprint on something doesn't mean that they didn't touch it. It may just mean that they didn't have sweaty fingers when they touched it.

Or, more likely in this case, it could simply mean that the defendant was wearing gloves when he touched these things. *Inspire* magazine specifically advises that you wear gloves when you are building bombs. And you wear gloves for a couple of reasons. One is not to leave fingerprints. One is because of all the messy powder that comes out of the fireworks before you put them in the bomb.

And you heard that surgical gloves with powder on them were found on the passenger side of Tamerlan Tsarnaev's CR-V, his car, the place where the defendant would have sat if they were using that car to help build the bombs.

But more important, really, is how they used the bombs. They decided to explode the bombs on Boylston Street. The defendant had been there the year before. He knew how crowded it would be. He decided where to plant his own bomb. He chose the place where it would do the most damage. Ms. Clarke has suggested to you that when he walked up there, he planted it there because there was a tree. But as you could see from the video, he passed numerous trees on his way to that [43-129] spot. It wasn't just that there

was a tree. He was looking for the most crowded spot he could find, one where he would do the most damage.

And even if he didn't plant it there because there was a line of kids along the railing, you know for an absolute certainty that he was well aware that those children were there. He's staring straight at them in the picture you saw, and he looks at them many, many times in the video you saw. He could, at any time, have picked up that knapsack and moved it somewhere else, but he didn't, because that wouldn't have fit in with the plan. The plan was to make this bombing as memorable as it could possibly be, and he succeeded.

He's the one who called Tamerlan Tsarnaev to give him the go-ahead. The defense struggled mightily in cross-examination of the witnesses to try to suggest to you that the 19-second phone call that's from the defendant to Tamerlan Tsarnaev isn't the call that took place right before the bombings, but you didn't hear Ms. Clarke talk about it in her closing argument because it's obvious that that's the call that took place right before the bombings.

You didn't hear about it because, again, it doesn't fit in with the narrative of the defendant just being the passive, go-along-to-get-along guy.

What you heard during the trial was a perfect example of trying to sidestep full responsibility for what the [43-130] defendant did, but this one failed so clearly that it wasn't worth mentioning in closing argument, from their point of view. It's an inconvenient fact for them. It's something they don't want you to believe. And you should view all their other claims about the defendant's

lack of involvement with the bombs with the same skepticism that you bring to that claim and some of these other claims.

The defense argues that Tamerlan is the one who chose the marathon as the site for the bombing. Where is the evidence of that? There's no evidence of that. The fact that he searched for it a few days ahead of time on the Internet doesn't tell you anything. He may have typed in the search on his computer, but you have no idea whose idea it was in the first place. There's no need to research the marathon if you've been there before, and Stephen Silva testified that his own twin brother and the defendant were at the marathon the year before. And you have no reason to doubt that he's telling you the truth. And he told you part of the reason he knew that was that the defendant told him he had been at the marathon.

Now, the defense has tried, again mightily, to convince you that he couldn't have been there because he tweeted several times during that day, and he didn't tweet that he was going to the marathon. If you were going down to the Boston Marathon to case it out for a possible bombing, would you tweet that? Of course not.

[43-131]

Once again, there's no evidence that Tamerlan Tsarnaev picked the marathon as the site of the bombing. But it's important for them that you think that because they don't want you to hold the defendant accountable for everything that he actually did in this case.

Ms. Clark argued that the defendant wasn't actually radicalized. So how deep did his jihadi beliefs go?



What's the actual evidence in the case about that? Well, he had terrorist writings and songs and lectures not just on his computer but on every electronic device he owned: his iPods, his thumb drives, the CD that he drove all the way back to Watertown to get before their trip to New York. He had been reading and listening to them for well over a year.

And you know that he had absorbed their teachings. He had absorbed them well enough to tweet them to others. He had absorbed them well enough to summarize them on the inside wall of that boat. When he wrote that message in the boat, he didn't have any books to crib from. He didn't have anyone whispering in his ear what to say. He wrote about them like somebody who had read and listened to and studied the material over and over and over again until he really had fully absorbed its lessons and was convinced of it. And you know that he had absorbed his lessons and was convinced of it because he believed in it enough to murder people. He believed in it enough to execute a police officer in cold blood. His actions [43-132] speak louder than words.

Same thing about the defendant's tweets and his searches. What do they show you? They show you the defendant had two sides. Yes, he was a young man with a young man's interests and beliefs and habits. That's the side that he revealed to his friends. But he was also a true believer in violent extremism. That's the side that he kept mostly hidden. The fact that he borrows quotes from songs that he's heard to express his beliefs doesn't mean he doesn't have those beliefs; just the opposite. He's just finding a creative way to express them.

And of course we didn't show you every single file on his computer. We didn't show you the thousands and thousands of files that—operating system files or some random thing he might have downloaded from the Internet. We showed you the ones that are relevant to the charges in this case. The jihadi materials on his computer weren't any less convincing to him because they were outnumbered by other files on his computer, and you know that because he actually carried out the bombings that are recommended in those writings.

Ms. Clarke suggested to you that you shouldn't pay much attention to what the defendant wrote in the boat because of his state of mind. So what do you think was his state of mind when he wrote that message to the world? Well, think about it. Two days earlier, three days earlier, he had pulled [43-133] off an extremely successful terrorist attack, an attack that received worldwide attention. After the attack, he had escaped. He had then been able to hide in plain sight until the time was right to attack again.

But by the time he snuck into that boat, things were different. He had been shot, and he was bleeding. He knew the police were looking for him. He knew it was just a matter of time before they caught him, if he didn't die first. So he knew this could be his last chance to voice his true beliefs. He revealed his true self when there was no longer any reason to keep it a secret.

The whole point of committing a terrorist attack is to send a message, and the defendant wanted to send a message to America that Americans are destined to lose the fight against violent extremism. And he wanted to send a message to his fellow jihadis. He wanted to inspire them with his words and with his actions. You

know that these words, the ones he wrote that night as he lay there in that boat, are his deepest and truest beliefs. He thought they were his final words. They are how he wanted to be remembered. They are the words that he thought would give meaning both to his life and to his death.

You know he was clear-headed and strong when he got into that boat. He was clear-headed enough to smash his cell phones first and to hide them. He was clear-headed enough to pick the boat as a hideout. He was strong enough to climb into [43-134] it without a ladder, despite how high it was off the ground. He was strong enough to carve words into the planks of the boat that you saw.

The message he wrote on the wall of that boat is perfectly clear. It's grammatical. It doesn't wander. It makes sense. He probably wrote it as soon as he got in there. You can be confident that those words are his truest beliefs because when he wrote them, he had no reason to tell anything other than the truth. But now that he's survived and he's on trial for his life, he has every reason to back away from the truth.

And you'll note in that message, he didn't write "we." He didn't say, "This is why we did this," or "This is why we did that." He said "I." It was a note about him, about who he was and what he had intended to accomplish and the message he wanted to send to the world and to be remembered by.

Ms. Clarke said that all the jihadi materials on the defendant's computer came from Tamerlan in January 2012 right before Tamerlan then left to take a six-month trip to Russia. Even if that's true, which I'll get back

to, what does it show? It shows that the conspiracy dates back all the way to January 2012. It shows that when Tamerlan decided to go to Russia for six months, the plot didn't go with him. It stayed home with the defendant.

As Dr. Levitt told you, many, many, many people read [43-135] jihadi materials. They are easy to find. They're all over the Internet. Many are probably exposed to them by family members, by brothers, by sisters, by friends. Most people read the materials and reject them. Only a tiny, tiny number read them and become true believers, and only a tiny fraction of those true believers actually decide to kill people.

Tamerlan Tsarnaev didn't turn the defendant into a murderer by giving him a bunch of magazines and then disappearing for six months. To shred the bodies of young women and children with a homemade bomb, you've got to be different from other people. And if you are the type of person who can adopt a philosophy of hate and commit multiple murders based on reading magazines and listening to lectures, does it really matter if you got them from your brother or from some other terrorist or from the Internet?

If you are capable of such hate, such callousness that you could murder and maim nearly 20 people and then drive to Whole Foods and buy milk, can you really blame it on your brother for giving you some propaganda to believe?

In any event, there's no actual evidence of where those materials came from originally. The defense's computer expert acknowledged that. All you know is that some of them were on many devices, including all of

the defendant's electronic devices. Their origin remains obscure, but he read them and he believed them and he was one of those tiny few who [43-136] decided to act on them.

When two people commit a crime together, it's always possible for one to point the finger at the other. Don't get distracted by that. The defendant and his brother were partners. Each acted on his own behalf and on the other's behalf. They are equally guilty, and that's why we ask you to return the only fair and just verdict in this case, which is a guilty verdict on all 30 counts in the indictment.

Thank you.

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  
Jury Assembly Room  
One Courthouse Way  
Boston, Massachusetts 02210  
Mon., Jan. 5, 2015  
9:15 a.m.

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**JURY TRIAL—DAY ONE—A.M. SESSION**

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[1A-3]

\* \* \* \* \*

THE COURT: My name is Judge O'Toole. I'm going to be presiding over this matter. I want to welcome you to this proceeding of the United States District Court for the District of Massachusetts, and especially to thank you for coming here today. You are here because you have been summoned to be available for service as trial jurors in this court.

The resolution of legal controversies, both civil and criminal, by trial of the matter before a jury of citizens drawn from the community is one of the most fundamental principles of our entire system of justice. You may recall from your study of American history that among the grievances against King George set forth in the Declaration of Independence were that he had "obstructed

the administration of justice” and “has made judges dependent on his will alone.”

Because of their experience in this respect, the founders were determined that the Constitution of the new nation would guarantee the right to trial by jury, and they wrote that guarantee into the Sixth and Seventh amendments of the Constitution, part of the Bill of Rights. In doing so, [1A-4] they assured that the outcome of legal cases would ultimately be entrusted not to officers of the government alone, but rather, to the public: ordinary citizens convened and acting as trial jurors.

We are about to begin the process of selecting a jury for a trial in a criminal case. The name of the case is *United States v. Dzhokhar Tsarnaev*. Mr. Tsarnaev is charged in connection with events that occurred near the finish line of the Boston Marathon on April 15, 2013, and that resulted in the deaths of three people. Mr. Tsarnaev is also charged with the death of an MIT police officer and other crimes that occurred on April 18 and 19, 2013.

In a criminal prosecution, the burden is always on the government to prove by factual evidence that the defendant is guilty of any crime he is accused of. And accordingly, every defendant is presumed to be not guilty until the government has proved otherwise at trial. The government bears the burden of proving a defendant’s guilt beyond a reasonable doubt.

The jury that we are about to start selecting today and in the next several days will have the task of considering the evidence produced during the trial, and decid-



ing on the basis of that evidence whether the government has proven the defendant's guilt of the charges against him beyond a reasonable doubt or not.

This case differs from many other criminal cases, [1A-5] however, in a significant way. Usually after a jury has convicted a defendant of a crime, the presiding judge decides what the punishment should be. In this case, however, Mr. Tsarnaev is accused of crimes that are potentially punishable by a sentence of death. If, after trial, he is convicted of any of these crimes, under the law it is the responsibility of the jury rather than the judge to decide whether Mr. Tsarnaev should be sentenced to death, or instead, to life imprisonment without possibility of release, the only other possible sentence for such a crime.

In essence, in our democracy we have committed these solemn and important decisions not to judges answerable to the sovereign alone, not to the press, not to the public opinion, and certainly not to the mob. We have committed this important duty to ourselves collectively as the people, the people who establish the constitutional order in the first place. And we the people, therefore, ask some of our fellow citizens to assume the high duty of convening as a trial jury and to resolve the issues presented with a firm disposition and commitment to do justice fairly and impartially.

Accordingly, it is the civic responsibility of every citizen to appear and serve as a juror when called unless seriously unable to do so. Such service is both an obligation of citizenship and an opportunity to perform a vital public and civic function. Juries are composed of citizens from all walks [1A-6] of life, each of whom brings his or her own personal perspective and life experience

to the task. You do not need to have any special education or experience to be a juror; what you do need is a commitment to justice.

Acknowledging the importance of jury service is not to ignore the obvious point, that your appearance here is, at the very least, inconvenient. We ask jurors to set aside their usual routines for a time to perform an important and necessary public service. Certainly serving on a jury, if you are chosen to serve, will require you to make some adjustments in your daily lives. You should not, however, think of your jury service, if you're chosen to sit on this jury, as an annoying burden.

Jurors regularly report to my colleagues and to me that they have found their service to be one of the most interesting and memorable experiences of their lives. After most trials, I meet briefly with jurors to thank them for their service. Uniformly, in the course of those discussions, jurors tell me that their experience was worthwhile, interesting and fundamentally important to them.

Jurors who seem to me to be nervous and unsure at the beginning of the case after a verdict have a calm and solemn sense of a duty responsibly performed. If you are chosen to serve in this case, I fully expect you will find the experience to do the same.

[1A-7]

Let me explain how we will proceed with the selection process. When I finish these preliminary remarks, a questionnaire will be distributed to you. You'll fill out the questionnaire before leaving today. As you fill it out, please do not discuss the questions or your answers with anyone else in the room, including the court staff

who have been instructed not to help you with your questionnaires. The information on the questionnaire must come from you and you alone.

Also, please understand there are no right or wrong answers to the questions on the form. All we ask is that you answer each question truthfully and completely to the best of your ability. The questionnaires are not intended to pry into personal matters unnecessarily, but there are some personal things we must know in order to assure to both sides in this case that the trial will be considered before a jury that is, in truth, fair and impartial. In addition, as a practical matter, using the questionnaire process makes the process less time-consuming and inconvenient for all, including you.

When you have filled out your questionnaire, you will give it to a member of the court staff, and you will then be free to leave. During the coming week, the questionnaires will be copied and then reviewed by the attorneys working on the case and by me.

The completed questionnaire will initially be reviewed only by the participants in this case and the Court. The [1A-8] filled out questionnaires will not become part of the public record unless and until I determine whether they include any sensitive information that should be kept confidential permanently. And if they do, I intend to keep that information and any possible further questioning about it from being available to the public.

When you leave, the court staff will give you a telephone number to call next week so that you may listen to a prerecorded message that will tell you about your possible future service in this case. Some jurors will be

told that they have been excused permanently, some jurors will be told to come to court again on a particular day to participate further in the jury selection process, and some jurors will be told to call in again at a later date for further information.

If you are selected to serve, the trial proper is expected to start on or about January 26th, and it is expected to last about three to four months. The trial will generally be conducted Monday through Thursday each week from about 9 a.m. to about 4 p.m., with time for breaks and lunch. The jury will not ordinarily sit on Fridays except in a week where there is a legal holiday that falls on Monday. The trial will continue through any school vacation week.

If you are concerned that service as a juror in this case would be an unusually difficult hardship for you, you will have a chance to describe that hardship in the questionnaire. [1A-9] If you're not excused based on what you have written, which may happen, I will discuss the hardship request in person with you when you come back to court. Any request to be excused will be seriously considered; however, I cannot guarantee that you will necessarily be excused if you think jury service in this case would be a hardship for you because finding a jury that represents a fair cross-section of the community will always pose some degree of hardship for those citizens who are chosen to serve.

It is important that the men and women who are selected as jurors in this case be able to listen to the evidence presented in court and to decide the issues in the case fairly and impartially. I'll be using the terms "fairly" and "impartially" again at times during the selection process. Let me explain briefly to you what I

mean. To serve fairly and impartially means to base a decision on the evidence presented in court during the trial, applying the law as I will describe it to you, and not based on any possible bias or prejudice or anything that you have seen, heard, read or experienced outside the courtroom including anything you may think you have previously learned from, say, reports in the media.

There has been a great deal of publicity about this case and there will continue to be. The mere fact that prior to this you may have read or heard something about the case does not automatically mean that you cannot be a juror, but you [1A-10] must be able to decide the issues in the case based on the information or evidence that is presented in the course of the trial, and not on information from any other sources.

The purpose of the jury selection process is to try to ensure that each person selected is an appropriate juror for this case, that the jury as a whole will fairly represent the community, and that the jury will assure that the parties get what they are entitled to: trial before a fair and impartial jury.

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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. 16, 2015  
9:24 a.m.

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**JURY TRIAL—DAY FIVE**

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[5-38]

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MR. McALEAR: Juror 35.

THE CLERK: Juror No. 35, sit here, please.

THE COURT: Good morning.

THE JUROR: Good morning.

THE COURT: I reminded everybody again today, but the last time when you filled out the questionnaire, I asked people to avoid discussion of the case or to avoid as well as you could any exposure to media stories and things like that. Have you been able to abide by that?

THE JUROR: Yes, I have.

THE COURT: You did fill out the questionnaire before. It's in front of you if you have need to refer to it, and I'm going to be asking you some questions about particular answers on the questionnaire.

THE JUROR: Okay.

THE COURT: Could you tell us a little bit about the nature of your work employment?

[5-39]

THE JUROR: Sure. I work for the Massachusetts Department of Energy Resources. In that regard, my role is looking at wholesale and retail electricity prices, wholesale markets, wholesale operations, factors that may impact gas and electricity prices, power plant operations, and the reliability of electric grid.

THE COURT: How long have you been in the field?

THE JUROR: Since 1987.

THE COURT: Okay. In the questionnaire, we asked a number of questions that could be generally characterized as international affairs, attitudes towards Islam or Muslims, attitudes toward the War on Terror and so on and so forth. Since the filling out of the questionnaire, there have been some incidents in Europe involving terrorist activity. Would any of those—have you paid attention to any of those?

THE JUROR: Just on, you know, high level, what was reported, high level.

THE COURT: You mean, by high level, you mean at sort of a general level?

THE JUROR: Yeah, just there was a situation in Paris.



THE COURT: Have you read a lot about it, a little about it?

THE JUROR: No, I haven't read any.

THE COURT: My question was going to be: Does it change any answers you gave in the questionnaire about those [5-40] matters, or does it bring up any other concern you would have that could be pertinent to this case?

THE JUROR: No. As you instructed us, to look at all the evidence that's presented in front of you, so that's what my task would be in this regard.

THE COURT: You did say in the questionnaire that you thought that the—this was Question 62, if you wanted to look at it. It's on Page 17. —that you thought the war—we asked whether you believe the War on Terror was overblown or exaggerated, and you said yes. Could you amplify on that?

THE JUROR: Sure. My thought process in answering that question was in regard to the media coverage of all the events globally and domestically.

THE COURT: What specifically were you thinking about that?

THE JUROR: Just the situation over in—where you hear about, you know, our—in Afghanistan and Iraq and all over the world, those particular areas that they're covering throughout the world, the media, so—

THE COURT: I've forgotten the word you used exactly. You think the media coverage has been overdone or something like that?

THE JUROR: Yes.

THE COURT: In what sense? Too much coverage or—

THE JUROR: Yeah. It's continuous coverage, if you [5-41] flick a channel on at some time, that it's there. So—

THE COURT: I guess, when you say "too much," it's kind of a value judgment. You think it's more coverage than the events call for? Is that a proper interpretation of what you're saying?

THE JUROR: I guess the duration of the—the duration of the coverage.

THE COURT: In proportion to the importance of it or—I'm trying to get what you think is overdone.

THE JUROR: Here's a story, cover it, and then there seems to be, in my opinion, a lot of—they get into so much.

We talked to this person, talked to that expert or this expert.

Just really dive in deep, deep, deep.

THE COURT: Are you thinking—sounds like you may be thinking of TV shows. Is that—are you talking about news reports or things like where there's panel discussions?

THE JUROR: Yeah.

THE COURT: I don't know if you watch, on Sunday, Meet the Press and things like that.

THE JUROR: No.

THE COURT: Are those the kinds of things you're talking about?

THE JUROR: I don't watch Meet the Press. Just in some—they have this panel, this expert, this expert on federal government, former CIA, whatever.

[5-42]

THE COURT: Just to come back to the general question about the war on terror being overblown, your thoughts about that are concerning media coverage of it rather than the activity of the government? Or do you think the government's actions, so-called war on terror, are exaggerated or overblown?

THE JUROR: I can only go by what's presented in the media. So if the media is covering that, that's what I would be watching. So I don't know what is the criteria, that I'm just watching TV, the media coverage, so—

THE COURT: Do you have any strong feelings, one way or the other, about how the government is handling those matters?

THE JUROR: I have a feeling that the government needs to obviously protect the citizenship of the United States and its citizens.

THE COURT: Okay. Well, okay.

In Question 74, we asked you how you felt when you received your summons for this case. You said you would be honored to be eligible to serve. Is this a case that, because of its subject matter particularly, intrigues you or—

THE JUROR: No.

THE COURT: Would that be an answer you would give for any case?

THE JUROR: It would be for any case.

