

**The bombing trial in Boston, Massachusetts:
United States v Dzhokhar Anzorovich Tsarnaev
(2015)**

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CHAPTER ONE

Introduction to the case of United States v Tsarnaev-in mitigation – in 2015

This case brings to the forefront the sore issue of *capital punishment* meted out by the federal criminal justice system of an allegedly highly civilised and cultured society in the United States. This paper (part two)¹² essentially sets out mitigation for the younger Tsarnaev brother even though we knew before the trial began that the verdict would have to be 'guilty' because the people of Boston demanded that verdict and received the first lap of the verdict on 8 April 2015.

Beautiful technical rulings or rhetoric would not have held sway in this case, nor do breaches in disclosure, metadata queries, tampered evidenced and the mitigation as set out below. The older Tsarnaev brother was fuelled by anger and personal revenge for the mother and father having to leave the United States due to fear that the mother's right to citizenship in the US may be revoked because, not only did she commit shop-lifting theft offences but she also caused a warrant of arrest to be drafted for her non-appearance at court. So both parents decided to return to Russia. There are many complex and socio-legal strands to this case:

- (i) If Mrs Tsarnaev, the mother of Tamerlan and Dzhokhar Tsarnaev, had attended court as she was summoned to do for an alleged shoplifting offence, the outcome might have been minor compared to what has since befallen her sons.
- (ii) Furthermore, there was a lack of money in the family and, Dzhokhar, the younger Tsarnaev brother found that his college grades at university at Dartmouth began to slip; the older brother, Tamerlan, since married and with a baby daughter, could not find employment, forcing the situation of his wife having to seek menial and poorly paid employment for 60 hours a week, leaving Tamerlan as the full-time carer of their baby.

- (iii) The older brother Tamerlan was very possibly brain damaged.
- (iv) Most importantly, no terrorist organisation has claimed responsibility for this 2013 incident at the Boston Marathon annual races at which three people died.
- (v) Even the local Muslim mosques did not embrace the older brother.
- (vi) Important also is the fact that both Tsarnaev brothers habitually used the chemical substance, cannabis, which may have played a part since cannabis use is known to trigger schizophrenia in those pre-disposed to mental illness. Note that in the state of Massachusetts, cannabis has been decriminalised.³ Cannabis is listed as a Schedule I substance under the 1970 Controlled Substances Act (US) the highest classification under the illegal drugs legislation.⁴
- (vii) There is also a young American widow who has lost her husband and a toddler who will never truly know her father, a mother and father who grieve in Russia, as do the relatives of the three people that died at the Boston Marathon in April 2013.

However, a look at this tragedy in cold perspective of recent events makes for an unemotional and considered objective view, as we ponder these other horrific calamitous events:

*In Nepal, Asia, on 23 April 2015, a volcano killed more than 10,000 people and other thousands were injured, according to a report made by the national police of Nepal.⁵

*In France, on 23 March 2015, a Germanwings airplane crash over the Alps, France, caused the deaths of all 150 persons on board.⁶

*In 2014, airplane flight MH370 to Beijing in China disappeared with over 250 people declared dead but not found.

*In 2010, the tsunami killed 230,000 persons one Christmas.

We should therefore consider how people are killed all around us, all the time. This can give some perspective.

The final result of April 2013 in Boston has been a tragedy for all concerned- the people⁷ at the Marathon that day; the Tsarnaev family; the whole United States of America, and it is hoped that society and the law will learn the lessons of this incident and subsequent trial. The two homemade nail-bombs, which Tamerlan Tsarnaev made, can never be

condoned, as can no murder. ⁸ What is more, a top-class education that might have resulted in a highly-paid job which could have helped to lift the whole Tsarnaev family from poverty has been lost and the younger Tsarnaev brother has denied himself from it by his own stupid loyalty to his brother's commands. Three persons were killed by this senseless act.

Did the police officers at the Boston Marathon 2013 secure the crime scene or was it violated?

Standing guard on a crime scene and hearing detectives lament that the 'evidence eradication gremlins have been here.' They were referring to first responders. Firefighters and EMS personnel handling emergency medical response to a patient (no offence to them as they are doing a necessary job) have particularly been long joked about in police circles as being 'evidence eradication'.

Some tips listed below could have helped to preserve the crime scene's investigative integrity at Boston Marathon site after bombing; these steps should have been obvious.

(1) Secure the scene quickly.

Place a uniformed patrol officer at each avenue of entrance or egress and string up that yellow crime scene tape. It is best to only have one point of access. This was not obvious.

(2) Control family/witnesses.

Make sure that any family members and witnesses are identified and moved away from the crime scene. They should also be separated to avoid any tainting of their versions of events. This did not occur.

(3) Suspect status

Ensure that all officers, particularly those guarding the entrance, are aware of any suspect's status. This is crucial information if a suspect has not yet been apprehended and may return to the scene.

(4) Make observations.

Note the placement of items in the crime scene and any additions left by EMS personnel. Pass that information to the investigator taking charge of the scene.

(5) All personnel should have been logged in

Uniformed personnel at the checkpoints should have *logged in and out all people entering the crime scene with their name, rank, agency affiliation, time in, and time out.* That includes the police chief and others. Anyone who is able to get past the crime scene tape or past the logging officer obviously should have been on the crime scene log. Police officers sometimes turn their marked unit towards the scene to enable the in-car camera to videotape to record all who goes in and out of the crime scene.