THE COURT: If you'd look at Page 20, Question 77, we [5-43] asked some questions about whether you had any opinion based on what you'd read about this case, whether you had formed any opinions from any source, including the media. I just want to go back to Question 73 for a minute, the previous page. You noted that you had read a lot or watched TV a lot about the case.

THE JUROR: Yes.

THE COURT: So, now, going back to 77, we asked, Do you have an opinion about whether the defendant is guilty or not guilty, whether he should get the death penalty or not and so and on forth. You said "unsure" for each of those. Can you amplify on that?

THE JUROR: I was really taking—my interpretation was taking your words and saying, Should I be drawing a conclusion without all the evidence presented? That's what my thought process was to answer to that question. I don't know if I took it out of context or not.

THE COURT: No. I think you may have been right. I guess what you're saying is you were preparing your mind for the condition it should be in if you were a juror in the case?

THE JUROR: Right. That's—

THE COURT: You understand that a defendant has the benefit of a presumption of innocence and the government has to overcome that by proof, and you would be able to follow those principles—

[5-44]

THE JUROR: Right.

THE COURT: —if you were a juror in the case?

THE JUROR: Correct, yeah. That's the way I was reading it.

THE COURT: Okay. We're going to get to the questions of potential penalty in a minute. But you noted on Question 82, on 21, that you had attended a OneFund event.

THE JUROR: Yeah.

THE COURT: What was the event? What was your participation in it and so on?

THE JUROR: It was just—it was a fund-raiser held at the state room in Boston. I don't know the exact date.

THE COURT: Was it soon after the events or a couple months later or when was it?

THE JUROR: Yeah. I think it was—I don't know the exact date. It could have been maybe three to six months perhaps afterwards. I don't know the exact date.

THE COURT: How did you come to go to that, do you remember?

THE JUROR: It was just through Boston.com or something came up. Somebody mentioned it or some—so I thought it would be a worth wild—

THE COURT: This was an event that the interested public could attend?

THE JUROR: Yeah, yeah, absolutely.

[5-45]

THE COURT: You saw that and you—

THE JUROR: Yup.

THE COURT: Did it include a contribution?

THE JUROR: Yes, yes, it did.

THE COURT: A donation?

THE JUROR: Yes, yup.

THE COURT: Do you remember how much you donated?

THE JUROR: I think it was 75 or 50, 50 or 75, somewhere around there.

THE COURT: Have you had—since that event, had you had—participated in any other fund-raising or expressions of support—

THE JUROR: No.

THE COURT: —or sympathy or anything like that?

THE JUROR: No. I only—I have contributed to a specific fund called the Rett—International Rett Syndrome Fund, which my daughter has Rett Syndrome.

THE COURT: Completely unrelated?

THE JUROR: Yeah, no.

THE COURT: Now, we also asked a number of questions about your views about the possibility of a sentence of death versus the possibility of a sentence of life imprisonment. So we start at Page 23, Paragraph 88—Question 88. We ask, if you had any general views, what are you they, and you said no. Can you—

[5-46]

THE JUROR: Well, again, I was—when you said to take—literally, I took your words to say don't make any decisions until all the evidence is presented, so that's—my thought process was going through that.

THE COURT: So that's about this case.

THE JUROR: Right.

THE COURT: Apart from this case, do you have any general views about the death penalty, its appropriateness or not?

THE JUROR: Well, I would say that if it's considered cruel or unusual punishment, but I don't know what the criteria—I don't know enough about what the criteria is that—I don't know if that answers your question.

THE COURT: Okay. Do you mean that in some cases you think that might be true, or do you think that—

THE JUROR: I guess—

THE COURT: —it will always be true? I'm not sure I'm following.

THE JUROR: I don't know what is considered, like, cruel and unusual punishment. I'd have to learn more about what is the criteria for that.

THE COURT: Are you using that phrase in a way that you think you understand it as a legal proposition as opposed to a factual proposition? In other words, do you think, in fact, the death penalty is cruel or, in fact, it is unusual [5-47] kind of thing, or you know that phrase because it's in the Eighth Amendment and you think you

want to understand the legal concept? I guess I'm trying to understand whether you're talking about it as a legal concept or as a human understanding of events.

THE JUROR: Yes, yes, human.

THE COURT: Okay.

The next couple of questions, we tried to gauge what you thought about the death penalty on 89. Go back to the previous page.

THE JUROR: Yup.

THE COURT: We asked you to circle on a scale of 1 to 10, 1 being strongly opposed, 10 being strongly in favor. You selected No. 5, which kind of puts you right in the middle. Then in the next question we tried to scale it again in a different way, this time by words rather than numbers. You said, "I am not for or against the death penalty. I could vote to impose it or I could vote for a sentence of life imprisonment, whichever I thought was called for by the facts and the law in the case." Do those answers fairly represent your views about the death penalty?

THE JUROR: Yes.

THE COURT: And in this case, would you be open to the possibility of, on the one hand, the death penalty if you thought the facts called for it and, on the other hand, open to [5-48] life imprisonment—

THE JUROR: Yes.

THE COURT: —if you thought the facts called for that?

THE JUROR: Yes.



THE COURT: So you're not committed—I'm hearing you—you're not committed either way until you've heard all the evidence?

THE JUROR: Yes, correct.

THE COURT: In Question 95, we asked if you could conscientiously vote for the death penalty if you thought that was the right punishment, and you said you weren't sure. The next question, you said that, if you thought life imprisonment was the right one, could you conscientiously vote for that, you said yes. There's a slight difference between "I'm not sure" and "yes." Could you tell us why you answered those questions the way you did?

THE JUROR: Again, I was taking what you had instructed us, to look at all the evidence, so how could I make any decision on that particular sentence area until I knew more about what is the criteria for that?

THE COURT: Do you intend by that answer to indicate in any way that you would not be prepared to vote for the penalty of death in any circumstance? Or do you intend to convey that you will consider the circumstances before making [5-49] up your mind about that?

THE JUROR: I have committed myself to make a decision based on what you had said was all the evidence in the case. So I—

THE COURT: And just to be sure, if that evidence persuaded you that a sentence of death was an appropriate punishment, would you be able to vote for that?

THE JUROR: Yes.

THE COURT: And the same is true for life imprisonment without release?

THE JUROR: Yes.

THE COURT: Any brief follow-up?

MR. BRUCK: Could we confer just a moment?

(Discussion held off the record.)

MR. BRUCK: No, sir.

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[5-79]

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THE CLERK: Juror No. 41.

MR. McALEAR: Juror 41.

THE COURT: Good afternoon.

THE JUROR: Good afternoon.

THE COURT: We have put the questionnaire you filled out previously in front of you, and we may be referring to it from time to time.

When you were here to fill out the questionnaire, I instructed jurors to avoid talking about the case in substance with anybody or—and tried to avoid any media or other information, sources about the case. Have you been able to do that?

THE JUROR: Yes.

THE COURT: Let me start with you telling us a little bit about your employment. What do you do, and how long have you done it?

THE JUROR: I work for EMC Corporation. I'm a senior executive assistant.

THE COURT: That's—what is that? Assistant to a [5-80] senior executive or a senior assistant?

THE JUROR: No. That's my title. Senior executive assistant.

THE COURT: I'm just getting to the "senior" applies to you and not to somebody else.

THE JUROR: Well, they're both seniors, too. I support a senior vice president and a chief risk officer. She's one and the same. And I also support a senior vice president. He's chief officer of public affairs and government policies.

THE COURT: Okay. And you've done that for a while?

THE JUROR: I've been there since 2005.

THE COURT: You tell us in the form that you have a couple of friends who are—one is in, I guess, the correctional—a correction officer of some kind, and the other is a sheriff. Can you tell us a little bit about those people?

THE JUROR: I have one girlfriend who did work for the corrections department for many years, and she has recently just gone to work for the Worcester sheriff's office. And then my husband—

THE COURT: What does she do?

THE JUROR: She's in HR. She does something with human resources.

THE COURT: Okay. All right.

[5-81]

THE JUROR: My husband and I, who is also her husband, are friends with him, and he works for the Norfolk prison. And he's not really a correction officer. I think he is. I don't know. But he mainly drives the inmates, like, to their doctors' appointments or the hospital or stuff like that. That's what he does.

And then I have another girlfriend who works at the Framingham women's prison. She does, like, computer stuff. I think she's like their IT person.

THE COURT: You had the honor of serving on two juries before?

THE JUROR: Yes.

THE COURT: When were they, just approximately?

THE JUROR: The last one I did was just April 1st of 2014.

THE COURT: Really?

THE JUROR: I got picked as the alternate, so—

THE COURT: Oh. When was the other one?

THE JUROR: Years ago.

THE COURT: The other one was a civil—first was a civil case and then a criminal case? You want to refresh that? I'm looking at Page 15.

THE JUROR: The first one, I don't know what you call it, criminal or civil. The first one I remember, it was someone who walked across the street, and she got hit outside [5-82] of a crosswalk or something. The one that I just did in April was drunk driving.

THE COURT: We asked a series of questions in the questionnaire about things that could generally be put under the umbrella of international events or issues such as matters relating to Islam or Muslims, the war on terror and things like that. You answered them in the questionnaire. Since you filled out the questionnaire, there have been events in Europe that are getting some reporting here about terrorism acts in Paris and so on and so forth. Have you followed any of those reports?

THE JUROR: I don't watch the news really a lot. If I hear it a lot, I usually hear it at work around the water bubbler.

THE COURT: Have you heard about the events in Paris? Do you know what I'm talking about?

THE JUROR: Kind of. I know that—was it Kerry was going over there to do some talking or peace talks or—that's probably about all I know.

THE COURT: Okay. What I was leading up to was whether any—what you've heard about any of that would affect any of the answers that you previously gave. Doesn't sound like it would. There doesn't seem like there's much there.

THE JUROR: Probably not because I don't really know about it.

[5-83]

THE COURT: Now, I'd like you to look at Page 20, Question 77. In that question we asked a multipart question about whether you had—based on the media or anything else, you'd formed an opinion about whether

the defendant was guilty or not guilty or should be sentenced to death or not, and you answered to each of those questions that you had not formed an opinion. Am I reading that right?

THE JUROR: Uh-huh.

THE COURT: Can you amplify on that? Is that the case? You don't have an opinion one way or the other?

THE JUROR: I don't really have an opinion. Obviously, I know what happened on that day. I have seen some of it in the media, but I don't really follow it. Sometimes I try not to listen to the news because it's too depressing.

THE COURT: When it comes to trial, as you've heard, there will be two phases. The first phase will be to determine whether the defendant is guilty of the crimes he's charged with or not. At that stage of the case, at the beginning—before the presentation of any evidence and throughout the case, until the jury gives us its answer, the defendant is presumed to be innocent of the charges and is guilty only when the jury says so because they've been convinced by the evidence at trial that the government has persuaded them that he is guilty of the offenses beyond a reasonable doubt. Do you think you would have any difficulty in accepting and applying the principles of [5-84] presumption of innocence and proof beyond a reasonable doubt by the government?

THE JUROR: No, not at all.

THE COURT: Then if the defendant is guilty—found guilty by the jury at that point of a capital crime, one for which the death penalty is possible, the jury

would then have to consider whether that sentence should be imposed or a different sentence, life without release. And this answer says you have no opinion about that as well. Is that a fair understanding of your condition at this stage? That's where your—

THE JUROR: Uh-huh.

THE COURT: You have to use a word.

THE JUROR: Yes.

THE COURT: Nodding doesn't help.

Then it might help you to follow this, too, Page 23, Question 88. We asked, in summary, for your general views on the death penalty, if you had some. And you said you didn't have any general views, and it would depend on the evidence and the crime. Is that an accurate summary of your general view?

THE JUROR: Yes.

THE COURT: Next question, we asked you to scale—put it on the scale what you thought about the death penalty, whether you were strongly opposed to it or strongly in favor of it, and you selected something right in the middle.

[5-85]

THE JUROR: Yes, I did.

THE COURT: Similarly, on the next page, we asked for that sort of—sort of that same kind of assessment of where you are on the scale of things but in words this time. And you selected "D." Would you just read that for a minute and tell me whether that represents your view?

THE JUROR: Uh-huh, yes.

THE COURT: Assuming that the defendant is convicted of a capital crime—so take that as a premise of the question, he is convicted—and you proceed to a penalty phase, would you be prepared by mental attitude and your general disposition to the manner to vote for penalty of death if you thought that was warranted under the circumstances; and on the other hand, would you similarly be prepared to vote for a penalty of life imprisonment without parole instead of the death penalty if you thought that was warranted?

THE JUROR: Yes, I would.

THE COURT: Either way, you would be prepared.

THE JUROR: Either/or.

THE COURT: Depending on the circumstances that you heard them in the course of the trial?

THE JUROR: Yes.

THE COURT: So you heard me talk about certain things the government must prove in the penalty phase. They must prove there was a certain level of criminal intention involved [5-86] in the commission of the acts and that there were circumstances that were aggravating that might call for a higher penalty than the average intentional murder and there would be evidence about mitigating factors that might say that's not the right penalty, that there should be life imprisonment. You hear all that, and you're open to going either way, depending on how you assess all that evidence? Is that a fair summary of what—

THE JUROR: Yes, it is.



THE COURT: Have I got anything wrong?

THE JUROR: No.

THE COURT: If you look at Question 95, we ask whether, if he was guilty and you decided that it was appropriate, could you conscientiously vote for the death penalty, and you expressed some uncertainty there. You said you were unsure.

THE JUROR: Yes, I did.

THE COURT: Is that—today you’ve kind of been a little firmer about it. I’m just wondering which is really—

THE JUROR: Because, when I’m answering that question, I don’t know any—I don’t know anything about the case. I don’t know any evidence. And where I’m not one way for death penalty or one way not for death penalty, to me, I would have to hear—I would have to hear the circumstances and the evidence and—

THE COURT: Any follow-up?

[5-87]

MR. WEINREB: No.

MR. BRUCK: No, sir.

THE COURT: All right. Thank you. Step out. Leave the questionnaire right there.

(The juror is excused.)

\* \* \* \* \*

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., Jan. 21, 2015  
9:22 a.m.

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**JURY TRIAL—DAY SEVEN**

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\* \* \* \* \*

[7-24]

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THE CLERK: Juror 83.

MR. McALEAR: Juror 83.

THE CLERK: Sir, over here, please. Have a seat, if you would.

THE COURT: Hello. Since you filled out the questionnaire and we're here, have you been able to abide by my instruction to avoid any discussion of the case?

THE JUROR: Yes, sir.

THE COURT: And any unnecessary avoidable exposure to the media reports?

THE JUROR: Yes.

THE COURT: So that's the questionnaire, and we may ask you to look at a couple of things as we follow up on some of the questions you gave.

THE JUROR: Sure.

THE COURT: It appears from your questionnaire that you are a student interrupted. Is that—

THE JUROR: Yeah. I was going to end up taking a break this semester anyways because my financial aid fell through, so . . .

THE COURT: So what are you doing?

[7-25]

THE JUROR: Well, I'm not employed right now because I lost my job. I was working seasonally at Best Buy. So right now I'm just at home.

THE COURT: Okay. What course were you pursuing at school?

THE JUROR: Psychology and a minor in neuroscience.

THE COURT: Neuroscience?

THE JUROR: Yes, sir.

THE COURT: Tell us about your social media use.

THE JUROR: Well, I mean, Facebook. I use Facebook, but I don't really put anything personal on there, and I definitely try to avoid political things for the most part. Usually I just—you know, I used to be a personal trainer, so I put like training things or health-related fitness things and, you know, some funny memes every now and then.

I mean, I saw the movie "American Sniper" over the weekend and I did post something like that, but I didn't really get into the politics or anything.

THE COURT: So anything beyond Facebook? Twitter or Instagram or anything like that?

THE JUROR: No, I'm not a Twitter person. I have Instagram, but I don't use it.

THE COURT: Let me ask you to look at page 15, I guess, Question No. 50.

THE JUROR: Yes?

[7-26]

THE COURT: That asks what court cases you may have followed with interest and what interested you about them.

THE JUROR: Sure.

THE COURT: And you talk about the Michael Brown case.

THE JUROR: Yes.

THE COURT: That's the Ferguson, Missouri, incident?

THE JUROR: Yes.

THE COURT: What was it about that that interested you?

THE JUROR: It was more just the people's reaction to the case, the outcome of the grand jury choosing not to indict the officer who was charged with the shooting. I mean, there were mixed emotions. Some people said that was the right decision, and some people said that they were somewhat disappointed with how the case was handled.

Personally, I didn't—it didn't really affect me too much because I don't like to dabble in those things, but, you know, there's just such a volume of people that, you know, post things on Facebook, it's kind of hard to avoid that at times. And I just thought there was a lot of charged emotion that kind of factored into people's view on the case, and that takes away from the legitimacy of, like, their views, actually, like, because they're speaking emotionally as opposed to logically.

So I thought due process was followed in that case and I thought the grand jury made the right decision.

[7-27]

THE COURT: Did you post anything about your own opinions about it?

THE JUROR: No.

THE COURT: On Facebook or anything?

THE JUROR: No.

THE COURT: Any other cases that—I think that may be the one you particularly mentioned. Were there others—

THE JUROR: Yeah, that's really the only one that I remember. There was the Casey Anthony case a few years back as well, but, like, to be honest, all of the details have escaped my mind.

THE COURT: We asked a series of questions about attitudes to various potential issues including attitudes towards Islam and Muslims and the war on terror and so on.

THE JUROR: Yes.

THE COURT: And you tell us that your mother is a native of Iran. Is that right?

THE JUROR: Yes. Yes, she is.

THE COURT: And she is a—just casually, I guess, a former Muslim who has changed to a different faith?

THE JUROR: Yes, that's correct.

THE COURT: How long has she lived in the U.S.?

THE JUROR: She came in '78, I believe, just before the Iranian Revolution.

THE COURT: Do you have family there now?

[7-28]

THE JUROR: Not anybody that I know.

THE COURT: In the region at all?

THE JUROR: No.

THE COURT: You answered these questions when you filled out the questionnaire, obviously. Since then there have been some attacks in Paris and events in Europe. Do you follow those, the news about those?

THE JUROR: Just vaguely. The first day it kind of happened, just to see what was happening, but after that—

THE COURT: No?

THE JUROR: —I didn't really follow through.

THE COURT: Would—did you have any reaction to those events that would have led you to change any of the answers you've put down in these matters?

THE JUROR: Not really. It obviously was not a good thing that happened at the time, but my views, from what I remember that I filled out, since then have not changed.

THE COURT: Okay. Looking at Question—oh, Question 67. You know a little bit of Arabic?

THE JUROR: A little bit of Farsi.

THE COURT: Farsi?

THE JUROR: Yes.

THE COURT: Okay. Is that close to Arabic? I don't know the answer to that.

THE JUROR: The writing is somewhat similar. A lot of [7-29] the—there are some Arabic roots. There are some French roots as well. I mean, Iranians are Caucasian in origin, so they're not Aramaic or Arabic, from my understanding.

THE COURT: Have you studied your heritage?

THE JUROR: A little bit. When I was a kid I took some, you know, like Farsi language classes, but it escapes me for the most part. Now I just know a few phrases and some very basic conversational things or,



you know, words and phrases, like if I speak with relatives.

In terms of my culture or the culture that, you know, my mom is from and I share half my heritage with, there are some things that interest me, but it's more like—like there's this thing called the Pahlevan, which is a house of strength in Iran, and they do like the Indian club swinging. Again, going back to the fitness, that's kind of what I was more interested in more than anything else.

THE COURT: Looking at Question 71, you seem to have sort of an international taste in news.

THE JUROR: Yes.

THE COURT: You pay attention to BBC America, Al Jazeera America?

THE JUROR: Every now and then. And, I mean, I probably watch like a little—you know, the 30-minute news broadcast maybe once every other week or so.

THE COURT: Do that on the Internet?

[7-30]

THE JUROR: No, usually on the TV. If it just happens to be on. If it's not on, I don't really go out of my way.

THE COURT: Let me ask you to look at page 20, Question 77.

THE JUROR: Yes.

THE COURT: In that question we asked whether, based on things you'd seen or read, learned from any source, whether you had an opinion about whether this

defendant is guilty or not and whether—how he should be punished, if he is. And to each of the four parts of that question you answered that you were unsure.

THE JUROR: Yes.

THE COURT: Can you tell us about that answer.

THE JUROR: Sure. If I just may reread the—

THE COURT: Yeah. Go ahead. Take your time.

THE JUROR: Okay.

(There is a pause.)

THE JUROR: Okay. So I believe at the time my logic in saying “unsure”—I’ll start at the bottom. In regards to should he receive the death penalty or not receive the death penalty, I’m not sure because I don’t really know much about the case outside of what I saw a couple of years ago and what we read in the brief, so I just felt that—I didn’t feel at the time that that was conclusive enough to be able to say whether I should—whether I believe he should get that or not [7-31] get that, that penalty.

In regards to him being guilty or not guilty, obviously he was involved in something, but as it is my understanding that you’re not guilty until proven—you’re innocent until proven guilty, I just thought it would be best to say “unsure.”

THE COURT: Understanding you probably have things from the media and so on, recollections, you’ve referred to the presumption of innocence and proof beyond a reasonable doubt—

THE JUROR: Yes.

THE COURT: —of guilt.

Do you have any concern or reservations about your own ability to apply that—those principles?

THE JUROR: No, I don't.

THE COURT: Specifically to require the government to convince you beyond a reasonable doubt by its evidence at trial?

THE JUROR: Right. Wait. Could you repeat that one more time?

THE COURT: Well, as I think you've recognized, the government—when someone is accused of a crime, the person doesn't have any obligation to prove he's not guilty of the crime; the government has to prove he is.

THE JUROR: Yes.

THE COURT: And that's done by evidence at trial to a [7-32] jury.

THE JUROR: Right.

THE COURT: And it's the obligation of the government to produce evidence that convinces the jury beyond a reasonable doubt; otherwise, the jury is required by law to find the person not guilty.

THE JUROR: Correct.

THE COURT: Is that something you'd be able to do?

THE JUROR: Yes, I would be able to do it.

THE COURT: I guess specifically what I want to know is how would you handle whatever ideas you've had from before the trial?

THE JUROR: Sure. Well, based on the evidence presented and—you know, I do have a knack to listening to people and what they say. You know, you guys have to do a fair job in presenting the facts the best you can. Based on that, that's probably when I would—that's definitely when I would make my decision because I think it would be wrong to do—or to have any preconceived notion as to what he deserves or doesn't deserve otherwise until that happens.

THE COURT: You and your family, as far as you know, were not personally involved or affected by the events?

THE JUROR: No, nobody that I know in my immediate family was involved or affected.

THE COURT: Let me ask you to turn to page 23. [7-33] Beginning with Question 88, we ask people about some ideas they may have about the death penalty. And in 88 we asked in general terms what—if you have any views about the death penalty, what they are. I have to confess I had a little trouble reading your writing. Maybe you can tell us what you wrote there.

THE JUROR: Yes. So I said that in certain cases, if the evidence and reason's fair and the punishment deemed as the death penalty, then I hope that it's given in the hope that it serves the purpose of justice as—I guess as outlined by what your objective or idea of justice in terms of what he deserves as—so, yeah, the standard—whatever standard—

THE COURT: I'm trying to read the last phrase. "In fairness and equity of all involved"?

THE JUROR: Yes. To say that people weren't affected, obviously somebody or—or something has to be

held accountable in some regard for what happened during that time that he was accused of carrying out the things that you had mentioned. So, you know, it didn't just happen on its own.

THE COURT: Well, okay. So the question was asking about—your general views about the death penalty. And now that you've read the answer—but I mean apart from the answer, can you tell me in general terms what your view is?

THE JUROR: I think the death penalty is valid in terms of being a good punishment, but, again, it all depends on [7-34] the severity of what he did and how people around him—or that were affected by his decisions were affected. So, you know, I think it would be merciful at times if you believe in an afterlife for the justice system to give someone the death penalty. Maybe it takes away some of the burden of the person's soul. But then again, I think that in certain cases, say, life in prison can also be an opening—or eye-opening experience for a person as well. Maybe they'll change before the time that they naturally die.

And I also think that the death penalty is fair, you know? There has to be an appropriate punishment for certain crimes out there, and to not have that as an option on the table would be wrong. Not that I think it should always be pushed on people, but I think it is a valid punishment.

THE COURT: So you—we asked you in Question 89—if you want to go back to that page.

THE JUROR: Sure.

THE COURT: —if you could sort of give us where on a scale of 1 to 10—where you thought you were with respect to the death penalty, and you picked 6.

THE JUROR: Yes.

THE COURT: Which is sort of in the middle.

THE JUROR: Yeah. And I still feel that way. I mean, if you guys had, you know, like a 6-1/2 or a 7, I probably would have done a half of some sort.

[7-35]

THE COURT: On the next page, Question 90, we ask you to tell us not by a numerical scale but in words which statement came closest to your view, and you circled letter D.

THE JUROR: Yes.

THE COURT: That says you're not for or against the death penalty; you could vote to impose it or to impose a sentence of life imprisonment, whichever you thought you believe was called for by the facts and the law in the case.

THE JUROR: Yes.

THE COURT: Is that a fair summary of your view?

THE JUROR: Yes, I think that was the most accurate statement that reflected my views and does reflect my views currently.

THE COURT: So in this case after hearing the evidence would you be able to conscientiously consider a penalty of death?

THE JUROR: I believe I could.

THE COURT: And similarly, would you be able to conscientiously consider a life imprisonment?

THE JUROR: Yes.

THE COURT: Are you open to either depending on the evidence?

THE JUROR: I definitely am open to either.

THE COURT: So you wouldn't automatically vote for one or the other regardless of the facts in the case. Is that what [7-36] you're saying?

THE JUROR: Yeah, I couldn't do that. It would go against my principle, to be honest.

THE COURT: Mr. Weinreb?

MR. WEINREB: No questions, your Honor.

MR. BRUCK: Good morning. I've been calling you Mr. 83, of course trying to protect everyone's privacy by not using their name. I don't mean to be rude. My name is David Bruck, and I'm one of the attorneys for Jahar Tsarnaev, and I do have a couple of questions I would like to ask you, if I could.

THE JUROR: Sure.

MR. BRUCK: You mentioned that—I think the words you used were “obviously he was involved in something.”

THE JUROR: Yes.

MR. BRUCK: Tell us about that.

THE JUROR: I mean, just from media reports, I do remember his name being mentioned as well as—I believe his brother's name being mentioned as well. So I mean, I don't know if this is a case of mistaken—I don't

know—I don't think this would be a case of mistaken identity, so obviously he was involved in something. Just exactly what and how, I don't know.

MR. BRUCK: Well, do you know—I mean, why he's the one charged rather than anyone else?

[7-37]

THE JUROR: No.

MR. BRUCK: Well, just based on what you've heard.

THE JUROR: Sure, based on what I've heard.

MR. BRUCK: Sure.

MR. WEINREB: Objection, your Honor.

THE COURT: Yeah, I think sustained. I think this goes beyond what we've outlined, so . . .

MR. BRUCK: All right.

You mentioned your mom changed her religious faith to Bahá'í.

THE JUROR: Yes.

MR. BRUCK: And I'm—are you aware of the treatment of Bahá'ís in Iran?

THE JUROR: Yes. Yes, I am.

MR. BRUCK: It's extremely cruel.

THE JUROR: It is.

MR. BRUCK: And, of course, Iran is a—styles itself as an Islamic Republic.

THE JUROR: Yes.



MR. BRUCK: If there was a great deal of information, of evidence about Islam and the defendant's Islamic faith and beliefs—you see where the question is—

THE JUROR: Yes, I could see where that's leading.

MR. BRUCK: Can you answer it?

THE JUROR: Yes, I can. To be honest, I personally [7-38] have nothing against Islam, as well as I know that many Bahá'ís do not. You know, we are taught to respect all religions. And, you know, what the Iranian government decides to do against Bahá'ís in terms of human rights violations or the like, you know, that's a shame that they do that. But the governing body of the Bahá'í faith also say that Bahá'ís are supposed to follow the laws of the country and to respect the government and the rights and to help people regardless of whether they're Islamic or Bahá'í or Christian or whatever else. So I have nothing against Islam or the people of Islam.

MR. BRUCK: Okay. Well, thank you.

You said in response to the judge's question about the punishment that—in this case you—that what you know is not conclusive enough to base an opinion. I just wonder—I guess I want to probe a little bit about that.

THE JUROR: Okay.

MR. BRUCK: As you sit here today, knowing that this case is the Boston Marathon bombing and its aftermath, and assuming now just for my question that he has been convicted—let's picture that.

THE JUROR: Okay.

MR. BRUCK: —proof beyond a reasonable doubt, the whole jury has agreed, so we're now in the sentencing phase. Do you lean one way or another regarding death penalty or life imprisonment?

[7-39]

MR. WEINREB: I object.

THE COURT: No, you can answer that.

THE JUROR: Do I lean one way or the other?

MR. BRUCK: Yes.

THE JUROR: If he's proven guilty, you said, correct?

MR. BRUCK: That's the assumption, right. Because you wouldn't have a decision to make until he was first proven guilty.

THE JUROR: I still—I don't know. There's just—I don't know enough. I mean, I would say definitely life in prison at this point, I mean, if I had to make a decision based on what you said, but in terms of the death penalty, I couldn't—I couldn't say that right now.

MR. BRUCK: I see.

So I take it that there could be circumstances under which life imprisonment could be a sufficient punishment for this type of crime in your mind?

THE JUROR: I could see that as being an appropriate punishment, yes.

MR. BRUCK: Okay. And do you appreciate in the end it's up to the jury, not up to the law and up to the Court?

THE JUROR: I do.

MR. WEINREB: Objection, your Honor.

THE COURT: Well, the answer's given, so . . .

THE JUROR: I apologize.

[7-40]

THE COURT: No, that's fine.

MR. BRUCK: Do you remember—you may have answered this already. Did you have any—did you do any Facebook postings about this case?

THE JUROR: No.

MR. BRUCK: Or any friends' postings come up on your Facebook page?

THE JUROR: No.

MR. BRUCK: Would you like to be on the jury?

MR. WEINREB: Objection.

THE COURT: Sustained.

MR. BRUCK: Bear with me just a moment.

(Pause.)

MR. BRUCK: Thank you so much. That's all I have.

MR. WEINREB: Your Honor, I have one question, if I may, please.

Good morning.

THE JUROR: Good morning.

MR. WEINREB: My name is Bill Weinreb. I'm one of the prosecutors in the case. I just have one question which is you've talked about that you're open

to the possibility that the death penalty would be an appropriate penalty and also open to the possibility that life imprisonment would be appropriate.

THE JUROR: Yes.

MR. WEINREB: My question is: If you determined after [7-41] hearing all the evidence—

THE JUROR: Yes.

MR. WEINREB: —if the defendant were found guilty and you had heard evidence in the penalty phase and you had actually come to the belief that a death sentence was the appropriate sentence, would you be able to actually impose it, vote that somebody be put to death for a crime?

THE JUROR: Yes.

MR. WEINREB: Thank you.

THE COURT: Okay. Thank you, sir.

THE JUROR: All right.

(The juror is excused.)

MR. BRUCK: Before the next juror comes out, please, just for the point of view of the record, of course the government objected to a couple of the questions on our list. The Court sustained some. When the Court sustains an objection, do—is the record complete or in—or will it be necessary for me to—or for the questioner, when the juror has been excused, to note our objection or—

THE COURT: I think asking the question makes your point.

MR. BRUCK: Very well.

THE COURT: I don't think it's necessary to take an exception—

MR. BRUCK: Well—

[7-42]

THE COURT: —as we used to do.

MR. BRUCK: Right. You see that our issue—

THE COURT: I think your record is fine.

MR. BRUCK: Fine. Thank you. That's all we need.

\* \* \* \* \*

[7-91]

THE CLERK: Juror No. 102.

JURY CLERK: Juror No. 102.

THE CLERK: Ma'am, have a seat right over here, if you would, please.

THE COURT: Good afternoon.

THE JUROR: Hi.

THE CLERK: Make sure you speak into the mic so everyone can hear you, okay?

THE JUROR: Okay.

THE CLERK: Thanks.

THE COURT: That's the questionnaire you filled out when you were here last. We may refer to it as we follow up on some of the questions you gave.

THE JUROR: Okay.

THE COURT: Since that time have you been able to follow my instruction to avoid any discussion of the process, the case?

THE JUROR: Yeah.

THE COURT: And tried to limit your exposure to any news accounts about things?

THE JUROR: Yeah.

THE COURT: So looking at your questionnaire, you were [7-92] until recently employed as an R.N. at the Good Samaritan Medical Center?

THE JUROR: Yes.

THE COURT: Where is that?

THE JUROR: In Brockton.

THE COURT: And it says that you left late December and are currently unemployed?

THE JUROR: Yes.

THE COURT: That's when you filled this out. Is that still the case?

THE JUROR: Yes.

THE COURT: Are you planning to reemploy or are you taking some time off or—

THE JUROR: I'm actually taking time off. I was—well, we're planning on going cross-country. We were going to start in April when our lease was up, and just travel.

THE COURT: When you say "we"—

THE JUROR: My boyfriend and I.

THE COURT: You had that idea. Had you made specific plans for a particular time for your trip?

THE JUROR: Well, our lease is up. We have an RV. We were planning on going cross-country in the RV. And if I was called, we were just going to stay in the RV around here.

THE COURT: That was my question, if you were called and if the case continued beyond April, what would the impact [7-93] be on you. And you're saying you could adjust?

THE JUROR: Yes, definitely. We had already planned on making adjustments if I was chosen to sit, so . . .

THE COURT: Okay. Tell me just a little bit about your training and work as a nurse. Do you have any specialty?

THE JUROR: Yes; for the last ten years I've been in the emergency room.

THE COURT: Emergency room?

THE JUROR: Yup. Before that I was an LPN and worked for an agency, so I basically staffed nursing homes, rehabs, transitional care units, things like that.

THE COURT: Okay. But throughout your time at Good Samaritan, you've been in the ER?

THE JUROR: Yes.

THE COURT: Some but no extensive use of Facebook. Is that—

THE JUROR: Hardly any.

THE COURT: Okay.

THE JUROR: Basically, family, friends. I'm a cake artist, so I post cake pictures.

THE COURT: If you want to refresh your recollection, at pages 18 and 19 we ask jurors some questions about what might broadly be called international affairs issues, things about the war on terror, so-called, and perhaps attitudes about Islam and Muslims and so on and so forth. Since you filled out [7-94] the questionnaire and gave those answers, there have been some events in Europe involving some terrorist attacks. Have you followed those at all?

THE JUROR: I don't really know much about it.

THE COURT: You don't know what or where?

THE JUROR: I think France.

THE COURT: Right. Well, my question was going to be if what you knew about those things would affect any of the answers you gave here.

THE JUROR: No, I don't believe so.

THE COURT: Let me ask you to turn to page 20 and direct your attention to Question 77.

THE JUROR: Uh-huh.

THE COURT: That's a multiple-part question in which we asked whether you'd formed an opinion from things you'd seen in the media or heard otherwise about whether this defendant was guilty or not, and if so, whether he should be punished by the death penalty or not.

THE JUROR: Right.



THE COURT: And to each of those you indicated—you checked the box that said “unsure.”

THE JUROR: Right.

THE COURT: Would you explain that for us?

THE JUROR: I can’t make a decision whether he’s guilty or not until I hear evidence. I don’t know really much [7-95] about it, so I can’t tell you one way or the other if I think he’s guilty now or not guilty. I don’t know.

THE COURT: You probably heard some things about the case, right?

THE JUROR: Yes. I mean, I read what was—the beginning of this that told facts.

THE COURT: That’s on the next page, if you want to—I think that’s what you’re referring to, the bottom of page 21?

THE JUROR: The facts. Yeah, so I read that.

At the time, bits of pieces of what was going on, but, still, I really could not tell you what the accounts of what happened. So I really don’t know. I don’t have enough information.

THE COURT: Do you remember following any of it as it unfolded at the time?

THE JUROR: I believe I was working at the time, so I really couldn’t follow it step by step after the fact.

THE COURT: You’re talking about the day of the marathon itself?

THE JUROR: Right.

THE COURT: Of course it continued into the end of the week, Thursday and Friday, as people were trying to—

THE JUROR: Yeah. I've worked nights for ten years, so having that shift, I really don't have much access to news. [7-96] I'm either sleeping during the day or working during the night.

THE COURT: All right. Now if you'd go to page 23, we asked a series of questions beginning with Number 88 about attitudes or beliefs, convictions about the death penalty and so on. And 88 is a general question, it says generally what your views are, and you said you didn't have any. Is that—

THE JUROR: I really don't. I—I don't know. I would have to see what the charges were. I'd have to—I'd have to weigh everything in order to have an opinion on that.

THE COURT: The next question was sort of asking you to put it on a scale where you were between strongly oppose and strongly favor, and you chose number 5.

THE JUROR: Right. I'm not either.

THE COURT: In the middle, is that it?

THE JUROR: Yeah.

THE COURT: The next question, Number 90, we ask you to select the statement that was closest to what your beliefs were about the death penalty. You selected D?

THE JUROR: Right.

THE COURT: It says you're not for it or against it and could vote to impose it or vote to impose, instead, a

life imprisonment, whichever you thought was called for by the facts and the law in the case.

THE JUROR: Right.

THE COURT: Is that an accurate summary?

[7-97]

THE JUROR: Completely.

THE COURT: Do you feel confident that—of course you don't know what the evidence is you're going to hear—

THE JUROR: Right.

THE COURT: —but can you envision evidence that would lead you to feel that the death penalty was the right decision—

THE JUROR: If there was—

THE COURT: —and vote for it?

THE JUROR: If there was evidence and if that was called for, then, yes, I guess I could.

THE COURT: And can you envision that there was evidence that you could consider that might lead you to conclude that the death penalty was inappropriate and that life imprisonment was the appropriate sentence?

THE JUROR: Definitely. I have no, like I said, views either way. I am really in the middle. I would have to hear everything and make an educated decision.

MR. WEINREB: Good morning.

THE JUROR: Hi.

MR. WEINREB: My name is Bill—good afternoon.

THE JUROR: Oh, yes.

MR. WEINREB: Just so the record is clear.

My name is Bill Weinreb. I'm one of the prosecutors in the case. I just wanted to ask you a few questions about [7-98] the death penalty.

THE JUROR: Sure.

MR. WEINREB: Have you given a lot of thought to the idea of the death penalty in general?

THE JUROR: I have. You know, it's part of this case, so, you know, I've thought about it. And, again, I would have to make an educated decision about that.

MR. WEINREB: Okay. So you've told us that you could consider the evidence and you could consider both possibilities, but I want to ask you a slightly different question—

THE JUROR: Okay.

MR. WEINREB: —which is, as you know, because the judge instructed you earlier, the jury—if the defendant in this case is found guilty—

THE JUROR: Uh-huh.

MR. WEINREB: —of one of the crimes that carries a potential penalty of death, then it will be up to the jury to decide whether he lives or dies.

THE JUROR: Right.

MR. WEINREB: You'll be one of those people who will have to make that decision—

THE JUROR: Right.

MR. WEINREB: —on another human being.

My question is simply: Can you imagine yourself on [7-99] the jury thinking about whether this person sitting at the table should live or die? Would you be able to—if you thought it was the appropriate punishment, would you be able to sentence him to death?

THE JUROR: If I felt it was appropriate.

MR. WEINREB: Okay. Thank you.

MR. BRUCK: Good afternoon.

THE JUROR: Hi.

MR. BRUCK: My name is David Bruck. I'm one of the attorneys for Jahar Tsarnaev, and I just have a few things I want to talk to you about.

THE JUROR: Sure.

MR. BRUCK: You live in Massachusetts now. Have you ever lived in other places?

THE JUROR: No.

MR. BRUCK: Okay. Understanding that you didn't follow all of the facts or that you weren't glued to the TV set the whole time when this was first happening, I'd like to ask you what stands out in your mind, if anything, about this case from anything you've heard, seen.

THE JUROR: The only thing that I definitely can remember from that time is probably after the fact when they showed the finish line. That's about it really.

MR. BRUCK: And did you have any feelings about what you remember of that scene?

[7-100]

THE JUROR: It was scary. There was a lot of confusion.

MR. BRUCK: Anything about the defendant?

THE JUROR: I honestly didn't even know the defendant until—I didn't know what his name was until the court summoned me here.

MR. BRUCK: Okay. Anything else that you recall about any aspect of this case at all?

THE JUROR: No. Just personally I thought, my goodness, the ERs are going to be overloaded, how are they going to deal with that. It was just a work perspective.

MR. BRUCK: You've been asked a bunch of questions just now about the death penalty, mostly by the judge. I want to ask you something about it but in a slightly different way. Massachusetts doesn't have the death penalty, as the judge told you.

THE JUROR: Right.

MR. BRUCK: Some states used to have it and recently abolished it. If you were in the legislature and the issue came up should we have it on the books in the state, would you be in favor of having it as an option or would you think it would be just as well, or better, not to have it as an option?