(6) Discourage gawkers taking smart-phone pictures

Much as if a bad vehicle accident on a highway attracts the curious, one should discourage non-essential personnel from showing up at the crime scene. If they are made aware that they will be logged in and possibly subject to a future court subpoena, most onlookers will go away.

(7) No debris.

All police officers and even the public today know that nothing should be discarded on the floor of the crime scene. If police officers were observed to drop paper, chewing gum, empty water bottles; they should be made aware of the impact of such behaviour. Cigarette ends and suchlike in and around the crime scene they were working in after the bombing would generally have compromised the crime scene.

(8) Media area

Police at the Boston Marathon bombing did not set up a media staging area away from the crime scene or even a barrier to prevent a body from being video taped for news. Nor did they give authorized Bona Fide Press any regular updates of useful, non-investigative impairing information. The situation was a chaotic situation, illustrating that the organizers of this Boston Marathon races did not see fit to spend money on proper security systems for such an important regular international event. A lack of regular updates from a public information officer or law enforcement executive led the media to develop their own unofficial sources.

(9) Protect from weather.

As the crime scene was outdoors, it needed to be protected from the effects of inclement weather. The local police may not have had overhead canopies but these can have been borrowed from commercial outlets such wedding companies, hotels or funeral companies.

(10) Communicate.

Communicating with supervisors and, the investigative commander in charge of the scene was not apparent. All information should have been turned over to that person, as well as any issues that needed to be resolved.

These ten tips could have upheld the integrity of the investigation and made the ridiculous Youtube videos posted impossible.

Criminal law and human rights

Criminal law is derived from basic human rights; from the nature of man and the interactions of social relations. Law prescribes regulative norms for human behaviour. Law reflects society in the security of person and property and serves to order human relations in a manner that ensures a firm and stable social order. Individuals and their behaviour in society are required to adjust to laws telling them to do something or to refrain from particular prohibited conduct. The life of the law is in its application. The necessities of community life at a particular time, the prevalent moral and political theories, public policy and the judiciary have all influenced the rules of law.

Criminal law and rule of law

Criminal law is not rule alone; it is action. The act that transgresses sets subsequent acts into motion. The circumstances of the act spell out the essential elements of a specific crime. Rules of law detail prohibited conduct, but it is the act of applying these rules to a particular set of circumstances that is the criminal law. Criminal law resembles an order or command backed by threats. It indicates various kinds of conduct that are unlawful and applies a prohibition, which must be complied with.

Criminal law and morality of society

The concept that criminal law is a coercive order emanates from the fact that certain options as to human behaviour are restricted or certain behaviour is obligatory and violations can lead a court to apply specific sanctions. The basic threat inherent in any coercive order is the court's reaction to disobedience. Therefore, the majority of persons habitually obey the criminal law. It is a major form of social control that communicates generally acceptable standards of conduct. However, can it be said to be a control when US prisons are over-spilling with prisoners and a vastly disproportionate number of prisoners are from an ethnic minority?

Since the world's countries shared ideal can be said to be law and order in society, criminal law is obviously linked to the apparent morality of society. The moral code of a community is closely aligned with, though distinguishable from, local criminal law. Criminal law brings to mid the idea of sanctions, but today, so does civil law. The penalty provisions of criminal law provide for sanctions of varying severity and deterrence is the primary objective of these sanctions. Many argue that there can be no crime if there is no punishment. In all jurisdictions, criminal offences are understood to be crimes against the person; crimes against the habitation; crimes against property; sex offences; crimes against the family; crimes against public decency; crimes against the administration of government and crimes against public order.

Crime and punishment

Punishment is the imposition of suffering for public purposes. Punishment is imposed at the discretion of those who represent the public rather than at the discretion of the victim and it is generally determined by the *moral turpitude* of the offender. Lord Diplock in *Lawrence*⁹ considered, *obiter*, the position of offences of careless driving after the offence of dangerous driving (in its former existence in the United Kingdom (UK) had been abolished.

Lord Diplock said:

‘Section 3 creates an absolute offence in the sense in which that term is commonly used to denote an offence for which the only mens rea needed is simply that the prohibited physical act (actus reus) done by the accused was directed by a mind that was conscious of what his body was doing, it being unnecessary to show that his mind was also conscious of the possible consequences of his doing it. So section 3 takes care of the kind of inattention or misjudgement to which the ordinarily careful motorist is occasionally subject without its necessarily involving any moral turpitude.’

However, what is ‘evil’?

The term ‘moral turpitude’ would be seen as extreme language for road traffic offences in this era and today’s criminal law is more humane, safeguarding convicted offenders by imposing suitable penalties so that released offenders are able to re-enter the community and assume the duties and responsibilities of conforming members of society. We need to remind ourselves that there is no such crime in any jurisdiction called ‘the crime of moral turpitude’

The term ‘evil’ appears in US Immigration legislation to mean evil intent, where the word ‘evil’ can also be debated. In an article¹⁰ by Sally Ramage titled *Witchcraft, Lollardy and the meaning of evil*, paragraph 1 states:

‘A look at the word ‘evil’ reveals that in court, ‘evil’ has been used to describe a fact, an act, a status, a financial situation, discrimination and has been given many other disparate meanings in literally hundreds of reported cases over the years. I now propose a definition – ‘evil’ in an English court of law should mean only this- a very great degree of wrong, a moral state that is consciously chosen, not a consequence of mental illness. Describing someone or something as ‘evil’ has been repeated in court judgments in literally hundreds of cases, yet no one has legally pinned down the word ‘evil’ in English law, nor defined it. It is still being used as in the days of witchcraft, of Lollardy¹¹ and of the plague, by judges who ought to know better than to use an emotive and undefined term such as “evil” ’.