THE JUROR: I don't know. I would need more information. I'm glad I don't have to make those kinds of decisions. And I was surprised when told that the death [7-101] penalty was on the table because I knew that Massachusetts didn't have it. Whether or not I would vote for it, I don't know. I'd have to think about that even more.

MR. BRUCK: How do you feel about serving on this jury?

MR. WEINREB: Objection.

THE JUROR: How do I feel?

THE COURT: No, you can answer that.

THE JUROR: Well, I feel as though I, you know, bring an honest and impartial view. I really, you know, have no opinion at this point. I would definitely need more information and facts before I could make any decisions on anything. I feel I'm a fair person. So I don't know if, you know, a feeling is a correct question. I'm not sure if I have a feeling.

MR. BRUCK: Let me ask it this way: Some people may get their jury summons and know it's for this case and say, "Oh, boy, I hope I don't get picked."

THE JUROR: No, I didn't know my summons was for this case. I had no idea at all.

MR. BRUCK: Would you have had that reaction?

THE JUROR: I don't think so. It's a case like any other case.

MR. BRUCK: Bear with me just a moment.

(Pause.)

[7-102]

MR. BRUCK: Thank you so much.

THE JUROR: Thanks.

THE COURT: Is that it? All right. Thank you.

THE JUROR: All set?

(The juror is excused.)

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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. 23, 2015  
9:26 a.m.

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**JURY TRIAL—DAY NINE**

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\* \* \* \* \*

[9-15]

MR. McALEAR: Juror 138.

THE CLERK: Sir, over here, please. Have a seat. Make sure you speak into the mic so everyone can hear you.

THE COURT: Good morning.

THE JUROR: How are you doing?

THE COURT: Good. When you left last time you were here, I had instructed everyone to avoid any discussion of the subject matter of the case with anybody. You could talk about coming here, obviously, but—and also to avoid any exposure to media articles about the case.

Have you been able to do that?

THE JUROR: Yeah, I haven't looked at anything.

[9-16]

THE COURT: Keep your voice up so everyone can hear you.

THE JUROR: Yeah. No, I haven't talked to anybody about it.

THE COURT: Okay. Tell us what you do for employment.

THE JUROR: I work for the City of Peabody. I'm in the water department.

THE COURT: What do you do?

THE JUROR: I'm in the distribution. I work out in the street doing water breaks, services, fixing all the mains.

THE COURT: And what is the basis of your compensation? Are you salaried or hourly or—

THE JUROR: I'm hourly.

THE COURT: What would happen if you were on this case for an extended period of time? Would you be paid?

THE JUROR: Yeah, as far as I know I'm getting paid. Yes.

THE COURT: Even though you'll be here?

THE JUROR: Yes.

THE COURT: And is that—you say as far as you know. Is that because you talked with higher-ups about it?

THE JUROR: My foreman actually was picked for jury duty like a month ago, and he served on a case for a week. So he got paid for the week. If they stop that after a certain time or what, I could find out.

[9-17]

THE COURT: You haven't specifically asked anybody?

THE JUROR: No.

THE COURT: Let me ask—we asked you a little bit about social media, and you said you use Facebook?

THE JUROR: Yes.

THE COURT: I guess you post to it once or twice a week but you check it every day or something like that?

THE JUROR: Yeah. We drive around in the city truck. If I'm not driving, I'm sitting in the passenger seat just playing on my phone unless we're working. But other than that, I don't really—I'm not posting on it or talking to people on it.

THE COURT: What's the nature of your use of it? Is it essentially personal, social-type things?

THE JUROR: Yeah.

THE COURT: Do you comment on public affairs or anything like that?

THE JUROR: Yeah, I see what my friends are doing and comment on that.

THE COURT: Anybody commenting about this trial?

THE JUROR: No.

THE COURT: Could we cut the audio for a minute and excuse the reporters?

(Discussion at sidebar and out of the hearing of the public: )

[9-18]

[REDACTED]

[9-19]

[REDACTED]

(In open court: )

THE COURT: That is the questionnaire you filled out, so we may refer to some of the questions and it might help you to take a look at it. I'm looking at page 19, Question 74. We asked did you have a reaction when you received the summons to possibly serve on this case, and you said "interested."

Can you tell us what you were thinking when you wrote that; what you might have meant by that?

THE JUROR: I wasn't sure what to really expect at all. I didn't expect it to be like anything I'd ever done, so I was curious, basically.

[9-20]

THE COURT: Did you have a reaction one way or the other in terms of it would be interesting to serve or just interested to find out and then get excused or what was your—

THE JUROR: More like to see what it was all about, I guess. I mean, like interested in what would be going on, not like looking to get out of work for a month or nothing like that.

THE COURT: Okay. On the next page, Question 77, we asked people if they had from any source, media or otherwise, formed an impression about whether the defendant was guilty or not or whether he should be punished in a certain way or not, and you answered “no” to all of those questions.

THE JUROR: Yeah. I wasn’t going to make any decisions until I’d seen everything that was presented, basically, in front of me.

THE COURT: In other words, if you were a juror, you would wait to hear what the evidence was before making up your mind. Is that what you’re saying?

THE JUROR: Yes. Yes.

THE COURT: In any criminal case—you may know, but I’ll lay it out, the basics anyway—in any criminal case a person accused of a crime under our system is presumed to be innocent, or not guilty—

THE JUROR: Yes.

THE COURT: —unless and until the government proves [9-21] otherwise by evidence at trial, and convinces the jury that the person is guilty by proof that leaves them with no reasonable doubt.

THE JUROR: Uh-huh.

THE COURT: Do you have any concern or hesitation about your ability to—if you were a juror to ensure that the government proved any crime beyond a reasonable doubt?

THE JUROR: Yeah, if the evidence was there, yes, I'd be able to make the right decision.

THE COURT: But if it wasn't there, is really I guess what I'm asking, would you then accept that the government had failed and that the verdict should be not guilty in that circumstance?

THE JUROR: Yes, I would be able to go both ways, whether it's right or wrong.

THE COURT: We asked a series of questions about attitudes or beliefs concerning the death penalty. That's on page 23. It's kind of—a general question in 88 asks if you have any views in general, what are they, and you said “none.” Is that—

THE JUROR: Yeah. I mean, I've never really—I don't know. Other than seeing anything on, like, movies or TV shows, I've never really known much else about the death penalty. And—I don't know. I mean, it never really interested me too much but . . .

[9-22]

THE COURT: Okay. The next question we asked a slightly different question which was on a scale of 1 to 10 from strongly opposed to strongly favor—do you—and you selected 8 indicating—so you're sort of on the favor side of the weighing there of the death penalty but not quite at the highest level.

THE JUROR: Yeah, I'd say I'd be more going on the circumstances of the event or—what happened for, like, each individual, like, that would be that—the death penalty would be addressing.

THE COURT: You heard me explain this morning the penalty phase where there would be consideration of things—

THE JUROR: Yes.

THE COURT: —that might aggravate the seriousness of the offense and things that might mitigate the punishment that should be imposed?

THE JUROR: Yes.

THE COURT: You've heard about that?

On the next page we asked in Question 90 for you to indicate which of a number of possible statements was closest to your view. You circled E which says, "I'm in favor of the death penalty 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."

[9-23]

Does that represent your view?

THE JUROR: Yeah. Yes.

THE COURT: So you would be able to, after hearing all the evidence, consider carefully the alternatives that were available and decide based on your evaluation of the evidence?

THE JUROR: Yes.

THE COURT: Is that what you're saying?

THE JUROR: Yes.

THE COURT: You would be open to either? You're not predisposed—or precommitted, I guess—

THE JUROR: Yeah, I'd be open to either. Earlier you mentioned something if he is to—or we do decide to say he's guilty, you said that we would be presented with more evidence.

THE COURT: Yes.

THE JUROR: Why would we be given more evidence after we make our decision depending on—

THE COURT: Because the first decision is actually whether he committed the crime, he's proved guilty of the crime, okay? That's the first stage. It doesn't consider what penalty might be imposed; it just asks whether you are persuaded by the government's evidence that he has—he is guilty of a charged crime.

THE JUROR: Uh-huh.

THE COURT: The second phase is then to consider what the penalty should be for that crime having found him guilty of [9-24] a capital offense. It would typically



be—or for—not typically, but an example of a capital offense of which he would be convicted would include an intentional murder, okay?

Once the jury had concluded that the government had proved that, the jury would then decide what penalty should be imposed between two alternatives: the penalty of death or the penalty of life without possibility of release, okay? And in that phase the government would present factors—evidence about what we call “aggravating factors” that make the crime more serious than other crimes of intentional murder and argue that—the government would argue that would mean the death penalty is appropriate.

The defense would present evidence about the events or about the defendant himself or other things that might mitigate the punishment and lead the jury to think that the death penalty was not appropriate for him but life imprisonment was better as a penalty for him, okay?

Are you following that?

THE JUROR: Yeah, yeah, it’s that—

THE COURT: So that’s why we ask what your disposition is. Are you open to the consideration of either alternative depending on your evaluation of the evidence? That’s really the question.

THE JUROR: Yeah, yeah, yeah. Yes, I am. I’m not more in favor of one way or the other; it would all depend on [9-25] the outcome of everything presented.

THE COURT: Not to belabor this too much, but let me ask you to look at page 25 at the bottom. Question

95 we ask if you found the defendant guilty and you decided the death penalty was an appropriate punishment, could you conscientiously vote for the death penalty, and you said, "I'm not sure." And if you go to the next question, sort of the other alternative is asked: If you found him guilty and you decided life imprisonment without possibility of release was the appropriate punishment, could you conscientiously vote for life imprisonment, and you voted that "I'm not sure." So you gave "I'm not sure" to both. I just want to—

THE JUROR: I think you kind of answered my question. We were just talking about it would all factor on how everything is presented to me how I would make my decision with that.

THE COURT: So earlier, I think with respect to the question—we were looking at Number 77, we asked whether you had an opinion about whether he was guilty and what the penalty should be, you said you were reserving until you heard—

THE JUROR: Yeah, I don't really have an opinion as of now.

THE COURT: Is that the same thing you were saying here?

THE JUROR: Yes, basically. I would have to wait.

[9-26]

THE COURT: Okay. Follow-up?

MR. WEINREB: Just a bit. Good morning.

THE JUROR: How are you?

MR. WEINREB: My name's Bill Weinreb. I'm one of the prosecutors in the case. I just wanted to follow up with you very briefly on the questions the judge asked about the death penalty.

So as the judge just explained to you, if the jury were to find the defendant guilty of a crime that is potentially punishable by death, then—in a capital case, then it's up to the jurors to decide what the penalty should be.

THE JUROR: Yeah.

MR. WEINREB: The law doesn't require one penalty or the other; each juror has to make a decision.

THE JUROR: Uh-huh.

MR. WEINREB: Have you thought about, at all, what it would be like to sit on a jury in a capital case and decide whether someone lives or dies?

THE JUROR: Yeah, it's a pretty serious situation.

MR. WEINREB: And although you've never been in that situation, having to make that decision, do you believe that you could sentence someone to death if you thought that that was the appropriate sentence given the circumstances of the case and the characteristics of the defendant?

[9-27]

THE JUROR: Yeah, I guess I could—I can't really say for sure until I would know all the facts in front of me, but if I had to—if that was the right decision to be made, then I would make the right decision, yes. If that was what I had to do, that's what I would do.

MR. WEINREB: Okay. And just so I'm clear and I understand you, you're using "if I have to." You understand that you would never have to, it would be up to you. You'd make the decision one way or another.

THE JUROR: Yeah, I'd be able to make the decision. Yes.

MR. WEINREB: All right. Thank you.

THE JUROR: Yup.

MS. CLARKE: Good morning. It's over here now. My name is Judy Clarke. I'm one of the lawyers for Mr. Tsarnaev.

THE JUROR: Uh-huh.

MS. CLARKE: And I had just a few follow-up questions.

The judge asked you about your answer to Question 74, if you want to take a look. It's at page 19.

THE COURT: 19, yeah.

MS. CLARKE: And you talked to him about that. I wondered if you would take a look at 75. You indicated that a few people were jealous. Can you explain that to us a little bit more, talk to us a little bit more about that?

THE JUROR: I think it was right around Thanksgiving I [9-28] had mentioned it right when I got the whole packet about having to come here, and a few people just mentioned that I was lucky, in their words, and they wished that they got the chance to be here. That was basically it. And I just told—I was saying that I wasn't really sure how I felt about it yet, it all just came on so quick, so . . .

MS. CLARKE: Feeling lucky because why?

MR. WEINREB: Objection. I don't know why it's relevant what other people felt.

THE COURT: Well, did other people explain to you why they thought you were lucky?

THE JUROR: No, it didn't really go much further than that. I really wasn't too interested in talking about it. It was like a family dinner, so we were, like, eating.

THE COURT: So these were family members who were saying it?

THE JUROR: Yes.

THE COURT: Okay.

MS. CLARKE: What did you take that to mean?

MR. WEINREB: Objection. Same objection.

MS. CLARKE: I'm just trying to get to the—

THE COURT: No, you could answer that, what you thought—

THE JUROR: I mean as—

MS. CLARKE: Lucky because?

[9-29]

THE JUROR: I'm not sure. I mean, these weren't like close family members; these are like distant cousins and stuff. It wasn't people I see and interact with frequently. But I'm not—it's maybe something that they were more interested in than I was or—

MS. CLARKE: So you took no meaning from them saying “Hey, you’re lucky you get to go. I wish I could go”?

THE JUROR: My uncle is—the only thing I could see him saying—

MR. WEINREB: Your Honor, objection. This is asking him to speculate about what other people felt. He’s already said that he—

THE COURT: No, go ahead. Go ahead. Tell us what—

THE JUROR: I think he’s more interested in, I don’t know, I’d say like—I don’t know how to put it. I’d say more interested in, like, more action-type things and like excitement, and he’d be more, like, locked in and like more interested in everything that would be going on. Like he would take a lot of interest in this type of stuff, I think.

MS. CLARKE: One more question about that: Was it clear to you that the conversation was about this case coming up?

THE JUROR: Yes.

MS. CLARKE: For this case?

THE JUROR: I just assumed it was because a few days [9-30] before I had noticed on the news that this case was—the jury selection for this case was supposed to start January 5th along with Hernandez’s case. And so that was just what—I was going under the assumption that it was for this case.

MS. CLARKE: If I could take you to Question 19 on page 8. Are you with me?

THE JUROR: Yes.

MS. CLARKE: And apparently your sister has a role in your life, right?

THE JUROR: Yes.

MS. CLARKE: And have you talked to her about the jury summons?

THE JUROR: Not that I recall. I mentioned it to her, that was about it. I don't recall anything other than her just knowing that I'm here and stuff.

MS. CLARKE: Have you talked to her about the Boston Marathon bombing?

THE JUROR: Yeah, that was more closer to the event and the time. Nothing recent or since that other than being picked for this.

MS. CLARKE: And did you express any opinion to her about it?

THE JUROR: No.

MS. CLARKE: Then or now?

THE JUROR: I'd say then I was more interested in what [9-31] was really going on and curious to see how everything was going to turn out.

MS. CLARKE: What do you mean?

THE JUROR: The whole, like, few days—everything was going on at the time of the event, like. That was about it.

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.

MS. CLARKE: Okay. I'd like to ask a couple of follow-up questions about Question 21, your Honor.

THE COURT: Fine. We'll cut the audio, please.

[9-32]

(Discussion at sidebar and out of the hearing of the public: )

[REDACTED]

[9-33]

[REDACTED]

[9-34]

[REDACTED]



[9-35]

[REDACTED]

MS. CLARKE: I had some public follow-up.

THE COURT: I'm sorry. We'll go back on the audio.

(In open court: )

THE COURT: We're back on? Okay. Go ahead.

MS. CLARKE: If I could take you back to page 25, Question 93, you answered that life in prison without the possibility of release is less severe than the death penalty, and your explanation was that someone being allowed to live their life after taking someone else's life is not always fair. Can you elaborate on that a little bit?

THE JUROR: I guess it would be more—I guess it would be more of how the person took the life, it wouldn't be as fair—if somebody's suffering—if somebody is killed and they're suffering the whole time, I'd feel that—I'm not really sure. The death penalty seems like sometimes it could be an easy way out, how it would—it could go both ways, I guess, but I'm really not sure.

MS. CLARKE: Well, I guess one of the questions is— [9-36] and only you know—

THE JUROR: Yeah.

MS. CLARKE: —is are you looking solely to the crime itself or something else?

MR. WEINREB: Objection. I don't understand the question.

THE COURT: Yeah, I think it's too vague a question.

MS. CLARKE: The judge has explained that there are two phases to a capital case, the first phase where the jury makes a determination of whether or not the person is guilty beyond a reasonable doubt of the capital crimes.

THE JUROR: Uh-huh.

MS. CLARKE: And that means, and I think the judge has explained, that you would never get to the penalty phase unless the person were found guilty of the crime, an intentional murder.

THE JUROR: Yes.

MS. CLARKE: Not a self-defense, not a duress, no excuse.

THE JUROR: Uh-huh.

MS. CLARKE: Intentionally kill, okay?

THE JUROR: Yes.

MS. CLARKE: So I'm wondering if that's where you stop in making your determination of whether somebody should get the death penalty or not or whether you want to know more.

[9-37]

THE JUROR: Yeah. I mean, I can't really say I have a certain line of where I'm going to make my decision or not. It would more depend on the outcome of how everything was presented to me and what—how everything, like, really played out.

MS. CLARKE: Let me ask it this way: If you made a decision that the person was guilty of an intentional murder, no excuses, in the penalty phase would

you be giving consideration, meaningful consideration, to the fact that someone may have had a bad childhood?

THE JUROR: Yes.

MR. WEINREB: Objection.

MS. CLARKE: Would that make a difference?

MR. WEINREB: I don't think it's appropriate to ask particular mitigating factors.

THE COURT: I think we've ruled that out before. I mean, I think we can keep coming at this. I think the witness has expressed his disposition—the witness, the juror. I keep calling him “the witness.”

MS. CLARKE: Mr. 138. Thank you.

THE COURT: Anything else? You're done?

Anything else?

MR. WEINREB: No.

THE COURT: Okay. Thank you, sir.

THE CLERK: Right this way, sir.

[9-38]

THE JUROR: Thank you.

(The juror is excused.)

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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

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

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**JURY TRIAL—DAY ELEVEN**

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[11-81]

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THE CLERK: Juror No. 229.

MR. McALEAR: Juror No. 229.

(Juror No. 229 enters the courtroom.)

THE CLERK: Ma'am, over here, if you would, please. Have a seat.

Speak into the mic so everybody around here can hear [11-82] you, okay?

THE JUROR: Okay.

THE CLERK: Okay. Thanks.

THE COURT: Good afternoon.

THE JUROR: Good afternoon.

THE COURT: Have you been able, since the last time you were here, to abide by my instructions to avoid any discussion of the substance of the case with anybody or the process or anything like that?

THE JUROR: Uh-huh.

THE COURT: And have you also, to the extent you've been able, avoid media reports about the case or the process?

THE JUROR: Yes.

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

THE JUROR: Can I open it?

THE COURT: You can. I'm going to start on page 6. And the question is a quick one. It gives a little information about your husband and his work. You say he's a financial advisor?

THE JUROR: Yes.

THE COURT: Can you tell—put that in a little more context, what it is he does?

THE JUROR: Sure. He works in a family business for RBC. It's called the McCarthy Group. And he's a financial [11-83] advisor, just as far as long-term planning.

THE COURT: I see.

THE JUROR: Investments.

THE COURT: Personal wealth, is that what you're talking about?

THE JUROR: Yeah, exactly.

THE COURT: How long has he done that?

THE JUROR: Oh, let's see. I'm going to go with—God, I think going on 21 years.

THE COURT: Okay. And your own work?

THE JUROR: Well, I don't know what I want to be when I grow up, but I do do a little bit of everything. I run events right now, I was a social worker, and I do volunteer for HAWC. I think that's on here.

THE COURT: Yeah, I was going to ask you what that acronym means.

THE JUROR: So it was a haven for domestic violence. And basically what we do is—

THE COURT: What do the letters mean?

THE JUROR: Well, they just changed it. Now I'm nervous. What is it? It's Haven for Wellness and Change [*sic*], so . . . And it's out of Salem.

THE COURT: Okay.

THE JUROR: And basically what we do, I'm on call for people who suffer from domestic violence.

[11-84]

THE COURT: Do you counsel or—

THE JUROR: It's just a hotline. So basically what I do is I make a plan with them to be referred to—you know, make sure they're in a safe situation, and I refer them to the best situation.

THE COURT: Okay. I'm looking at Question 26 on page 10 where you talk about your event planning and so on.

THE JUROR: Okay.

THE COURT: Did I say page 26?

THE JUROR: You did.

THE COURT: Page 10, Question 26. Sorry.

THE JUROR: Okay.

THE COURT: Just from the dates, homemaking prior to the event planning, but there's an overlap there. So is it you were doing both at the same time?

THE JUROR: I was.

THE COURT: Is the event planning a full time, part time?

THE JUROR: No, I do contract work for them. So they call me when they want me to work, and I can say yes or no.

THE COURT: When they get a particular event?

THE JUROR: Yes. Right. Exactly. I mean, they would like me to work a lot more, but because I have the children I just kind of get to pick and choose.

THE COURT: I see.



[11-85]

Next page, page 11, Question 33, you have a friend who is a Homeland Security lawyer?

THE JUROR: Yes.

THE COURT: Tell us about that. Do you know what this person does?

THE JUROR: Right now she works in immigration. She just moved up here. Her parents were sick. So she was down in Miami, and now she works out of Hartford. So she does a lot of the Homeland Security with people who are in immigration, are illegal status.

THE COURT: And is this somebody you're close to or is this just somebody who's an acquaintance? Can you give us—

THE JUROR: Sure. She was my roommate in college, and we've been friends ever since, so over 20 years.

THE COURT: But you're not neighbors—

THE JUROR: No.

THE COURT: —because she's long distance.

THE JUROR: No, no. She lived in Miami, but she had to move back because, unfortunately, both her parents are ill, so she takes care of them.

THE COURT: So how do you stay in touch?

THE JUROR: By phone. She's actually back in Miami selling her house.

THE COURT: Also on page 11 at the top we asked about social media.

[11-86]

THE JUROR: Uh-huh.

THE COURT: You said Facebook infrequently?

THE JUROR: Yeah, just to kind of spy on my kids.

THE COURT: Page 14, Question 42, you've been a witness, I guess, probably when you were a social worker?

THE JUROR: Yeah, a long time ago. Yup.

THE COURT: And then also personal family matter, I guess?

THE JUROR: Oh, yeah. I took care of my uncle who passed away last year, and his ex-girlfriend's daughter was suing him for rent even though they lived together. I just felt like I had to stand up for him.

THE COURT: So that was fairly recent?

THE JUROR: Within the last two years.

THE COURT: How about the other one?

THE JUROR: Oh, God. That was a long time ago. That was probably—had to be in the '90s.

THE COURT: All right. So now turn to page 20, if you would, please.

THE JUROR: Sure.

THE COURT: Question 77.

THE JUROR: Okay.

THE COURT: In that question we ask a multiple-choice sort of question with available boxes for you to check about whether you'd formed an opinion about

whether the defendant was [11-87] guilty or not or if he should receive the death penalty or not based on things you'd seen in the news or learned about otherwise. And you—for the available choices, yes, no or unsure, for each of those you checked “unsure.”

THE JUROR: Uh-huh.

THE COURT: Would you just tell us about that, why you chose that box?

THE JUROR: I would have to say because of a lot of—when it happened—was through the media that I heard about it. And, you know, I just think I'm a little bit jaded with the media, and I just thought with our legal system I should keep an open mind. You know, through my education and, you know, I just know what the media tells us, there's always more. So I felt like, you know, you're innocent before proven guilty, that I should have that open mind. So I had to answer that fairly.

THE COURT: And would you be able to, if you were a juror in the case, follow that principle, that a person accused of a crime is innocent until proven guilty by the evidence at trial?

THE JUROR: Yes.

THE COURT: In your capacity as a social worker or in your volunteer capacity, have you had any connection with or association with criminal prosecutions?

THE JUROR: Well, what I do right now as far as with [11-88] HAWC is we have to stay very non-judgmental. And the advice that we give people has to be one of just support and empowerment and not what—you know, we can't persuade them either way.

And when I was a social worker, what I did mainly was crisis work. And, again, that was where I would go in and make a plan for the person's safety but I couldn't tell them what to do and I couldn't judge the situation or what was going on.

THE COURT: So would you be able, in this case, although it has some notoriety, to listen to the evidence, hold the government to its burden of proof, which is to prove the defendant guilty of any of the crimes that he's charged with beyond a reasonable doubt by the evidence at trial, and if you thought the government had not sustained its burden on any of the counts, would you be able to find the defendant not guilty as to that count?

THE JUROR: Yes, I think so.

THE COURT: Any hesitation?

THE JUROR: Well, I mean, it's a weighty question, but I want to believe that, yes, I would, because I feel like, you know, as we learned today with the videos and everything I've been thinking about is that, you know, if it was myself or someone I knew who was in this situation, that I would want that fair trial.

THE COURT: Okay. Beginning on page 23 we asked a [11-89] series of questions about jurors' thoughts or attitudes about the death penalty, and that begins with Question 88 on 23.

THE JUROR: Sure.

THE COURT: 88 is a general question: Do you have any views about the death penalty in general? and you said none. Is that accurate?

THE JUROR: Yeah, I think that—well, maybe as far as like—what do you mean “in general”?

THE COURT: I guess as a policy matter should there be a death penalty or not or are there occasions when it is appropriate and occasions when it's not? I mean, people could have various thoughts about it, that's all. We're really trying to get you to tell us whatever occurred to you in response to that, so . . .

THE JUROR: Right. So I think on 91 I explained that I feel that it is case to case in my mind. So I don't know if "none" is an appropriate answer to that one. So, I mean, I feel it's case by case.

THE COURT: Okay. We'll get there. We'll work through them.

THE JUROR: Sorry.

THE COURT: In 89 we asked you to see if you could position yourself on a scale of 1 to 10 in terms of being strongly opposed or strongly in favor, and you chose—I guess you chose 6 first and then changed it to 5.

[11-90]

THE JUROR: I feel like it should be the middle because, again, I feel it's case by case.

THE COURT: Okay. And then the next page, Question 90, we set forth a series of statements that people could possibly agree with or disagree with, and asked you to select one that you thought best described your feelings about the death penalty for someone who has been proven guilty of murder, and you selected D saying you're not for or against the death penalty. "I could vote to impose it or I could vote to impose a life

imprisonment without the possibility of release, whichever I believe was called for by the facts and the law in the case.”

Does that fairly represent your view?

THE JUROR: Yes.

THE COURT: And when you were referring to 91, you’re kind of saying the same thing?

THE JUROR: Right. Right.

THE COURT: Is this something that—it’s understandable if jurors, when they came in in early January, hadn’t thought a lot about the death penalty at that point and when we asked you to fill out these questionnaires. Have you thought about it more since then at all?

THE JUROR: Oh, absolutely. Since I left, you know, having to answer that question, of course. But has it changed? No. I mean—

[11-91]

THE COURT: That was going to be my next question. Have you changed your view in any way?

THE JUROR: No.

THE COURT: The bottom of 25, Question 95, we asked, “If you found this defendant guilty and you decided the death penalty was appropriate, could you conscientiously vote to impose the death penalty?” and you said “yes.”

THE JUROR: Uh-huh.

THE COURT: The next question is the reciprocal of that. “If you found the defendant guilty and you decided that life imprisonment without the possibility of

release was the appropriate punishment, could you conscientiously vote for that penalty?" and you said "yes."

THE JUROR: Do you feel like that's a contradiction?

THE COURT: No, I don't necessarily. Do you?

THE JUROR: No, I don't. I think it's depending on what the facts are.

THE COURT: Okay. Follow-up?

MR. MELLIN: Your Honor, may I ask a few questions?

THE COURT: Okay.

MR. MELLIN: Good afternoon. I'm Steve Mellin. I'm one of the prosecutors on the case. I'd like to jump back to where Judge O'Toole started, which was a little bit of discussion kind of about your master's of social work.

Your undergraduate degree, it looks like, was in [11-92] psychology. Is that right?

THE JUROR: Yes.

MR. MELLIN: What types of courses did you take for that? I didn't mean that to be a trick question.

THE JUROR: I know. It was just a thousand years ago. So behavioral psych. I did concentrate more in adolescent at the time, so adolescent psych, family and children.

MR. MELLIN: And "adolescent" to you means what? What age are you talking about?

THE JUROR: Well, adolescent—well, some theories it could be 13 to 26.

MR. MELLIN: Okay.

THE JUROR: You know, depending on, you know, what school of thought you came from, so . . .

But when I did work with children, for adolescents it was considered 13 to probably 18.

MR. MELLIN: And what type of work did you do with the children?

THE JUROR: Well, I've had many jobs in social work, so I'm trying to think. To start off with, I did work at a group home, Harbor Schools, and I was the lead social worker there. So they were residents that were placed there. And so I did a lot of case work, a lot of individual, and then a lot of groups. And then overseeing the staff.

MR. MELLIN: How did the children end up at the home?

[11-93]

THE JUROR: Some of—I would say most of them were probably placed by the state at the time. They—you know, if they weren't able to be integrated into the community at their homes, or if their homes weren't a place where they were being able to kind of abide by laws and different things like that, this was a place where they could be under supervision and get an education as well.

MR. MELLIN: Okay. You mentioned earlier that you did some work in kind of a crisis setting. Is this the crisis setting or is that something else?

THE JUROR: No, no, I worked for Greater Lynn—not Greater Lynn. I'm sorry. I worked in Lynn at



a crisis center, so it was on-call. And I also worked in the crisis agency. So if, say—a lot through Lynn Union Hospital, if they had people who came in who were, perhaps, suicidal and different things like that, I was the initial person who did the evaluation before the psychiatrist came onsite.

So I did the evaluation to see if the person should go to the next step or if they could go home or if they could go into outpatient therapy or if they needed to be in inpatient.

MR. MELLIN: Any interactions with law enforcement in any of that where—if the crisis was some type of domestic abuse or anything like that where you would call the police?

THE JUROR: They would call me. So I was—like the police usually were the ones who brought them to the hospital. [11-94] Not all the time. I'm sorry. But that's how that happened.

Would I have to call the police? At my office sometimes, you know, if somebody was—you know, had a psychotic break or something like that, or was getting violent, then we did have to call for police assistance.

MR. MELLIN: And in the time you were working in social work, did you do any psychological testing on any of the people you were dealing with, anything like that?

THE JUROR: No, that wasn't my job. That was done—they were referred to me after that.

MR. MELLIN: Have you ever done any?

THE JUROR: Probably as, like—you know, in graduate school as part of a practicum, but it wasn't what I studied or specialized in.

MR. MELLIN: Okay. So in this case if you were to hear from psychologists, would you be able to decide the weight to give that testimony based on hearing the testimony here in court as opposed to maybe what you learned back a few years ago?

THE JUROR: Honestly, you know, I don't know. I mean, it was so long ago, it kind of seems like a lifetime ago. It might trigger some things that I had in my education, but I don't think I would consider myself like a professional in that.

MR. MELLIN: Fair enough. Okay.

[11-95]

And then turning to the death penalty questions, you kind of put yourself in the middle of the road on this. You said that you have thought about it a little bit since we handed you this little text to fill out.

What have you thought about the death penalty since you filled out this questionnaire?

THE JUROR: Probably how my position has changed on it, you know, as far as, like, you see me as a social worker, I probably started out young probably being more liberal, and then probably becoming—as I became older and worked more a little bit more open to, you know, that it's not very black and white; that there's different things that come into play for me as far as that decision.

MR. MELLIN: Okay. And you mentioned that you believe that it's a case-by-case analysis, right?

THE JUROR: Uh-huh.

MR. MELLIN: If you did believe this was a case where you thought the death penalty was appropriate, would you be able to vote to impose the death penalty?

THE JUROR: Yes.

MR. MELLIN: Thank you.

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

Can you tell me a little bit more about some of the things in your life experiences that caused you to change your [11-96] view about the death penalty?

THE JUROR: Probably having children myself and seeing things—you know, and as far as just things that—cases maybe I've come across or things I've seen in the news as far as things happening.

MS. CONRAD: Can you be more specific? Any particular cases that come to mind?

THE JUROR: No. I think just probably, you know, if you had asked me this question 20 years ago, I would have said absolutely not, and now I just think—I'm just not as naïve and I just have to, you know, look at things from both sides.

MS. CONRAD: When was it exactly that you did do social work? You said the '90s?

THE JUROR: Yes. And I still always—like I said, I always try to keep myself involved in some way, you know, as far as like volunteering or something like that.

MS. CONRAD: So was it a conscious decision to leave that field or was it more just change in circumstances?

THE JUROR: I'd say change in circumstances because I made no money and my husband did, and so I didn't want to pay someone to raise my kids.

MS. CONRAD: I understand. You said, I think in answer to Mr. Mellin's question, about, you know, if the circumstances called for it. Can you tell us a little bit more about what kind of circumstances would be relevant to that in [11-97] your mind?

THE JUROR: Well, I just think—like an example just that would come to me—I don't know. If the evidence just was, like, just completely that this was just a malicious act and this is the intention, then I guess that—you know, if there was no way around it, you know, but I think—just the facts would have to be there that I would really have to, you know, think about it. I couldn't just say no right away; I couldn't just say yes right away.

MS. CONRAD: I'm sorry. You could or could not say yes right away?

THE JUROR: I think that I would have to have more information either way. I don't think it's a decision—like I'm not somebody who's just going to say right at a cocktail party that, yes, somebody should be put to death or, no, they shouldn't. I need more information. I'm not going to just jump to that.

MS. CONRAD: And would you be able to consider facts regarding the defendant's background as well as facts regarding the crime in making that determination?

THE JUROR: Yeah, absolutely. I think that's probably where my thought process would be.

MS. CONRAD: Now, you said something about having children changing your view. Can you talk a little bit more about that?

[11-98]

THE JUROR: Well, I just think that as far as probably not being as naive and just thinking that—you know, that sometimes bad things happen out there and there needs to be more consequence, whereas when I was younger and it was just myself, I probably didn't have that point of view.

MS. CONRAD: Would a case that involved the death of a child make it more difficult for you—

MR. MELLIN: Objection.

THE COURT: Sustained.

MS. CONRAD: You told us that—well, you said on your form that you were unsure whether you'd formed—the way the question is framed is a little bit difficult. If you'd look at page 20, Question 77. So it's a little confusing, but the way the question is actually written is it asks whether you'd formed an opinion about whether Mr. Tsarnaev is guilty, and your answer to that is “unsure.”

THE JUROR: Uh-huh.

MS. CONRAD: So are you saying there that you're unsure whether he's guilty or you're unsure whether you formed an opinion?

THE JUROR: Well, I think they're one and the same because I don't have that information, you know,

as far as if I just watched the television that day, then, you know, that wouldn't be—I don't know. That's just not where I would come from, you know? I just don't feel like—I am unsure as [11-99] far as, like, what you're asking. Like I'm not someone who's going to say "guilty" or not "guilty."

MS. CONRAD: Sure. And I appreciate that and I really appreciate—first of all, I want you to understand that we're really trying to find out how you feel. There are no right or wrong answers here, which is really the most important thing, is that you tell us as honestly as you can. And sometimes it's hard to know yourself how you feel about something.

And of course, we appreciate that you understand the legal concepts, but before you ever got your jury summons, did you have an opinion about whether Mr. Tsarnaev was guilty?

THE JUROR: From what I saw on TV?

MS. CONRAD: Yes.

THE JUROR: I guess, yes, I suppose that we knew that he was involved.

MS. CONRAD: And what was that based on?

THE JUROR: From the media. And like I started off, it's just—you know, I don't always believe everything that I, you know, hear or see from the media, but it was from what the media coverage was telling us.

MS. CONRAD: And is there anything about that media coverage that stands out in your mind?

MR. WEINREB: Objection.

THE COURT: Yeah, I think so.

MS. CONRAD: Again, focusing on your state of mind, if [11-100] you will, before you got your jury summons did you have an opinion about whether or not Mr. Tsarnaev should receive the death penalty?

MR. WEINREB: That was just asked and answered.

MS. CONRAD: No, I asked about guilt; now I'm asking about the penalty.

THE COURT: This is about the death penalty.

MR. WEINREB: I withdraw that.

THE COURT: The C and D part is the question.

THE JUROR: I'm sorry. So what was your question?

MS. CONRAD: So my question is just before you got the jury summons did you have an opinion one way or the other about whether Mr. Tsarnaev should receive the death penalty?

THE JUROR: Honestly, I don't think I thought about it.

MS. CONRAD: And did you think about it after you received the summons?

THE JUROR: Yeah, I think so. I think that's because it was out there for—you know, everybody obviously knew what this trial was going to be about.

MS. CONRAD: And when you thought about it at that point, did you form an opinion or did you have an opinion? And I'm not, again, asking whether you could put that opinion aside; I'm just asking whether you had an opinion.

THE JUROR: An opinion of?

[11-101]

MS. CONRAD: Whether he should receive the death penalty.

THE JUROR: No, I did not.

MS. CONRAD: You said in answer to Question 76, which is also on page 20, that you read news articles regarding the venue appeal?

THE JUROR: Uh-huh.

MS. CONRAD: And can you tell us a little bit about what you read?

MR. MELLIN: Objection.

THE COURT: No, go ahead. You can answer that.

THE JUROR: So I'm sorry. I don't have my glasses. So the question is?

MS. CONRAD: Do you want to borrow mine?

THE JUROR: They made me leave me stuff outside.

So you want to know what I read specifically?

MS. CONRAD: Yes.

THE JUROR: Just that his lawyers were trying to change the venue because, obviously, you know, you were concerned about people on the North Shore and, you know, just us being probably more prejudice to the situation.

MS. CONRAD: Why do you mention the North Shore in particular?



THE JUROR: That's where I live. It wasn't in the article.

[11-102]

MS. CONRAD: And you read this after you got the summons?

THE JUROR: Oh, gee. I don't—after I got the summons? Honestly, I probably wasn't conscious of the fact that that was even about this. I think as of January 5th I didn't even put two and two together, so I think I did. I think when I would just open, you know, my computer, it was there.

MS. CONRAD: Sure.

THE JUROR: To be honest, did I read the whole article? No.

MS. CONRAD: So you didn't realize—am I understanding you correctly that you didn't realize that your jury summons was for this case until you came in on January 5th?

THE JUROR: Absolutely. Right.

MS. CONRAD: And so how did you feel about that?

MR. MELLIN: Objection.

THE COURT: Sustained. We asked it in the questionnaire.

MS. CONRAD: Yes. But your—let me go back, then, your Honor.

So your answer to Question 74 was not your reaction to being a juror in this case but just getting a jury summons in general.

[11-103]

THE JUROR: 74? “What did you think of . . . “  
Yeah. That’s . . .

MS. CONRAD: So my question is: When you realized it was for this case, how did you feel?

THE JUROR: On January 5th?

MS. CONRAD: Yes.

THE JUROR: Probably a little stupid that I didn’t realize it was that case because I think everybody else did.

MS. CONRAD: Not necessarily.

THE JUROR: Okay.

MS. CONRAD: But how did you feel about the possibility of being a juror in this case? I guess is what I’m asking.

THE JUROR: It probably gave me pause. I mean, I don’t know if it—you know, what the emotions that I had. I was just like, wow.

MS. CONRAD: And since then have you given that more thought?

THE JUROR: Honestly? Yeah. I’m supposed to go to Aruba in a couple of months. I was thinking, wow, you know, this is going to be a long—the judge said that you could be here for a long time, so I thought, wow, it’s a big commitment.

MS. CONRAD: Do you already have tickets for that?

THE JUROR: I do.

MS. CONRAD: You do?

[11-104]

THE JUROR: Yeah.

MS. CONRAD: And they're already paid for?

THE JUROR: No, it's a company—for my husband, so . . .

But that's probably the most thought I gave it.

MS. CONRAD: Your answer to Question 74, "Grateful to have a legal system in place"?

THE JUROR: Yes.

MS. CONRAD: Can you tell me a little bit more about?

MR. MELLIN: Your Honor, objection. We've already gone over this.

THE COURT: Yes, I think that's plain enough, actually.

MS. CONRAD: May I just have a moment, your Honor?

(Pause.)

MS. CONRAD: On Question 89—and I'm sorry if you already answered this, I had a little trouble hearing—but it looks like you crossed out 6 and changed it to 5?

THE JUROR: Okay. I'm sorry.

MS. CONRAD: It's on page 23. I'm sorry.

THE JUROR: Page 23? Page 23?

MS. CONRAD: Yes.

THE JUROR: Okay.

MR. WEINREB: Your Honor, if that's a question, I object. That was asked and answered at length.

[11-105]

MS. CONRAD: I'm sorry. I just didn't hear the answer if it was.

MR. WEINREB: Well, it will be in the transcript.

THE COURT: I think it shows that there was a—the juror originally put 6 and changed it to 5. I'm not sure how much of a gradient change that is. They're both right in the middle.

MS. CONRAD: Well, one's—they're two different answers.

THE COURT: Anyway, I think we can leave it as-is at this particular point.