The word 'evil', the writer argued, has lost its impetus and its meaning has changed from extreme moral turpitude to common slang, nowadays meaning 'bad' or "not what the society in its present liberal state approves of". Should not the Courts now give us a formal meaning of the word 'evil' or else the English Courts must discontinue immediately, the use of the word 'evil' in Court judgments? Some examples of judges' decisions on the word 'evil' are as follows

*In *C v, DPP* [1995]¹² the judge said that a child could know the difference between good and 'evil'.¹³

*In *R v Brown* [1993] the Court said that *pleasure derived from the infliction of pain is an 'evil' thing.*

* In *Ledwith v Roberts* [1936], the Court called the days of street robbery, 'evil' days.

*In *R v B, R v A* [1979] the Court used the term 'evil' as being the opposite of 'good'.

*In announcing a consultation relating to the Forced Marriage (Civil Protection) Bill 2007, the UK government distributed a statement scripted by Justice Minister Bridget Prentice which was titled '*Forced marriage an "evil" in our society*'.

*In *R v O'Brien and another, R v Moss, R v Llewellyn* [2006], the judge summed up a murder case as follows:

'...You have been found guilty now of two crimes, "evil" to a degree beyond all adjectives...'

*In *R v Dica* [2004] regarding the transmission of the Aids virus to another person, the judge classed this criminal offence as an 'evil' act. The judge said:

'...There is a strong case for arguing that society should have criminal sanctions available for use to deal with "evil" acts...'

CHAPTER TWO

Boston Marathon bombing trial: United States v Dzhokhar Tsarnaev (2015)

The April 2015 trial of Dzhokhar Tsarnaev in Boston, Massachusetts, *United States v Dzhokhar Tsarnaev* should not, some argue, have been a trial of a terrorist belonging to a US listed terrorist organisation. It should have been a trial of accessory to a gunman and a bomber, whether coerced or not, because in 2013, Dzhokhar Tsarnaev was a young man who had won a scholarship to the prestigious Massachusetts Institute of Technology ('MIT') against all the odds. He survived there through friendships that brought him less turmoil than indeed was his inner feeling because his parents were poor, his siblings were poor and the emotional sustenance he received from his parents was no longer available, since they had returned to permanently live in Russia from where they originally had sought asylum.

A dominant older brother and actions by duress

Dzhokhar Tsarnaev's older brother was a very dominant character, and the younger brother must have experienced bullying and coercion from him. Tamerlan Tsarnaev was very probably brain damaged from untreated concussions suffered when undertaking the sport of boxing over many years- he was not under a contract; he was a freelance boxer, hoping to win prizes. He was in fact a 'mostly unemployed' boxer, father of a baby he was forced to 'mother' for 60 hours each week whilst his wife worked as an auxiliary for menial wages in order to pay the rent for their tiny rented apartment at the top of a rented-out house. This case of Tamerlan Tsarnaev, the person whose criminal intentions were made to be played out by both siblings, poverty-stricken, angry, bitter, caught-in-a-trap young man forced to baby-sit his infant child, is not one of terrorism, but of a person with a violent disorder, undiagnosed and untreated brain injury, who invented, and acted upon his intention to let his angry rage loose on society local to him.

Interfering with justice and profit seeking: the media

On 8 April 2015, the world's media announced that in Boston, the trial court decision was that Dzhokhar Tsarnaev was guilty of all 30 charges that he faced, many of which carry the death penalty. The global news related that the jury deliberated for just over 12 hours spread over two days.

Boston's new Mayor, (since the death of Mayor Menino) Martin Walsh, said in response to the verdict that he hoped this verdict provides a small amount of closure, which makes one wonder how the families of the 3,000 persons who died from the 9/11 terrorist attacks could ever have closure.¹⁴

No winners

No one has won in this year of the celebration of the 800th anniversary of the Magna Carta. This United States case highlights for the Magna Carta celebrations that the United States is a federal state still divided by religion and by the death penalty.

In the year 1215, eight hundred years ago, the average Englishman and Englishwoman 'searched for God in their great English cathedrals, which had taken thousands of workers decades to complete. They sat in their magnificent English cathedrals and asked God for relief from their ailments'.¹⁵ Like Boston, Massachusetts in the year 2015, England, 800 years ago in the year 1215, was a staunchly Catholic country and intolerant.

Criminalisation of murder in the United States

The US murder law displays a high degree of consistency in its core doctrines from one jurisdiction to another, and nearly every state allows a partial defence of provocation or 'extreme emotional disturbance' which can reduce a charge from murder to manslaughter.

All US states *that impose a death penalty* require a jury *or a judge* to do so on the basis of formally identified aggravating and mitigating factors, as constitutionally mandated.¹⁶

Defences to murder in US law, including ‘duress’

Among the set of defences to murder in the US, duress, as in this Tsarnaev case, is allowed as a legitimate defence (under certain limited circumstances)¹⁷ but only in a very few states, and caselaw *Spunaugle v State* 946 P.2d 246 (Okla Crim App 1997) became precedent, citing the following:

Brewer v State, 414 P.2d 559 (Okla. Crim. App. (1966);
Wofford v State, 494 P.2d 672 (Okla. Crim. App. 1972)
Randleman v State, 552 P.2d 90 (Okla. Crim. App. 1976);
Tully v State, 730 P.2d 1206 (Okla. Crim. App. 1986);
State v Woodward, 737 P.2d 569 (Okla. Crim. App. 1987);
Ross v Oklahoma, 487 U.S. 81 (1988) ;
Mann v State, 749 P.2d 1151 (Okla. Crim. App. 1988);
Anthony James Mann v Oklahoma, 488 U.S. 877 (1988);
Bowman v State, 789 P.2d 631 (Okla. Crim. App. 1990);
Lafevers v State, 819 P.2d 1362; (Okla. Crim. App. 1991);
Crawford v State, 840 P.2d 627 (Okla. Crim. App. 1992);
Neill v State, 827 P.2d 884 (Okla. Crim. App. 1992);
Stiles v State, 829 P.2d 984 (Okla. Crim. App. 1992);
Robedeaux v State, 866 P.2d 417 (Okla. Crim. App. 1993);
Bartell v State, 881 P.2d 92 (Okla. Crim. App. 1994);
Bryson v State, 876 P.2d 240 (Okla. Crim. App. 1994);
Crawford v State, 881 P.2d 88 (Okla. Crim. App. 1994);
Plantz v State, 876 P.2d 268 (Okla. Crim. App. 1994);
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Hammon v State, 898 P.2d 1287 (Okla. Crim. App. 1995);
Lozoya v State, 932 P.2d 22 (Okla. Crim. App. 1996) ;
Salazar v State, 919 P.2d 1120 (Okla. Crim. App. 1996);

Williams v State, 915 P.2d 371 (Okla. Crim. App. 1996)

Williams v State, 915 P.2d 371 (Okla. Crim. App. 1996)

Nevertheless, a closer examination finds significant differences in the formal structure of murder law from state to state.

The state of Massachusetts and the death penalty for murder

Many of the charges the Defendant has been convicted of are federal offence, which carry the death sentence, even though the case was tried in Boston. On the subject of the death sentence, the state of Massachusetts had long forsaken the death penalty. The state of Massachusetts abolished the death penalty on 18 October 1984.

It is as well to study this history of the death penalty for crime committed. Studying the history forces us to forget the assumptions of our own culture and to confront those of another, thus 'accepting the sometimes uncomfortable notion, equally present in anthropology, that other people act on other assumptions and organise their way of doing things differently from those of ours and in accepting this, we begin to understand how decisions in centuries past were rational in their own cultural context and that modern solutions are not the only solutions that human beings have found appropriate.'¹⁸

Activists against the US death penalty

It was Benjamin Rush, physician and signer of the Declaration of Independence¹⁹, who led the opposition to the death penalty and supported the penitentiary, but who died disconsolate and confused.²⁰ In addition, Charles Spear, Universalist minister and prominent opponent of the gallows, devoted himself to reform for the sake of mankind. Remembering 1849, when Boston, Massachusetts was, like today, in a position of considering the death penalty for a sailor, Washington Goode. Then, unlike today, the jury considered evidence and facts relative to the case, and not the propriety of commutation or alteration to the laws (although news that Massachusetts in 2013 has

drafted a bill to re-establish the death penalty, it cannot be made retrospective). In 1849, defence attorneys, William Aspinall and Edward Hodges, (to Washington Goode) addressed the jury over the course of two days and spoke of the terrible burden of conscience the jury would feel for consigning Washington Goode to a disgraceful and untimely death.

Attorney Edward Hodges condemned the source of the testimony against Washington Goode as unworthy of consideration in a case of life and death. He said that 'the testimony of the residents in the neighbourhood was contradictory, inconsistent and hopelessly false and that in this region it was impossible for the fair image of truth to emanate'. Goode, he said, 'was in the area of the murder, but so were others and Goode's clothing matched that of someone seen walking away from the area, a thin connection on which to convict a man of murder and the death penalty'. Edward Hodges concluded his mitigation by leaving the defendant in the hands of the jury and the hand of his God. The Prosecution argued that a man could be identified even without showing his face.