MS. CONRAD: When you read about the venue, did you have any opinion about it?

MR. MELLIN: Objection.

THE COURT: Sustained.

MS. CONRAD: In working with law enforcement and your experience with law enforcement, would anything about that experience affect how you would view testimony by a law enforcement officer?

THE JUROR: No.

MS. CONRAD: Would you tend to give more—more readily believe a law enforcement witness than a non-law enforcement witness?

MR. MELLIN: Objection. Asked and answered.

THE COURT: Yeah. You know, I don't think we have to [11-106] follow up on questions that were unambiguously answered in the questionnaire.

MS. CONRAD: Well, your Honor, respectfully, Mr. Mellin asked a number questions about work with law enforcement. I'm following up on those.

THE COURT: Well, that was about experience. But the question about crediting or discrediting law enforcement testimony because of its source was plainly in the questionnaire. We have an answer to that.

MS. CONRAD: Thank you very much.

THE JUROR: Okay.

THE COURT: Okay. Thank you.

THE JUROR: Thank you.

(The juror is excused.)

\* \* \* \* \*

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., Feb. 4, 2015  
10:11 a.m.

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**JURY TRIAL—DAY THIRTEEN**

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\* \* \* \* \*

[13-112]

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THE CLERK: Juror No. 286. Ma'am, over here,  
please, if you would. Have a seat.

THE COURT: Good afternoon.

THE JUROR: Good afternoon.

THE COURT: Since you were here to fill out the questionnaire, have you been able to follow my instructions to avoid discussing the substance of the case?

THE JUROR: I have.

[13-113]

THE COURT: And as much as possible, to avoid any media accounts?

THE JUROR: Yes.

THE COURT: Thank you. Tell us about your work.

THE JUROR: I'm a general manager of a restaurant.

THE COURT: And you've been doing that for a couple of years?

THE JUROR: No. I've been doing it for about a year and a half. I've been with the same restaurant for about 24 years.

THE COURT: So you were recently promoted to general manager?

THE JUROR: Correct.

THE COURT: How big—how many staff people do you supervise?

THE JUROR: About 50.

THE COURT: We asked a little bit about social media you use. You use what? Facebook?

THE JUROR: Facebook, Twitter, Instagram.

THE COURT: Mostly for family or social?



THE JUROR: Yeah, just social. Facebook, I keep up with friends and relatives. Twitter, I watch TV and kind of tweet while I'm watching TV with other people that are watching the same programs that I'm watching.

THE COURT: Does that include news programs?

[13-114]

THE JUROR: No.

THE COURT: You have prior jury experience in the Suffolk Superior Court?

THE JUROR: I do.

THE COURT: That was a civil commitment? Was that what it was? What was it?

THE JUROR: It was a—

THE COURT: A patient?

THE JUROR: Right. He was kind of—I guess they had stated that he wasn't going to be allowed back out into the public, and he was kind of appealing, I guess, that decision.

THE COURT: When was that?

THE JUROR: Probably about four years ago.

THE COURT: What was the decision?

THE JUROR: He was sent back to Bridgewater State Hospital.

THE COURT: So if you'd turn to Page 20, I want to direct your attention to Question 77. In that question we asked whether, based on what you'd seen or read in the media or heard from any other source, had you formed an opinion the defendant was guilty or not guilty

or should receive the death penalty or should not receive the death penalty. To each of those you answered, no, you hadn't formed an opinion.

THE JUROR: Correct.

THE COURT: Is that accurate?

[13-115]

THE JUROR: Yes.

THE COURT: You probably have seen things about the case?

THE JUROR: Absolutely.

THE COURT: But that hasn't led you to form any—

THE JUROR: I'll tell you, I watch the news. I've seen reports of the—everything on the news. When I read those questions, I was kind of—you know, you're putting it on me, and I don't feel I knew enough of the facts to base a decision. I assume while I'm watching the news that I'm—the police or whatever have done—they got who they were looking for. I kind of left it at that. When it was being pinpointed at me, I wasn't comfortable with the information I knew to make an accurate decision.

THE COURT: You know that in a criminal prosecution anybody who is accused of a crime is presumed to be innocent, not guilty, unless the government proves otherwise, proves the person guilty by evidence at the trial.

THE JUROR: I understand.

THE COURT: The evidence has to be convincing to the degree of—the jurors would be convinced of his guilt beyond a reasonable doubt. Corollary of that is, if the jurors are not so convinced, it's their obligation to find the government has failed its burden of proof and to find the defendant not guilty.

[13-116]

THE JUROR: Correct.

THE COURT: Would you be able to faithfully apply those principles if you were a juror in this case?

THE JUROR: I would.

THE COURT: With respect to guilt or innocence?

THE JUROR: Absolutely.

THE COURT: You say you went to the Boston Strong concert at the Garden and bought a T-shirt there?

THE JUROR: Yeah. Actually, I was—I realized afterwards that I bought the T-shirt actually for the concert. I thought, when I was filling out the questionnaire, that I had bought it at the concert. But I bought it to attend the concert.

THE COURT: Do you still use it?

THE JUROR: No. I'm not really a T-shirt—I'll tell you the last time I remember wearing it was at Disney World a year and a half ago only because so many people commented on it when we were there, but I'm not really a T-shirt, jeans-type person.

THE COURT: We asked a series of questions about attitudes towards the death penalty in general

and perhaps more particularly. If you'd turn to Page 23, with Question 88, we started by asking you if you had any views about the death penalty in general, what are they, and you said you don't really have any.

[13-117]

THE JUROR: I don't.

THE COURT: Is it something you've thought about over the years or not thought about it over the years?

THE JUROR: I never really thought it. It doesn't really apply to me or my life. That maybe sounds selfish, but I just—if it doesn't apply to me, I don't really give it much thought.

THE COURT: Okay. In the next question, we asked you to indicate where you thought you might fall on a numerical scale from 1 to 10, from strongly opposed to strongly favor. You're sort of in the middle.

THE JUROR: I'm in the middle, yeah.

THE COURT: And then Question 90 on the next page, there's a series of propositions that go from opposition—strong opposition to strongly in favor. And we asked you to pick the statement that might best capture your own point of view on this. And you've selected (d), which is, "I'm not for or against the death penalty. I could vote to impose it, or I could vote to impose a sentence of life imprisonment, whichever I believed was called for by the facts and the law in the case." That's what you selected then. Does that—today, that does seem to still be the way you would be on the scale of things?

THE JUROR: Yes.

THE COURT: You heard me this morning talk about how [13-118] there would be a penalty phase and there would be presentations probably about aggravating factors and mitigating factors. Would you be able to listen to all that evidence and in the end decide which, assuming—of course, you don't get to the penalty phase until you found the defendant guilty of intentional murder. That's the premise. Would you be able in the penalty phase then to consider all the aggravating, mitigating circumstances, anything else that seemed important to you and be able to choose in either direction depending on how you weighed the evidence?

THE JUROR: I could.

THE COURT: The bottom of 25, Question 95, and then 96 on the top of the next page, we asked first—now, these are not about general views about the death penalty but kind of bring you to this case. If you found this defendant guilty and you decided that the death penalty was an appropriate punishment, could you conscientiously vote for the death penalty?

THE JUROR: Yes.

THE COURT: You said "yes."

THE JUROR: Uh-huh.

THE COURT: The other side of that is the next question. If you found him guilty and decided on the other hand that life imprisonment without possibility of release was the appropriate punishment, could you conscientiously vote to [13-119] impose that—

THE JUROR: Yes.

THE COURT: —punishment?

Okay. Anything? Mr. Mellin.

MR. MELLIN: Good afternoon, ma'am. I'm Steve Mellin. I'm one of the prosecutors on the case. I want to go right where Judge O'Toole was asking questions about the death penalty. If we can just kind of see if we can dig down a little bit on that. You say you were kind of not for it, not against it. But where—when you think about it, I mean, what impressions do you have of the death penalty?

THE JUROR: I don't really have any. I mean, I could—it doesn't bother me. I don't feel like—I guess I don't feel like I'm the one that's sentencing somebody to death or prison for the rest of their life. It's their own actions that are determining that factor. If I'm following the law or whatever—it's kind of the same thing with my job. I fire people, and they're, like, How can you do that to somebody? I'm, like, I didn't do that. They did that. They consciously made the effort to not come to work or to steal or be late or whatever. I feel the same way with being a juror, being told to follow the law and what I've heard, and I'll decide that by what I've heard in the courtroom.

MR. MELLIN: You've heard a little bit about how this process works. But if the jury does find the defendant guilty [13-120] of one of these capital offenses, the jury would go on to decide whether it will be life imprisonment or death penalty; do you understand that?

THE JUROR: I do.

MR. MELLIN: So it really is going to be up to the jurors to make the call between does the evidence support the death penalty or does it support life imprisonment. And it's going to be a call that you will have to

make. And if you believe that the aggravating factors sufficiently outweigh the mitigating factors to justify a sentence of death, would you actually be able to vote to sentence someone to death?

THE JUROR: I could.

MR. MELLIN: Thank you.

THE JUROR: You're welcome.

MS. CLARKE: Hi. My name is Judy Clarke. I'm one of Mr. Tsarnaev's lawyers.

THE JUROR: Good afternoon.

MS. CLARKE: You're a supervisor?

THE JUROR: I'm a general manager, supervisor.

MS. CLARKE: A big supervisor—

THE JUROR: Yes.

MS. CLARKE: —of a good number of people, it sounded like. A jury, everybody is sort of equal. Have you thought about how that might work for you?

THE JUROR: No. I mean, I kind of almost prefer it. [13-121] I don't like being the center of attention. I kind of actually like being—it would be more comfortable for me actually.

MS. CLARKE: Can you help us understand that a little bit more? More comfortable—

THE JUROR: I took the position. It was offered to me. I actually said no six times to my boss. I didn't want the position. I didn't want the responsibility. I was kind of guilted, I guess, into it, but they didn't have anybody else that they felt comfortable doing it. I've had a problem with that decision since the day that I've

taken the job. I've played the lottery more in the last year and a half then—hoping for that retirement. It's not a comfortable position for me. It's—so being level with everybody and equal with everybody is a lot more comfortable for me personally.

MS. CLARKE: Not having anybody to boss around?

THE JUROR: Right, or being responsible for somebody.

MS. CLARKE: Well, it's huge responsibility being on a jury deciding whether somebody is going to live or die based on their actions or not. How do you think you would cope with that responsibility?

MR. WEINREB: Objection.

THE COURT: No. I think you can answer that. Go ahead if you're able to.

THE JUROR: Yeah. I don't feel like I would have an issue with it. I've done—it hasn't been a death penalty [13-122] case before, but I've been on a case before and I've had no problem.

MS. CLARKE: With your prior jury service? You said that was a positive experience, I think.

THE JUROR: Yeah. Actually, it's, like, when you were giving our instructions on day one, you have this sense of pride coming out of there, whatever, that you've done something very important. Somebody like myself, I haven't really gone to college. I was a waitress for years. I feel the same way when I come out of the voting booth every time I vote. It's something very important that I've done. It's probably one of the most important things that I will do in my life.



MS. CLARKE: Okay. At the restaurant, did your employees or coworkers, colleagues, talk about the Boston Marathon bombing when it happened?

THE JUROR: No. I work 20 miles out of the city. We were actually really busy. I was a waitress at the time. I was kind of like joking with my boss I wanted to go home. Boston was—I live in Boston, and Boston was on lockdown. I'm, like, I have to go home. We're on lockdown. We were really busy. All the restaurants around rely on people coming from public transportation. It was shut down. We were already there and open. It's a breakfast restaurant so all—we open at 7 a.m. We were all there at 6:00 in the morning. Yeah, we were busy. We were working.

[13-123]

MS. CLARKE: But you knew about it?

THE JUROR: Yeah, yeah.

MS. CLARKE: Over the course of time, have people there talked with you about it?

THE JUROR: No, not really.

MS. CLARKE: All right.

THE JUROR: No.

MS. CLARKE: Family or friends talk with you about the Marathon bombing?

THE JUROR: No.

MS. CLARKE: Or any of the events of that week?

THE JUROR: No. I remember talking to my kids about it explaining situations with them. There was something else going on at UMass Boston when the

bombing was all going on. I was a lot more concerned about what was going on there. I guess it ended up being like a—I can't think of the word but an explosion of an AC unit or something.

MS. CLARKE: Oh.

THE JUROR: I have a brother that works over there, so I was more concerned about what was going on over there than what was actually going on in Downtown Boston.

MS. CLARKE: All right. You've just not had any conversations really about this case? I mean, before the judge instructed you.

THE JUROR: Before, yeah. I mean, maybe in general or [13-124] something but not really. It didn't really—I don't attend the Marathon. I don't go into Downtown Boston. I didn't know anybody that was affected from it. Maybe just in general. You know, I mean, just in general. Hey, did you hear what happened at the Marathon?, something like that.

MS. CLARKE: I think you said in the questionnaire that you'd read a moderate amount of the press coverage. That's Question 73 if you wanted to take a look. Can you tell us what stands out in your mind that you read about it?

MR. WEINREB: Your Honor, I object.

THE COURT: Yeah. I think so.

MR. WEINREB: We've already plowed this ground.

THE COURT: She's already indicated what her attention was to it. I think that's enough.

MS. CLARKE: You mentioned you went to Disney World, I guess the Florida—

THE JUROR: Right.

MS. CLARKE: —version of it. And people commented on your Boston Strong shirt. What were those conversations like?

MR. WEINREB: Objection.

THE COURT: You can summarize what people may have said.

THE JUROR: It was more or less, like, Oh, cool. Cool shirt. They would point or whatever. It was—my boyfriend [13-125] and I attended the concert together. It only stood out in my mind because I had worn it that day, and then the very next day, he wore his. I said, Oh, you just got jealous about all the attention I got yesterday from my shirt. But there were people, like, Cool shirt, high five. They'd walk by and be like, Hey.

MS. CLARKE: He did get the appropriate attention, I take it?

THE JUROR: He did.

MS. CLARKE: And was one up on you, I take it?

THE JUROR: Right.

MS. CLARKE: Let me go back to your job very quickly. You're a general manager. If you're in trial here for three or four months, do you get paid okay?

THE JUROR: You know, it's not something I discussed with my boss. She's not on-site. I'm the only one on-site. She knows about my service here. I just

kind of, I guess, taken it into my own that we're here Monday through Thursday. I could really work Friday, Saturday, Sunday. And we're not here on holidays. Most of my job is, when everybody else isn't at work, that's when I work. I work weekends. I work holidays so—and they'll have to cover, you know, or not cover, whatever.

MS. CLARKE: So you're not evaluating this as a hardship for you if you were to actually serve?

[13-126]

THE JUROR: No. I could probably squeeze in most of my hours with the schedule of the court.

MS. CLARKE: All right. Just one second, Judge. Thank you very much.

THE JUROR: You're welcome.

THE COURT: That's it. Thank you. Just leave that there.

\* \* \* \* \*

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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[15-67]

CLERK MAYNARD: Juror 349.

THE CLERK: Ma'am, over here, please, if you would. Have a seat right here. Thanks. Speak into the mic so everybody around here can hear you.

THE JUROR: Okay. Can I get my glasses? I didn't realize I had to read.

THE COURT: Of course.

THE JUROR: Sorry.

THE COURT: Good morning.

THE JUROR: Good morning.

THE COURT: Since you were here to fill out the questionnaire, have you been able to follow the instructions to avoid discussing the case with anyone?

THE JUROR: Yeah.

THE COURT: And as much as possible to avoid any media?

THE JUROR: That's a little harder.

THE COURT: But when you've seen it, you've been able to put it aside?

THE JUROR: Yeah.

THE COURT: So we put the questionnaire there because we're going to follow up on some of the answers you've given us.

THE JUROR: Okay.

[15-68]

THE COURT: Feel free to take the clip off.

Tell us what you do.

THE JUROR: Product development for women's clothing.

THE COURT: What does product development involve?

THE JUROR: Design of the garments, coloring the garments, putting it in to work with the factories, approving samples, fitting samples.

THE COURT: Something you've been doing for a while?

THE JUROR: Yes.

THE COURT: I take it in your current position you've been there only since mid December?

THE JUROR: Yeah, it's a new company, start-up company, so I've just started.

THE COURT: I think you were, if I looked—later on you were wondering how the new job might—people at the new job might react—

THE JUROR: Right.

THE COURT: —if you were called. And this is on Page 19, Question 74 if you want to look at. And you said they were okay.

THE JUROR: Yeah. I got the—I think I might have gotten the notification before I had started the job, so I didn't know, you know. And since it's a start-up, it's a start-up company as well, I was a little bit nervous. But they are very—you know, whatever happens, happens. They're okay [15-69] with it.

THE COURT: It's not going to be a financial hardship to you.

THE JUROR: No, they'll pay me. I might have anxiety in terms of my job, but, you know what I mean, because it's new, but, yes, they're fine with it.



THE COURT: Okay. With respect to social media, do you use it both personally and in connection with the job?

THE JUROR: I don't use social media for work. I use it personally.

THE COURT: Family and friends kind of thing?

THE JUROR: Yup. Yup.

THE COURT: So nothing in the fashion design area, you don't use it for that?

THE JUROR: No. I mean, I research, you know, like what other companies are offering, things like that, online.

Do you mean that?

THE COURT: You mean by going to their websites.

THE JUROR: Yeah, I go to people's websites.

THE COURT: I'm more interested in things you might be posting.

THE JUROR: Oh. No. No.

THE COURT: So let me ask you to go to Page 20 and Question 77 near the top of the page, a multipart question. We asked whether based on things you had seen or read in the media [15-70] or otherwise, had you formed an opinion about various matters, and you indicated yes, you had formed an opinion that the defendant was guilty. And as to the other matters, you checked you were unsure.

THE JUROR: Uh-huh.

THE COURT: Then below that we asked, if you answered yes to any of the questions, as you did, would you able or unable to set aside your opinion and base your decision about guilt in this case solely on the evidence that will be presented to you in court, and you selected the box that said you would be able. Can you tell us about that?

THE JUROR: Yeah, I think when I first checked the guilty, you know, if I felt that he was guilty box, I realized after, I don't know what all the charges are, so I can't know that he's guilty, because I don't know what the charges are or what the evidence is and all of that. But I think that there's involvement. There was so much media coverage, even just the shootout in Watertown. I watched it on TV. And so I feel like there's involvement there, like I think it's—anybody would think that.

THE COURT: Yeah, it's understandable that, given the coverage, that people have—

THE JUROR: Right.

THE COURT: —formed impressions and perhaps even conclusions. The question of course is in the formal process [15-71] of a criminal trial, we ask jurors to put their minds in a condition that they will focus on the evidence produced in the trial and make their decisions that they have to make based on that evidence and not on things they know independently or from—

THE JUROR: Right.

THE COURT: —some other source. And the question is would you be able to faithfully do that.

THE JUROR: Yes, I would.

Can I ask you a question about the media thing? Is the live feed that's going on now, the media's in the other room?

THE COURT: Yes. There's actually two members of the media here. And if we do a private, I told you you could have a private answer, they'll leave the room too.

THE JUROR: So for the trial, is that the same situation?

THE COURT: No.

THE JUROR: Would media be allowed?

THE COURT: Yes. The media and the public will be in the courtroom during that. Okay?

THE JUROR: Uh-huh.

THE COURT: We've asked people about how they might have been affected by events or how they may have reacted to them. In Question 82 we asked about whether you supported [15-72] various activities after the event.

THE JUROR: Right.

THE COURT: You said you bought a T shirt from Life is Good.

THE JUROR: Uh-huh.

THE COURT: Is that the same or different from Boston Strong?

THE JUROR: Life is Good is a clothing T shirt company.

THE COURT: Right.

THE JUROR: They made a T shirt. I think it says “All You Need is Love” on the back, maybe. It just said Boston on the front, not Boston Strong. Then I think some of the proceeds went to the One Fund.

THE COURT: Okay. Do you still have the shirt?

THE JUROR: Yeah.

THE COURT: Do you wear it?

THE JUROR: Not really. I wore it to the marathon last year.

THE COURT: Uh-huh.

THE JUROR: But not really.

THE COURT: You were there as a spectator last year?

THE JUROR: Last year, I was.

THE COURT: That is 2014.

THE JUROR: Yeah, the most recent. I was not there [15-73] the year—

THE COURT: Have you gone, typically or commonly?

THE JUROR: No. I went because a friend was running.

THE COURT: In 2014?

THE JUROR: Yeah. I was not there the prior years.

THE COURT: Beginning on Page 23 at Question 88, we asked a series of questions about your attitudes towards the death penalty.

THE JUROR: Uh-huh.

THE COURT: 88 was if you had general views, what are they.

THE JUROR: Uh-huh.