Goode's case served as a rallying point for anti-gallows activists in Massachusetts. No one has been hanged in Boston since 1836 and jurors were determined not to become accessories to the destruction of human life. Thousands signed petitions against his death sentence and one historical document titled '*Protest of 400 inhabitants of Concord against the execution of Washington Goode*' has been preserved in archives as a Human Rights document at the Thoreau Institute at Walden Woods at 44 Baker Farm Road, Lincoln, Massachusetts.²¹

Other death penalty cases

In 1972, the court held in *Furman v Georgia*²² that 'the imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments'. (See Appendix 2). However, in 1976 in *Gregg v Georgia*²³, Troy Gregg, charged with committing armed robbery, and murder had been tried in two stages- a guilt stage and a sentencing stage and he was found guilty of two

counts of armed robbery and two counts of murder. The penalty was a death sentence or life in prison. A death sentence was upheld and it was decided that this did not breach his eight or fourteenth amendment rights. In those states that still maintain the death penalty today, technological and medical palliatives are today used but it is argued that these are but a facade of humane punishment.²⁴

Mitigation

Mitigation has a very important part to play in establishing levels of culpability or blameworthiness by explaining why an offender acted in the way he or she did in committing the offence alleged and 'proven'. Ultimately evidence in mitigation is admitted to enable the court to take a more lenient view of the wrongdoing than might otherwise be the case, but it does not constitute a plea for mercy, which some argue, should become institutionalised as exemplified by the late Nelson Mandela.

Metadata in prosecution electronic documents relied on at trial

The questions to be raised in the forthcoming Tsarnaev criminal trial in 2015 are these: Is it ethical for the prosecutor attorney recipient to view or use metadata in documents produced by another party? Does this prosecutor attorney have any duty to remove metadata from the files prior to sending them in disclosure to the legal defence attorneys?

Attachments constitute part of an e-mail's metadata

Metadata is a critical component of electronically stored documents.²⁵ Does the prosecutor attorney recipient of these pieces of videos and photographs in the public's cell-phones have an ethical duty not to view or otherwise use the metadata without first ascertaining whether the sender intended to include such metadata in the produced documents in a court of law?²⁶

When email is a vehicle for transmitting other documents, such as word processing documents, pdfs, videos or photos or mp3 music or broadcasts, etc, links to those

attachments are part of the e-mail's metadata. Preserving these links means that a reviewer can tell what document and which version of it was attached to a particular email. Therefore, metadata can be a valuable resource in the document reviewer process because it reveals a document's history. The crucial difference between electronic and printed documents is that all the information in a paper document is displayed on its face, whereas electronic documents carry their history with them. So defence lawyers for Tsarnaev could have, by court order, demand that the FBI produce the metadata to any photos they intended to display at trial in Boston, because, significantly, metadata is NOT a separate document but is an integral part of the document it displays and metadata connects attachments to emails.

FBI recent admissions of flawed evidence

On 22 April 2015, an article in *Philadelphia Magazine*²⁷, the magazine reported that the FBI's ongoing review of the agency's use of "microscopic hair comparison analysis" has disclosed that FBI hair analysts provided seriously inaccurate forensic testimony in a sixth capital case in Pennsylvania. Previously, the agency had reported that its hair examiners had presented scientifically unsupportable testimony for the prosecution purporting to "match" the hair of 32 other death-sentenced defendants to hair found at the crime scenes in those case. Of the now 33 death-sentenced cases in which the FBI admittedly provided flawed testimony, ten cases have been in Florida; six cases in Pennsylvania; and five cases in Texas.

'Caucasian looking' man is the allegedly reported prime suspect: relief

The images that appeared helpful to the FBI were from a store camera and cell phone footage from bystanders near the finish line where the explosions took place. In one instance, newspapers reported, an individual is alleged to appear planting a bag close to where the explosions took place and then leaving the scene. To the relief of many American immigrant communities, it appears that the FBI have reason to believe that the

prime suspect may be a Caucasian male, or at least not a coloured person, news reports indicated.²⁸

Amateur bombs made by Tamerlan Tsarnaev with time on his hands

The bomber or bombers apparently used two pressure-cookers to make two homemade bombs, according to the FBI. A Spanish company named Fagor, and not one of the more popular ones from the subcontinent apparently manufactures this pressure –cooker, newspapers reported that the FBI unofficially told them. A company spokesperson for Fagor reportedly said that American police had approached them and that the company was assisting the police in whatever way it could.

Presidential visit to Boston after the day

United States ('US') President Obama arrived in Boston to commiserate with Bostonians and made a speech at an interfaith memorial service.²⁹ He pledged that his government would find the terrorists and hold them responsible and he described individuals as those who would rather destroy than build, thinking that the devastation they caused will make them important. President Obama continued his speech by saying that America's fidelity to a free and open society will grow stronger, despite this outrage. It is not a crime to be a Muslim in the US; indeed were it so, that would breach the citizen's Amendment 1 of the US Constitution (see Appendix 2, pages 1 and 2).

Media lies: dangerous media overstep

The media were reprimanded for getting ahead of the story and reporting the arrest of a suspect when competitive pressure seemed to cause some reporters to overreach and over-interpret 'leaks'. While authorities said they were making rapid progress and zeroing in on persons of interest based on video footage, there was then no arrest or detention of any suspect. This is interesting since the leaks to US newspapers are from anonymous government officials.

Pre-trial publicity can become an abuse of process because such pre-trial publicity might influence the jury and since the fundamental tenet of a common law, legal system is that jury trial provides the fairest and most reliable method of determining guilt or innocence.

FBI probe on US media hackings stopped by US President in 2015- no reason stated

Yet the FBI was reported (during the UK's Leveson Inquiry) to have launched a probe on 14 July 2011- to determine whether Murdoch's News Corporation had accessed voicemails of victims of the 9/11 attacks. On 15 July, 2011, the then US Attorney General Eric Holder had announced an additional investigation by the Department of Justice, which was to examine whether News International had violated the Foreign Corrupt Practices Act ('FCPA') this examination having been discontinued in 2015³⁰ as notified by the Securities Exchange Commission ('SEC') as per section 13 or 15(d) of the US Securities Exchange Act 1934, notified to News Corporation and also to Twenty-First Century Fox on 28 January 2015.³¹

FBI progress report given by Mayor Menino of Massachusettes

In April 2013, the Mayor said at the time, that, '...every hour, we are getting closer' describing the progress of the FBI murder investigation of two people. Such was the heightened expectation of an arrest that a media scrum converged in front of the Federal Courthouse in Boston expecting the suspect to be produced.

FBI rebuked media for lying yet Defendant's abuse of process claim failed

The media crowd dispersed after authorities said there was no suspect in custody, but not before the FBI's stinging rebuke of the media, which was undoubtedly with justification. An FBI spokesperson issued this statement in April 2013 in Boston:

‘Contrary to widespread reporting, no arrest has been made in connection with the Boston Marathon attack. Over the past day, there have been a number of press reports based on information from unofficial sources that has been inaccurate. Since these stories often have unintended consequences, we ask the media to exercise caution and attempt to verify information before reporting.’

The media’s reckless publications should have hampered any prosecution of the persons who did this terrible act if defence counsel were to make a complaint of ‘abuse of process’³², in the face of media comments in thousands of instances. Nevertheless, the case made by the Legal Defence Team that a fair trial would not ensue should the Defendant, Dzhokhar Tsarnaev be tried in the city of Boston, was not successful and the trial did take place in Boston, Massachusetts.³³

The State, not the Defendant, is responsible for curbing media prejudice

Traditionally, the responsibility for ensuring that the Defendant does not suffer undue prejudice from media reported comment is not that of the individual Defendant but that of the State itself. There is the jurisprudence of Criminal Contempt of Court in the context of pre-trial publicity because it is a long-established fact that pre-trial publicity can inhibit a fair trial and the Defendant’s Constitutional Rights. The whole matter of Bills of Rights is currently a hotly debated topic in various jurisdictions throughout the world, since almost all democratic nations, with the exception of Australia, now have a Bill of Rights, either constitutionally entrenched as that of the US, or non-binding statements of rights and non-entrenched statutory bills of rights.

What is troubling is that approaches adopted by states as regards rights protection differ greatly. Therefore, judges presently have the power to strike down legislation, which is inconsistent with the rights contained therein.³⁴

Pre-trial publicity can become an abuse of process because such pre-trial publicity might influence the jury and since a fundamental tenet remains unchallenged in common law

legal systems that a jury trial provides the fairest and most reliable method of determining guilt or innocence.

Amateur bombing occurred 12 years after 9/11 terrorism

This attack at the Marathon race in Boston is still of unknown affiliation. Not a single terrorist organisation has claimed responsibility and it is now apparent that this was a single criminal, vengeful outrage by person or persons holding a grudge.³⁵ This Boston Marathon bombing occurred airplanes driven into the World Trade Centre buildings on 11 September 2001 attacked twelve years after the World Trade Centre in New York. It cannot be compared to 9/11.

***FBI admits to telling serious and dangerous lies about evidence- no action taken
FBI allegedly told lies by college friends of Defendant; years of jail term sentences
FBI shot dead one of Tsarnaev' friends in his room: no government action***

Since the Boston bombing, several of Mr Dzhokhar Tsarnaev's college friends³⁶ were charged and with criminal offences, forced to endure expensive court trials, permanently ruined reputations and then convicted.

* FBI Investigators have not affirmed that the allegedly 'two pressure cooker bombs' exploded at the 2013 Boston Marathon races consisted of gunpowder extracted from fireworks.

*The court papers outlining the charges, footnoted that FBI said that about a month before the tragedy, Tsarnaev told two of them that he knew how to make a bomb. This footnote is unsupported by recorded confession, contemporary, or indeed certified FBI notes taken, even though a Footnote is definitely part of the document (as the electronic metadata is part of the electronic message).

*The court papers were silent as to whether authorities believe that this innocuous text message between college friends was an instruction from Tsarnaev to destroy evidence although this is how the FBI treated it.

FBI told the media that once inside Tsarnaev's shared college room, his three friends noticed a backpack containing fireworks, which had been opened and emptied of gunpowder. No supporting evidence was given.

Three college friends of Boston Marathon bombing convict Dzhokhar Tsarnaev, namely Azamat Tazhayakov, Dias Kadyrbayev and Robel Phillipos, had been arrested, accused, charged and convicted of trying to protect Dzhokhar by going into his dorm room and getting rid of a backpack three days after the marathon attack. The three 19-year-old friends of college student Dzhokhar Tsarnaev were not accused of any role in the bombing.³⁷ Rather, Azamat Tazhayakov and Dias Kadyrbayev, from Kazakhstan, were charged with *conspiring to obstruct justice* by concealing and destroying evidence and the third friend Robel Phillipos was charged with lying to investigators about the visit to Dzhokhar Tsarnaev's dorm room.