THE COURT: And you said you weren't sure, as I interpret it, you weren't sure of the law concerning the death penalty and would have to know that before you could—

THE JUROR: Right.

THE COURT: —decide what your view was.

Is the subject something you've thought about, the appropriateness of the death penalty in general as a policy matter? Is that something you've thought about?

THE JUROR: I'm not opposed to the death penalty in general. I'm not—I feel like I'm not for or against it. I would have to hear the evidence.

THE COURT: In Question 89, we asked for you to put yourself on a numerical scale from strongly opposed to strongly [15-74] in favor and you put yourself sort of in the middle.

THE JUROR: Yeah.

THE COURT: Then in the next page, Question 90, instead of numbers we asked you to look at statements.

THE JUROR: Right.

THE COURT: And see if there was one that represented your feelings about the death penalty in the case of someone proven guilty of murder.

THE JUROR: Uh-huh.

THE COURT: You selected D, which is I'm not for or against the death penalty, I could vote to impose it or I could vote to impose a sentence of life imprisonment without the possibility of release, whichever I believe was called for by the facts and the law in the case.

THE JUROR: Right.

THE COURT: Is that a fair representation—

THE JUROR: Yeah, I think that's fair.

THE COURT: —of your attitude?

THE JUROR: Uh-huh.

THE COURT: You have to say yes or no.

THE JUROR: Oh. Yes.

THE COURT: The reporter is taking down the—

THE JUROR: Head nod, yes.

THE COURT: But that fairly states your—

THE JUROR: Yeah, yeah, uh-huh.

[15-75]

THE COURT: If you go to Page 25, the bottom, Question 95. Now, particular to this case, if you found this defendant guilty and you decided the death penalty was the appropriate punishment for him, could you conscientiously vote for the death penalty, and you said yes.

THE JUROR: That's true, yes.

THE COURT: Then on the next, top of the next page we asked the other side of that question. If you found this defendant guilty and you decided life imprisonment without the possibility of release was the appropriate punishment for him, could you conscientiously

vote for life imprisonment without the possibility of release, and again you checked yes.

THE JUROR: Yes.

THE COURT: So it's yes to both of those questions.

THE JUROR: Uh-huh. Yes.

THE COURT: You're catching on.

MR. CHAKRAVARTY: Just very briefly. Good afternoon, just barely. My name is Alope Chakravarty. I'm one of the prosecutors. You had expressed a concern or the question about the media arrangement.

THE JUROR: Right.

MR. CHAKRAVARTY: Is there some special concern you have?

THE JUROR: I think there's a lot, there were questions and there's a lot of conversation, and if you were a [15-76] potential juror, you'd need to be avoiding the media, and it's so front and center, it's difficult. And, you know, just even driving in the car, the news comes on, and, you know, I've heard, you know, you try to switch it, but you hear things. So I just wondered, and I just would wonder that the jurors would remain anonymous, you know, if you were put on the jury, that it would stay anonymous and that it wouldn't be, you know, in the media who you were.

THE COURT: Yes. You will remain unidentified except by number until the case is over. You will probably be identified after the case is over.

THE JUROR: Okay. That was my question, I guess.

MR. CHAKRAVARTY: Your attendance at the marathon this past year, is that going to affect your ability to be fair and impartial in this case?

THE JUROR: No, no.

MR. CHAKRAVARTY: I just wanted to touch on the last series of questions that the judge had posed to you about the death penalty.

THE JUROR: Uh-huh.

MR. CHAKRAVARTY: If, after you've, you and the rest of the jury have decided guilty and you listen to all of the evidence in the penalty phase, both the aggravating and mitigating and you personally have come to the decision that the death penalty is appropriate, what gives you the confidence [15-77] that you can say, "Yes, here's my vote, I vote to put this person to death"?

THE JUROR: Well, I think by all the evidence and by the instruction from the judge, whatever the law is, I would go with that. And, you know, I think I'm a pretty fair and equitable person, intelligent, and I would think it through.

MR. CHAKRAVARTY: That's all I have.

MR. BRUCK: Good afternoon.

THE JUROR: Hi.

MR. BRUCK: My name is David Bruck and I'm one of Jahar Tsarnaev's lawyers, and I have a few more questions. The good news is I think I'm the last person who will ask you any.

THE JUROR: Okay.



MR. BRUCK: The judge has told you that when the trial is over, the juror's names, you have to assume, would become public.

THE JUROR: Uh-huh.

MR. BRUCK: Let me back up a little. He asked you about being able to consider the evidence in court, and if the government proved their case, only consider the evidence that was presented in the court to find the defendant guilty.

THE JUROR: Uh-huh.

MR. BRUCK: I'm going to ask it the other way. If you're on the jury, knowing everything or having seen everything you've seen and heard everything you've heard and [15-78] formed the opinion that you formed, and you're in the jury box and the government puts on their evidence but it leaves a reasonable doubt in your mind, probably guilty, maybe, but not beyond a reasonable doubt. And this sound like an easy question, but it's intended to be a hard question.

THE JUROR: Okay.

MR. BRUCK: Could you find this defendant not guilty and let him go home?

THE JUROR: I would listen to all the evidence, and what the law is. So if that was the case, yeah.

MR. BRUCK: Based on what the judge told you, that the burden of proof is on the government, it's never on the defendant.

THE JUROR: Uh-huh.

MR. BRUCK: But that's sometimes easier said than done.

THE JUROR: Right.

MR. BRUCK: Based on everything you know, do you think in the back of your mind you'd be expecting the defendant to prove he was innocent?

THE JUROR: So your question is would the defendant be expected to prove his innocence versus—

MR. BRUCK: To you.

THE JUROR: To me?

MR. BRUCK: Would you need, in this case, given [15-79] everything you've heard and the opinion you formed—the judge has told you what the rules are, but the point of this part of the trial is to find out what's inside you. And the law doesn't ask people to do things that are superhuman or more than a person can do.

THE JUROR: Right.

MR. BRUCK: So that's what I'm getting at. Do you think that what you have heard and the opinions you've formed might cause you to feel that the defendant would have to prove that he didn't do it in order for you to—

MR. CHAKRAVARTY: Objection, your Honor.

MR. BRUCK: —find him not guilty?

THE COURT: Go ahead and answer it, if you're able to.

THE JUROR: I guess I'm kind of not clear on the question.

THE COURT: Maybe you don't understand it.

MR. BRUCK: I can try to make it a little simpler.

THE COURT: Make it a little shorter will help.

MR. BRUCK: Shorter would be good. Sorry. It's my fault, the way I asked the question.

I guess what it comes down to is knowing what you know and having formed the opinion that you formed, do you think you might need the defendant to bear a burden of proof and show that he was innocent before you could actually render a verdict of not guilty in the case?

[15-80]

THE JUROR: I think I would take whatever opinion I have and prior, and if I was on it and set it aside and listen to the evidence, and listen to the trial. And I don't think whatever feeling I could have now would be that—would affect it.

MR. BRUCK: Okay. And knowing that the jurors wouldn't be anonymous forever, what would you feel like if the jury, all 12 members of the jury did find the defendant not guilty and you went back to your life out in the community?

MR. CHAKRAVARTY: Objection, your Honor.

MR. BRUCK: Could you do that?

THE COURT: Well, let me ask the question a slightly different way. When people learn that you have been on the case, if you and the other jurors had acquitted the defendant of some or all of the charges, would you be concerned about criticism from people about your decision?

THE JUROR: I hadn't thought about it that way.

THE COURT: And the second half of the question, really, is if you were worried about that, how, if at all, would that affect your service as a juror?

THE JUROR: Right, right. I think I would be okay with it, with whatever the decision that we made, if I was on the jury, I would stand by it and—I guess I just kind of worry during the trial, you know, I don't know if we're, if you were on it, you were going back and forth from home and being, [15-81] you know, I don't know, media following you—

THE COURT: No.

THE JUROR: —or something. That's why I asked the question. I think once it was over, I would, if I was on it, I hope I would just go back to my life.

THE COURT: Okay.

MR. BRUCK: You put in your questionnaire, if you turn to Page 20 and look at 76, Question 76.

THE JUROR: Okay.

MR. BRUCK: Can you tell me what, if anything, you remember about the New York Times article that you checked out describing the start of the trial.

THE JUROR: There was some information about the—I don't mean to point, but I don't know your name.

MS. CLARKE: Me? I'll remain anonymous.

THE JUROR: Okay.

MS. CLARKE: Judy Clarke.

THE JUROR: Yeah. There was some information about her and some prior trials.

MR. BRUCK: Do you remember, can you tell us what that information was?

THE JUROR: I think it was the Unabomber trial, maybe.

MR. BRUCK: Anything else that you can recall, if you think hard about it?

THE JUROR: Unh-unh, not really.

[15-82]

MR. BRUCK: And what was the connection—you said it was about Ms. Clarke and about the Unabomber. Do you remember what it said?

THE JUROR: I think she was a defense lawyer for the Unabomber.

MR. BRUCK: A defense lawyer for the Unabomber.

THE JUROR: Yes.

MR. BRUCK: I mean, what was your reaction to that?

THE JUROR: I don't think I really had one.

MS. CLARKE: It's okay.

THE JUROR: What?

MS. CLARKE: It's okay.

THE JUROR: I don't know that I had a reaction. I just noted that she had, I guess.

MR. BRUCK: You noted it.

THE JUROR: That she's been involved with some big trials, national media-type trials.

MR. BRUCK: Okay. And that article was after you came to court to fill out the questionnaire—

THE JUROR: Uh-huh.

MR. BRUCK: —that you saw that.

THE JUROR: It was not after the questionnaire, it was before.

MR. BRUCK: It was before the questionnaire.

THE JUROR: It says last week, it was before the [15-83] questionnaire. It was before I even came here.

MR. BRUCK: Okay, after receiving your summons but before that.

THE JUROR: Yeah.

MR. BRUCK: Okay. I've gotcha. Excuse me. I wanted to ask you a little bit about where you were on April 15, 2013, if you can remember.

THE JUROR: I was in New York City at Columbia Presbyterian hospital. My brother had brain surgery.

MR. BRUCK: Oh my goodness, is he okay?

THE JUROR: Yeah.

MR. BRUCK: Good.

And how did you find out about the marathon?

THE JUROR: Later when I got home to his home, where I was staying, it was on the news.

MR. BRUCK: And did you go back to Boston that week?

THE JUROR: Maybe a couple of days later.

MR. BRUCK: Okay. Where—did you know anybody—now that you’ve had more chance to think about it, anybody at all that was down there around the—

THE JUROR: (Juror shakes head.)

MR. BRUCK: Where were you on the 18th and 19th, the day of the search and the lockdown?

THE JUROR: In Watertown? I was at home.

MR. BRUCK: In Scituate.

[15-84]

THE JUROR: Yeah.

MR. BRUCK: So you didn’t shelter in place or you did?

THE JUROR: No. I had just stopped working, actually. April 15 was my last day of work at a prior job, or the first day that I wasn’t—excuse me—working. And so, yeah, I was in Scituate, I wasn’t working. I don’t remember if I went to the gym, whatever.

MR. BRUCK: Did the events of that day affect your travel or where you went or what you did?

THE JUROR: No.

MR. BRUCK: Your friend that ran the marathon in 2014, had she run the year before?

THE JUROR: How did you know it was a she?

MR. BRUCK: It was a lucky guess.

THE JUROR: She had not, no. It’s my next-door neighbor’s daughter.

MR. BRUCK: Okay. And was there any discussion with her about the—

MR. CHAKRAVARTY: Objection, your Honor.

THE COURT: Yeah. And I think in the interest of time, we should move on.

MR. BRUCK: Okay.

THE COURT: We have a long way to go today.

MR. BRUCK: Sure. I understand.

You said you were unsure about whether Mr. Tsarnaev [15-85] should receive the death penalty. Unsure can cover a lot of territory. And I guess what I'd like to know is within that unsure, do you lean one way or the other right now?

THE JUROR: I don't. I don't really know—I don't know what the law, how the law reads about the death penalty. I am not for it or against it. I would go by what the law was.

MR. BRUCK: If I told you that the law in the end leaves it up to the jury once certain basic facts are proven, guilt beyond a reasonable doubt, intended to commit the crimes that are charged in this case, that after that it's really up to the jury, that law doesn't tell you what the answer is.

THE JUROR: Okay.

MR. BRUCK: That's what the judge meant when he said the jury's never required to impose the death penalty.

THE JUROR: Okay.

MR. BRUCK: I'll ask the question again, knowing that it really would be up to you, do you lean one way or the other right now?



THE JUROR: No.

MR. BRUCK: Bear with me just a moment.

That's all I have. Thanks so much

THE COURT: All right. Thank you. Don't forget your glasses.

THE JUROR: Thank you.

(The juror was excused.)

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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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\* \* \* \* \*

[16-123]

THE CLERK: Juror No. 395.

THE JURY CLERK: Juror 395.

THE CLERK: Ma'am, over here, please. Have a  
seat if you would.

THE JUROR: Thank you.

THE COURT: Good afternoon.

THE JUROR: Good afternoon.

[16-124]

THE COURT: Since you were last here, have you been able to avoid talking about the substance of the case with other people?

THE JUROR: Pretty much, yes.

THE COURT: Tell me how much "pretty much" is?

THE JUROR: I've been in situations but have gotten up and excused myself.

THE COURT: Good. And similarly with media reports about the case, have you been able to turn away if you've run across one?

THE JUROR: Yes.

THE COURT: You're employed as a legal executive assistant for a law firm in Boston.

THE JUROR: That's correct.

THE COURT: Looks like you've been doing it for quite awhile.

THE JUROR: Yes, I have.

THE COURT: So you now support actually the managing director. Is that what they call the partner in charge?

THE JUROR: Yes, yes, in the corporate division.

THE COURT: I see. Managing of the corporate?

THE JUROR: Yes.

THE COURT: Have you been supporting people in the corporate side mostly in your career, or have you gone in other—

[16-125]

THE JUROR: Prior to this, I worked for 30 years for an attorney that did, first, commercial real estate and leasing and then went into estate planning and probate. And then the last four years has been with the corporate department.

THE COURT: But not litigators?

THE JUROR: No, never a litigator.

THE COURT: We asked about social media. You say you use Facebook intermittently to very rarely.

THE JUROR: Correct.

THE COURT: Give us a little bit of an idea of that.

THE JUROR: I don't really know how to post anything. So I can read what is posted, but I've never posted anything myself.

THE COURT: Okay. Let me ask you to turn to Page 20.

THE JUROR: I don't have Page—

THE COURT: It might be out of order.

THE JUROR: Okay. Here it is.

THE COURT: It's actually—in my copy, it's between 18 and 19.

Question 77, there we asked whether, as a result of what you'd seen or read in the news media or elsewhere,

had you formed an opinion about various matters including, (a), that the defendant was guilty or (b), he was not and then about the penalty. And you indicated, yes, you had formed an opinion that he was guilty.

[16-126]

We then down below, in the second part of the question, asked, If you answered yes to any of these questions, would you be able or unable to set aside your opinion and base your decision about guilt solely on the evidence that will be presented to you in court? And you selected the box that said “able.”

THE JUROR: Yes.

THE COURT: Can you tell us about that?

THE JUROR: I believe that—I have formed an opinion up until this point based on what I did read and had seen in the media, but I realize that that’s not all the information that would be available to me. So once more—once I had more information, I believe that, you know, I could change my mind based on what I had read at the time.

THE COURT: Yeah. It’s understandable, given the amount of coverage that there has been, that people have formed impressions about things. What we ask jurors to do, if they’re serving in a case, is to focus their attention on the evidence that is actually produced in the trial and make their decision based on that body of evidence without importing into it other ideas from other sources.

THE JUROR: Correct.

THE COURT: You think you would be able to observe that discipline if you were a juror in the case?

THE JUROR: I do.

[16-127]

THE COURT: I'm sure you know that in our criminal process a person who's accused of a crime is presumed innocent unless the government proves that he's guilty by the body of evidence at the trial and proves it beyond a reasonable doubt. Do you think you would have any difficulty in faithfully applying those principles of the presumption of innocence and proof beyond a reasonable doubt?

THE JUROR: No, I don't.

THE COURT: Let me ask you to look at Question 78. You said you don't talk about this with your husband because the conversations can become too heated. Is it only he who has strong views, or do you have them, too?

THE JUROR: Actually, it's not—my husband and I wouldn't discuss this just one on one. It would be more in a social setting.

THE COURT: And other people would be there?

THE JUROR: And other people, right, and—

THE COURT: I was thinking you might have meant one on one. Then I was going to ask really whether you thought, if your husband had strong views and they were different than yours, whether that would affect your service.

THE JUROR: No, I do not.

THE COURT: Just going back to Question 77, as to the (c) and (d) parts of the question, about the death penalty, you indicated "unsure."

[16-128]

THE JUROR: Uh-huh.

THE COURT: You don't have any present opinion about that.

THE JUROR: I do not.

THE COURT: Okay. So we asked a series of questions about the death penalty to get jurors' attitudes. That begins on Page 23, at Question 88. Question 88 itself asks, If you have any views on the death penalty, in general, what are they? And you said, "I would need to hear and know all the facts before committing either for or against the death penalty. I've always thought I was against it, but when you really have to think about it, things change." Can you amplify on that a little bit?

THE JUROR: I think it's easy to have what you feel are strong opinions about something; but then once you're in a situation that it actually could be a possibility and you think about it from that perspective, it kind of opens up a whole different dialogue within yourself.

THE COURT: In the next question, we asked you to locate where you think you would be on a spectrum from 1 to 10, where 1 was someone who is strongly opposed and believed that the death penalty should never be imposed; and 10 reflected somebody who's strongly in favor and believed it should be imposed whenever a defendant is convicted of intentional murder. You chose 5, to indicate you were somewhere in the [16-129] middle of all that, is that correct?

THE JUROR: That is correct.



THE COURT: Turn the page to the next page, 90. Here we asked you to select from a series of statements which one you thought best described your feelings about the death penalty for someone convicted of murder. You selected (d). "I'm not for or against the death penalty. I could vote to impose it, or I could vote for a sentence of life imprisonment without the possibility of release, whichever I believed was called for by the facts and the law of the case." Do you think that best sums up your state of mind?

THE JUROR: I do.

THE COURT: And then in the bottom of Page 25, at Question 95, we asked—focusing perhaps on this case a bit more particularly than those other questions did—If you found this defendant guilty and you decided that the death penalty was the appropriate punishment for him, could you conscientiously vote for the death penalty? And you said, "I'm not sure." Go to the top of 96. There we ask a similar question. If you found the defendant guilty and you decided life imprisonment without the possibility of release was the appropriate punishment, could you conscientiously vote for that sentence? And you said "yes" to that. So there's a little bit of a difference between your answers to the two questions.

THE JUROR: I think that—I think that, when I was [16-130] filling these questions out and thinking about it, I—in my mind I was thinking that, for me, there are different degrees of guilt. And I don't know what—where this falls without knowing all of the information. So my thought process was just that, for me, I believe there are different degrees of guilt.

THE COURT: Well, you heard this morning that I described in brief the process after a person has been convicted of murder. And that would be the predicate. You don't get to the penalty, obviously, until the jury has already found the person guilty of intentional murder, right?

THE JUROR: Uh-huh.

THE COURT: And at that point, as I said, you'd hear aggravating factors that might make the case more serious or more blameworthy. And you might hear other mitigating factors that might explain why the death penalty was inappropriate and life imprisonment was an appropriate and sufficient sentence.

THE JUROR: Uh-huh.

THE COURT: And on the basis of all that, the jurors would be asked to decide whether they thought the death penalty should be imposed or life imprisonment without the possibility of release. So, obviously, it's difficult to predict what you would do in the future on an unknown—

THE JUROR: Right.

THE COURT: —base of information.

THE JUROR: Yes.

[16-131]

THE COURT: But can you tell us whether you think you would be prepared to listen to that evidence and be open to being persuaded in either direction?

THE JUROR: I would be, yes.

THE COURT: Okay.

MR. WEINREB: Good afternoon.

THE JUROR: Hi.

MR. WEINREB: My name is Bill Weinreb. I'm one of the prosecutors in the indicates.

THE JUROR: Hello, Mr. Weinreb.

MR. WEINREB: I just want to follow up on one thing here on that Question 95 just to make sure I understand. So Question 95 assumes that the penalty phase is over. You've heard evidence from the government suggesting that the death penalty is the appropriate sentence, and you've heard evidence from the defense suggesting that it's not the appropriate sentence. And now you've come to the decision in your mind that you believe it is the appropriate sentence. This is just the assumption.

THE JUROR: Uh-huh.

MR. WEINREB: The question is: Having come to that belief in your mind, would you actually be able to do it, to vote to send somebody to death?