The FBI stated that hours after surveillance camera photos of the Boston Marathon suspects were on the television news on 18 April 2013³⁸, Dzhokhar's friends suspected that he was one of the bombers and therefore removed the backpack along with a laptop from Dzhokhar's shared dorm room at the University of Massachusetts, Dartmouth.³⁹

Defence attorneys for the three student friends of Dzhokhar Tsarnaev insisted that their clients had nothing to do with the bombing and were just as shocked by the crime as everyone else⁴⁰ and Robel Phillipos' attorney, Derege Demissie, said to reporters outside the Boston court:

'The only allegation is that he made a misrepresentation.'

At the first court appearance, the students did not request bail. Robel Phillipos was held for a hearing on the following week. On 2 May 2013, Dzhokhar's school friend Robel Phillipos was charged with lying to FBI investigators. Robel Phillipos faced a maximum of eight years in jail and a \$250,000 fine. Azamat Tazhayakov faced five years in jail and a \$250,000 fine for lying to the FBI.

One student was in violation of his student visa, because he was skipping classes, and because he was no longer enrolled. All three men, Azamat Tazhayakov, Dias Kadyrbayev, and Robel Robello, were charged with various offences, including lying to the FBI.⁴¹

The FBI said that before Tsarnaev's roommate Kadyrbayev let Dzhokhar's three friends into the College room, Kadyrbayev had allegedly received the following text message from Dzhokhar:

'I'm about to leave if you need something in my room take it.'

(There was no metadata supplied to Defendant's Legal Defence Team).

FBI said that when Azamat Tazhayakov learned of the text message from Dzhokhar to his roommate Kadyrbayev, "*he believed he would never see Tsarnaev alive again,*" the FBI swore in an affidavit. Note that no recorded interview with these words was supplied to the Legal Defence Team. The court papers were silent as to whether authorities believe that this innocuous text message between college friends was an instruction from Tsarnaev to destroy evidence although this is how the FBI treated it.

The FBI said that college friend knew when he saw the fireworks that Dzhokhar Tsarnaev was involved in the bombings and decided to remove the backpack "*to help his friend Dzhokhar Tsarnaev avoid trouble.*"

There was no recorded interview with metadata was ever supplied to Legal Defence Team.

FBI told the media that Kadyrbayev decided to remove Tsarnaev's laptop 'because he did not want Tsarnaev's roommate to think he was stealing or behaving suspiciously by just taking the backpack'. Kadyrbayev and Tazhayakov shared a rented room and returned there allegedly with Dzhokhar's backpack and laptop computer and then they watched television news reports featuring photographs of Dzhokhar Tsarnaev. No discovery recorded interview and metadata provided to Legal Defence Team.

The FBI said that Kadyrbayev told authorities the three men then ‘*collectively decided to throw the backpack and fireworks into the trash because they did not want Tsarnaev to get into trouble.*’ No recorded police taped interview with complete metadata supplied to Legal Defence Team.

FBI admits to regular falsification of evidence in hundreds of cases

In April 2015, after ensuring successful court convictions of Dzhokhar’s friends for telling lies to FBI, the FBI admitted that it had often falsified evidence. This *BBC News*⁴² excerpt from 20 April 2015 describes the main event:

‘The FBI has admitted "errors" in evidence provided by its forensics laboratory to US courts to help secure convictions, including in death penalty cases, over more than 20 years.

A report by the Office of the Inspector General (OIG) noted "irregularities" in the hair analysis unit. More detail on the cases affected is expected later from campaign groups. Flawed forensics had been used in at least 60 capital punishment cases, the OIG report found.

Fourteen defendants were either executed or died in prison, says the Washington Post,. The review of cases of FBI evidence was prompted by the Washington Post news in 2012 that three men were wrongly placed at the scene of violent crimes by the unit's hair analysts, raising the possibility of hundreds of unsafe convictions. ...’

Friends scared to acknowledge Tsarnaev

Recent newspaper articles allege that his many supporters have turned against Dzhokhar Tsarnaev as his criminal trial begins, because they are afraid of being connected to the alleged bomber.⁴³

Friend not called by Prosecutor to give evidence against Tsarnaev

Several friends of Dzhokhar Tsarnaev have suffered traumatic court trials⁴⁴ and it is possible that some of his former friends will be called as prosecution witnesses in his court trial on many charges, as the government pushes for a death sentence conviction for Dzhokhar Tsarnaev.⁴⁵ This can be argued by Defence Attorneys as being from the ‘*poisoned chalice*⁴⁶’, and should be disallowed as evidence in Dzhokhar Tsarnaev’s forthcoming trial. On 5 January 2015 Dzhokhar Tsarnaev was deemed well enough to attend court before US District Judge George O’Toole (Jnr).

One borrowed second-hand gun

The FBI alleges that it was Tamerlan and Dzhokhar Tsarnaev who killed a police officer at the MIT college.

Whose bullet killed the MIT officer?

It has never been established whose bullet killed the officer or indeed, whether the officer was killed by his own bullet or his colleagues’ bullets. This matter was never raised at the Defendant’s trial in April 2015 and the Dzhokhar Tsarnaev’s Legal Defence Team appear ignorant or sleepy to this fact.

Criminalist Firearms Examiner

When there is evidence that a gun has been used at a crime scene, the correct criminal procedure is for the police investigators to appoint a firearm examiner. This criminalist firearm examiner usually concentrates on four features of the scene:

Bullets; Shell casings; Evidence of gunshot residue on the suspect (Tamerlan Tsarnaev as police had said and of gunshot residue on the victim, and suspects and importantly, evidence on the weapon itself.