THE JUROR: If I came to that decision based on the facts that were presented to me, yes.

[16-132]

MR. WEINREB: Thanks very much.

THE JUROR: Sure.

MS. CLARKE: Hi. Good afternoon. My name is Judy Clarke. I'm one of Mr. Tsarnaev's lawyers.

THE JUROR: Hi, Miss Clarke.

MS. CLARKE: I just wanted to ask you a few things if I could. You mentioned in 77, and you talked

to the Judge—and you're right. Your questionnaire goes from Page 18 to 20 and then 19. There you go.

You mentioned that the conversations become too heated. What do they get heated about?

THE JUROR: Just people—various people's opinions as to what happened, what should happen, where—you know, where things went wrong, what—you know, just basic communications over the days that followed.

MS. CLARKE: So what happened to the community and to—on Boylston and what should happen in the future?

THE JUROR: Not so much the future but just what the—the events that had just happened and how—why it happened. Everyone, you know, had an opinion as to why it happened and how it happened. And so—and if you tend not to agree with some people, they get upset.

MS. CLARKE: So you do what?

THE JUROR: I'm sorry?

MS. CLARKE: You do what? Avoid the conversation?

[16-133]

THE JUROR: Well, I think that I try to steer the conversation away from that. In a social setting, you know, let's not discuss politics or religion.

MS. CLARKE: Probably a good—

THE JUROR: That's kind of where we try to put things.

MS. CLARKE: If you're—have you served on a jury before? I can't remember.

THE JUROR: I have not.

MS. CLARKE: If you're in a—on a jury, it could get heated. The debate could get heated. How do you think you would deal with that? Just tell everybody to quiet down?

THE JUROR: Everyone is entitled to their opinion; and in a jury setting, it's much different than a social setting.

MS. CLARKE: Sure.

THE JUROR: And people have much more of the facts than they do in a social setting. So I think that the conversation would be much more knowledgeable of the people involved.

MS. CLARKE: At least a little more informed?

THE JUROR: Yes.

MS. CLARKE: Have the people who have had these heated conversations involving you, I guess—

THE JUROR: Involving this situation.

MS. CLARKE: You just happen to be there?

THE JUROR: Yes.

[16-134]

MS. CLARKE: Participating in the conversation?

THE JUROR: Well, yes, with friends.

MS. CLARKE: Have there been opinions expressed about the death penalty in this case?

MR. WEINREB: Objection.

THE COURT: Sustained.

MS. CLARKE: Have there been any opinions expressed that influence you one way or the other?

THE JUROR: No.

MS. CLARKE: It was interesting, in 88, which is Page 23, where you wrote, "I always thought I was against it," the death penalty, "but when you really have to think about it, things change." What prompted that thinking?

THE JUROR: I don't think that I was in a—that I'm in a position, without hearing all of the facts, to say that I am either for it or against it at this point. It's easy for me to say, yes, I believe that a person should have—should have the death penalty; but when you're faced with that may be a real possibility that I would have to decide, then—and you start—and I start thinking about it in those terms, then it's difficult for me to say.

MS. CLARKE: Sure. And I guess, when you filled this out, you were beginning to think about—

THE JUROR: Correct.

MS. CLARKE: —the death penalty. In this case or [16-135] just generally?

THE JUROR: I would have to say, when I filled this out, it was in this case.

MS. CLARKE: Okay. Your work at the law firm, I don't think anybody asked you. Is that a hardship for you if you were sitting for three or four months here with the rest of us?

THE JUROR: I mean, I've discussed it with my employer, and they're aware of it. I don't think—I think that, for every juror, it would be a hardship to be on a case such—such a lengthy case.

MS. CLARKE: Would you—

THE JUROR: But they have said that it would be fine.

MS. CLARKE: And you would be paid?

THE JUROR: Correct.

MS. CLARKE: So there's not a financial crunch for you?

THE JUROR: Yes.

MS. CLARKE: Okay. Could I just—one moment, your Honor?

(Discussion held off the record.)

MS. CLARKE: If I can go back to 88 and just to sort of make clear in our minds, your position before this case on the death penalty, did you have one abstractly, as a matter of policy or as a matter of law?

THE JUROR: I would say that I would probably lean [16-136] towards being against it, but I can't say that I was set in that.

MS. CLARKE: You were open to both?

THE JUROR: Correct.

MS. CLARKE: Life imprisonment or the death penalty outside of this case?

THE JUROR: Correct.

MS. CLARKE: And remain open to both inside of this case?

THE JUROR: That is correct.

MS. CLARKE: Thank you very much.

THE COURT: All right. Thanks. Just leave it there.

We'll put it back together.

THE JUROR: Thank you.

\* \* \* \* \*



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., Feb. 13, 2015  
10:54 a.m.

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**JURY TRIAL—DAY EIGHTEEN**

---

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\* \* \* \* \*

[18-24]

\* \* \* \* \*

THE CLERK: Juror No. 441.

THE JURY CLERK: Juror No. 441.

THE CLERK: Sir, over here, please, if you would.  
Have a seat.

THE COURT: Good morning.

THE JUROR: Morning.

THE COURT: Since you were last here, have you  
been able to avoid any discussion of the case?

THE JUROR: Yes.

THE COURT: And, as much as possible, any media accounts?

THE JUROR: Uh-huh.

THE COURT: Okay. So that's the form you filled out when you were here. Let me just ask you about your employment. What is it you do?

THE JUROR: I'm an auditor but I got—technically, I got fired around January 20th for productivity. So I'm currently unemployed.

THE COURT: Are you looking for work now?

[18-25]

THE JUROR: Yes. I'm in the process of trying to collect unemployment and looking.

THE COURT: So, as you know, this case may be an extended case for three or four months. Would that interfere with your ability to look for employment?

THE JUROR: No. I mean, I don't know what I'm—what I have access to, you know, to look for a job if I were to be in it, but other than that, I would be okay.

THE COURT: Okay. Well, if a job came up and—we wouldn't want you to have to turn it down.

THE JUROR: Yup. I'm not—I think I can get a decent job with a little bit of looking for it relatively—in a reasonable amount of time.

THE COURT: All right. So you don't object to being considered for the jury?

THE JUROR: No, I don't object.

THE COURT: Okay. All right. So I see you use Facebook and Instagram about daily. For just social purposes?

THE JUROR: Yeah. I don't post a lot on them. I've looked and just fishing through, you know, seeing what's going on around.

THE COURT: Are you using either in your job search?

Do you expect to use either?

THE JUROR: Since I lost my job, it's been mainly talking. I got my auditing job through Indeed. I'm going to [18-26] do that soon, but I kind of wanted to see where the unemployment route was going to go first before I try to get anything concrete. I know I can lock into a job tomorrow if I went back to CVS or anything like that. I could go work for retail. I don't particularly want to do that again.

THE COURT: So let me ask you to turn to Page 20, Question 77—

THE JUROR: Yup.

THE COURT: —near the top, we asked whether, based on things you'd seen or heard in the media or from other sources you had formed an opinion that the defendant was guilty or not guilty on that he should receive the death penalty or not. And you checked "no" to each of those boxes. Could you tell us about that?

THE JUROR: More now looking back, as a not guilty. Need to see more evidence, not that, yes, he's guilty or, no, he's not guilty.

THE COURT: Okay. So I think you answered in one of the earlier questions that you actually had service—prior jury service and it was a criminal case.

THE JUROR: Yup.

THE COURT: So you're familiar with the principles of the presumption of innocence and the government's obligation to prove crimes beyond a reasonable doubt by the evidence at trial?

[18-27]

THE JUROR: Correct.

THE COURT: If you were a juror in this case, would you be able to apply those principles faithfully to the decision that you would have to make?

THE JUROR: Yes.

THE COURT: If the government failed in respect of any of the charges to convince you beyond a reasonable doubt that the defendant was guilty, would you be able to vote not guilty?

THE JUROR: Yes. I could vote not guilty.

THE COURT: On Page 21, we asked about potential impacts on you or close—people close to you. You said there weren't any.

THE JUROR: Yeah, nothing, nothing close, no friends, relatives, really, friends of friends.

THE COURT: Beginning on Page 23, at Question 88, we asked a series of questions about the death penalty and your attitudes about it. 88 itself is a question about general views. If you have any views about the

death penalty in general, what are they? And you said you don't have any views either way.

THE JUROR: Yeah. I mean, very, very neutral on it. It can be used in certain circumstances or, you know, not used, whatever. I don't really have any concrete feeling on it.

THE COURT: In Question 89, we asked you to give us an idea of where you might place yourself on a scale from 1 to 10, [18-28] with 1 being strongly opposed, never impose the death penalty, and 10 being strongly favor, impose the death penalty whenever a defendant is convicted of an intentional murder. You put yourself at 7. Can you explain that answer?

THE JUROR: For certain circumstances I would definitely vote for a death penalty, you know, not throwing it around for any particular reason. But 7 is the—I would be willing to go ahead with it.

THE COURT: Okay. On the next page, Question 90, we asked it in a different way.

THE JUROR: 90?

THE COURT: Page 24, Question 90. If it's easier to look at it—to unclip it, why don't you take the clip off.

THE JUROR: Yeah. That would probably be easier.

THE COURT: Here we asked—instead of numbers on a scale, we asked you to read a number of different possible statements and see if there was one that represented what you think about the matter. And this is whether—what your feelings are when somebody has been convicted of murder. You selected (d). “I'm not for or against the death penalty. I could vote to impose

it, or I could vote to impose a sentence of life imprisonment without possibility of release, whichever I believe was called for by the facts and the law in the case.”

THE JUROR: Yes.

THE COURT: Is that a fair summary of your views on [18-29] the matter?

THE JUROR: Yes. That would be a fair summary.

THE COURT: So you would be prepared to make a call depending on how you assessed the evidence? You heard me talk about the penalty phase.

THE JUROR: I would have to see everything before I would lean one way or another first. Don’t come to any conclusions until everything is seen.

THE COURT: Just a couple more questions. On the next page, the bottom of 25, Question 95, putting it in the context of this case, If you found this defendant guilty and you decided the death penalty was appropriate, could you conscientiously vote for the death penalty?

THE JUROR: Yes.

THE COURT: And on the top of the next page, we asked a similar question. If you found him guilty and you decided life imprisonment without the possibility of release was the appropriate punishment, could you vote conscientiously for that penalty?

THE JUROR: Yes.

THE COURT: And you said “yes.”

THE JUROR: Yup.

THE COURT: So those represent your views?

THE JUROR: Uh-huh.

THE COURT: All right.

[18-30]

MR. WEINREB: Thank you, your Honor. Good morning.

THE JUROR: Morning.

MR. WEINREB: My name is Bill Weinreb. I'm one of the prosecutors in the case. I just wanted to follow up on a few of your answers.

THE JUROR: Okay.

MR. WEINREB: I may have heard you wrong, but did you say that you hadn't given a lot of thought to the issue of death penalty in the past?

THE JUROR: Yeah. I haven't fully looked into it. It's nothing that I really have wanted to in the past or even now. I've thought about it, but I'm at that point where it doesn't really matter to me. I'm not super against it, you know, don't do it, or super, you know, let's have the death penalty. I'm kind of neutral on that.

MR. WEINREB: Have you thought since—when did you first learn that you were—that this case was the one you had been summoned for?

THE JUROR: About a day or two before. I heard a couple of things that it might be for that. I didn't think really anything about it; and then in my heart, it could be that case pretty much the night or two before.



MR. WEINREB: Since that time, have you given thought to the idea of you personally serving on a case where the death penalty is a possibility?

[18-31]

THE JUROR: I would have no issues.

MR. WEINREB: I guess the question that I really wanted to get at is if—if you were on a jury, not in this case necessarily, just in any case, any case, and the defendant were convicted, and you moved to the penalty phase and you heard evidence that convinced you that the death penalty was the appropriate sentence for a defendant, would you personally be able to sentence someone to death if you concluded that was the right sentence?

THE JUROR: Yes, absolutely.

MR. WEINREB: Thank you.

MR. BRUCK: Good morning.

THE JUROR: Good morning.

MR. BRUCK: My name is David Bruck, and I am one of Jahar Tsarnaev's lawyers. And I've just got a few more questions for you if that's okay.

THE JUROR: Go right ahead.

MR. BRUCK: UMass Lowell?

THE JUROR: UMass Lowell.

MR. BRUCK: Did you ever take a course from a professor named Horgan, John Horgan?

THE JUROR: Not ringing a bell.

MR. BRUCK: You told the judge a couple times that your views on the death penalty are that it's appropriate in certain circumstances or certain types of cases. I think those [18-32] are pretty much the words you used.

THE JUROR: Uh-huh.

MR. BRUCK: Can you give us some examples, what kinds of cases you're thinking about?

THE JUROR: If the case has proven to be motivated or something behind it or a severe evil act, something that a lot of people would consider evil, you know.

MR. BRUCK: Can you tell me more?

MR. WEINREB: Well, your Honor, I don't think he should be asked to precommit.

THE COURT: I think that's right. I think it's getting close to that.

MR. BRUCK: I'm trying to find out what the juror meant when he said certain kinds of cases.

THE JUROR: Very heinous act.

MR. WEINREB: Objection, your Honor. The question was sustained.

THE COURT: Yeah. I think we should get to a different question.

MR. BRUCK: They're not objecting to you. They're objecting to me just so we're clear.

Okay. Now that we've been talking about it, you've been talking to the judge a little bit, I guess I want to be sure about your feelings, if any, about the death penalty

in this case. You know what case you've been called for?

[18-33]

THE JUROR: Yes.

MR. BRUCK: Do you have—do you lean either way as far as whether this case is one that is appropriate for the death penalty?

THE JUROR: I'd have to see everything before I would know if it's going to lean one way or another. I'm not leaning anywhere right now, you know. I don't know if—you know, guilty, not guilty. I'm unsure until I see all the evidence.

MR. BRUCK: Okay. Where were you on April 15, 2013, on the day of the bombing?

THE JUROR: I don't know. I was seeking employment at that time. I got hired the following June after that.

MR. BRUCK: I guess what I'm really asking you: Do you remember where you were when you heard about it?

THE JUROR: Maybe at my girlfriend at the time's house.

MR. BRUCK: Do you remember people talking about it that day when the bombing first occurred?

THE JUROR: A little bit, you know, what had happened.

MR. BRUCK: How did you feel when you heard about it?

THE JUROR: You know, that act occurred, you know. That's not—you know, not good. I wasn't, you know, too into it or not. I wasn't angry or anything like that. I was just kind of disappointed.

MR. BRUCK: Sure. What about the following Friday, [18-34] the day that people sheltered in place during the manhunt. Do you remember that day?

THE JUROR: Not in depth, no, but I'd get updates, look at the TV once in a while.

MR. BRUCK: Where were you living at the time?

THE JUROR: The current house I'm in now, in Woburn, Mass. I was staying with a girlfriend in Stoneham back and forth a little bit.

MR. BRUCK: Did that—the activities of—the police activities and everything that day and the shelter-in-place order, did that affect your activities that day?

THE JUROR: No, no.

MR. BRUCK: In any way at all?

THE JUROR: No.

MR. BRUCK: That's all I have. Thank you.

THE JUROR: Thank you.

THE COURT: All right, sir. Thank you. Just leave those there. We'll pick them up.

\* \* \* \* \*

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

---

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

---

**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

---

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  
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Boston, Massachusetts 02210  
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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

---

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

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: Dec. 1, 2014

---

**AGREED-UPON PRELIMINARY JURY INSTRUCTIONS**

---

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

Judy Clarke, Esq. (CA Bar# 76071)  
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San Diego, CA 92101  
(619) 308-8484  
JUDYCLARKE@JCSRLAW.NET  
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(540) 458-8188  
BRUCKD@WLU.EDU

Miriam Conrad, Esq. (BBO # 550223)

\* \* \* \* \*

**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

---

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

*v.*

DZHOKHAR A. TSARNAEV, DEFENDANT

---

Filed: Dec. 2, 2014  
FILED UNDER SEAL

---

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

---

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

---

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.

---

**LOBBY CONFERENCE**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
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John Joseph Moakley Federal Courthouse  
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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

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- and -

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

\* \* \* \* \*

[47]

\* \* \* \* \*

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.

\* \* \* \* \*

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. 2, 2015  
11:05 a.m.

---

**LOBBY CONFERENCE**

---

APPEARANCES

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FEDERAL PUBLIC DEFENDER OFFICE

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- and -

CLARKE & RICE, APC

By: JUDY CLARKE, ESQ.  
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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

\* \* \* \* \*

[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

---

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

---

Filed: Jan. 13, 2015

---

**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.

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**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

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

FEDERAL PUBLIC DEFENDER OFFICE

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CLARKE & RICE, APC

By: JUDY CLARKE, Esq.  
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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

\* \* \* \* \*

[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.

---

**JURY TRIAL—DAY FIVE**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
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- and -

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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

\* \* \* \* \*

[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.

---

**JURY TRIAL—DAY SEVEN**

---

APPEARANCES

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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

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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

\* \* \* \* \*

[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.

---

**JURY TRIAL—DAY SIX**

---

APPEARANCES

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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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CLARKE & RICE, APC

By: JUDY CLARKE, Esq.  
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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

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

- and -

UNITED STATES DEPARTMENT OF JUSTICE

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By: DAVID I. BRUCK, Esq.  
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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.

---

**JURY TRIAL—DAY NINE**

---

APPEARANCES

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By: WILLIAM D. WEINREB and ALOKE CHAKRAVARTY,  
Assistant U.S. Attorneys  
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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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- and -

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By: DAVID I. BRUCK, Esq.  
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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

---

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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APPEARANCES

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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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Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[12-99]

\* \* \* \* \*

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.

\* \* \* \* \*

[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

---

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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APPEARANCES

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- and -

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- and -

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Lexington, Virginia 24450  
On Behalf of the Defendant

\* \* \* \* \*

[15-153]

\* \* \* \* \*

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.

\* \* \* \* \*

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., Feb. 11, 2015  
10:26 a.m.

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**JURY TRIAL—DAY SIXTEEN**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

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NADINE PELLEGRINI, Assistant U.S. Attorneys  
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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

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[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

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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., 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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\* \* \* \* \*

[40]

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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.)

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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., Nov. 12, 2014  
10:03 a.m.

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**STATUS CONFERENCE**

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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

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Criminal Action No. 13-10200-GAO

UNITED STATES OF AMERICA, PLAINTIFF

*v.*

DZHOKHAR A. TSARNAEV, ALSO KNOWN AS JAHAR  
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John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Thurs., Apr. 9, 2015  
9:37 a.m.

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**STATUS CONFERENCE**

---

APPEARANCES

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[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—

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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

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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

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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

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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

/s/ DAVID I. BRUCK  
DAVID I. BRUCK

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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  
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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

---

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]

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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.

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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  
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.

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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  
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

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<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

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No. 13-CR-10200-GAO

UNITED STATES OF AMERICA

*v.*

DZHOKHAR A. TSARNAEV

---

Filed: Nov. 7, 2013

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**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).

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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: Apr. 11, 2014

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**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.

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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

---

Filed: Nov. 4, 2014

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**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**

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

*v.*

DZHOKHAR A. TSARNAEV

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Filed: Apr. 14, 2014

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

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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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**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

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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., Mar. 17, 2015  
9:35 a.m.

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**JURY TRIAL—DAY THIRTY-FOUR**

---

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- and -

LAW OFFICE OF DAVID I. BRUCK

By: DAVID I. BRUCK, ESQ.  
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Lexington, Virginia 24450  
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.

---

**JURY TRIAL—DAY FIFTY**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

By: WILLIAM D. WEINREB, ALOKE CHAKRAVARTY and  
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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

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- and -

CLARKE & RICE, APC

By: JUDY CLARKE, ESQ.  
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

\* \* \* \* \*

[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.

---

**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.

---

**JURY TRIAL—DAY FIFTY-TWO**

---

APPEARANCES

OFFICE OF THE UNITED STATES ATTORNEY

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

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UNITED STATES DEPARTMENT OF JUSTICE

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



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On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE

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By: DAVID I. BRUCK, ESQ.  
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On Behalf of the Defendant

\* \* \* \* \*

[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

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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

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By: DAVID I. BRUCK, ESQ.  
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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**

---

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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

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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., Mar. 24, 2015  
9:10 a.m.

---

**JURY TRIAL—DAY THIRTY-EIGHT**

---

APPEARANCES

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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

---

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.

---

**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.

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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

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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.

\* \* \* \* \*

[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.)

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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

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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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\* \* \* \* \*

[51-116]

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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

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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., May 5, 2015  
9:12 a.m.

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**JURY TRIAL—DAY FIFTY-FIVE**

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\* \* \* \* \*

[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]

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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

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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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[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]