Was the MIT officer shot by own colleagues in error?

If it was established at postmortem that a gunshot wound killed the MIT police officer, then no attempt should have been made to recover bullets from wounds at the scene but rather, any bullets will be retrieved by the forensic pathologist during the police officer's postmortem examination.

This case is silent as to this matter of a bullet in MIT officer's body

At postmortem of the MIT officer, the pathologist will have identified *the entrance and exit wounds, and the path and direction of the bullet or bullets.*

Key questions will involve:

- (i) the wound size in relation to the weapon used;
- (ii) the estimated shooting range; and
- (iii) the relative position of victim and perpetrator.

Allegedly, police have found the gun that the Tsarnaevs used and which killed the MIT officer. Therefore, police should have handed over the alleged gun and bullets found at the crime scene. Firearm experts would then be asked to establish whether a particular gun was used in a crime and they must comply with a strict procedure, documentary evidence of which report must be disclosed to the Legal Defence Team and to the Court.

The firearm expert: Compliance Procedure⁴⁷

Steps	Description of steps	<i>US v Tsarnaev</i> (
1	A new bullet is test-fired through the gun into a tank filled with water or into cotton wadding, capturing the bullet without damaging it. <i>This newly fired bullet now bears the gun's signature of scratches.</i> When a bullet travels through a rifle barrel, the inside of the barrel scores a series of tiny scratches into it. The patterns of scratches are highly specific for particular types of gun, and are often sufficiently individual to link a bullet with a single weapon.	None
2	A comparison microscope is used to see if these marks match scratches on bullets found at the scene. The test bullet is examined and the most	None

	prominent set of scratches pinpointed. The other bullet is treated in the same way, the expert looking to see if the sets of scratches match.	
3	once the expert spots a possible match, he or she rotates both bullets in the same direction and at exactly the same rate to see if other markings come into view at the same time. If a low-power examination looks promising, the expert increases the magnification, and looks to see if smaller marks also line up.	None
4	There is much skill involved in this procedure. No two bullets ever look the same. The bullet from the crime scene, if not still in the body, could have picked up additional markings when it struck the victim or anything else along the way. A gun barrel presents a different set of dust particles inside on each occasion it is fired, leaving different marks on any bullet. It takes expertise to conclude with certainty that two bullets travelled down the barrel of one gun.	None
5	Shell casings contain useful information. The shape of the dent left by the firing pin on the shell case can vary from weapon to weapon and examination can reveal a high probability that a particular gun was involved in crime. Also, when a gun fires, the explosion forces the shell case against the back of the chamber and any imperfections in the gun chamber become stamped into the shell. Only if the firearm is automatic or semi-automatic will the mechanism that loads and removes the shell also leave characteristic marks. The most powerful information is the evidence found on the bullet. Where is the bullet that killed the MIT officer? How did one man fire 200 bullets from a tint second hand gun against dozens of armed police?	None

Bombs made by Tamerlan Tsarnaev with time on his hands

This section will examine the bombing of the marathon run, its components, police Protocol in place since 2001 for dealing with bombings, and the policies and procedures that police should have operated. The bomber or bombers apparently used two pressure-cookers to make two homemade bombs. A Spanish company named Fagor, and not one of the more popular ones from the subcontinent apparently manufactures this pressure – cooker, newspapers reported that the FBI unofficially told them. A company spokesperson for Fagor reportedly said that American police had approached them and that the company was assisting the police in whatever way it could.

United States ('US') President Obama arrived in Boston to commiserate with Bostonians and made a speech at an interfaith memorial service.⁴⁸ He pledged that his government would find the terrorists and hold them responsible and he described individuals as those who would rather destroy than build, thinking that the devastation they caused will make them important. President Obama continued his speech by saying that America's fidelity to a free and open society will grow stronger, despite this outrage. It is not a crime to be a Muslim in the US; indeed were it so, that would breach the citizen's Amendment 1 of the US Constitution (see Appendix 2, pages 1 and 2).

CHAPTER THREE

Dangerous media overstep

The media were reprimanded for getting ahead of the story and reporting the arrest of a suspect when competitive pressure seemed to cause some reporters to overreach and over-interpret 'leaks'. While authorities said they were making rapid progress and zeroing in on persons of interest based on video footage, there was then no arrest or detention of any suspect. This is interesting since the leaks to US newspapers are from anonymous government officials. Yet the FBI was reported (during the UK's Leveson Inquiry) to have launched a probe on 14 July 2011- to determine whether Murdoch's News Corporation had accessed voicemails of victims of the 9/11 attacks. On 15 July, 2011, the then US Attorney General Eric Holder had announced an additional investigation by the Department of Justice, which was to examine whether News International had violated the Foreign Corrupt Practices Act ('FCPA') this examination having been discontinued in 2015⁴⁹ as notified by the Securities Exchange Commission ('SEC') as per section 13 or 15(d) of the US Securities Exchange Act 1934, notified to News Corporation and also to Twenty-First Century Fox on 28 January 2015.⁵⁰

Mayor of Massachusetts gave FBI progress report

In April 2013, the Mayor said at the time, that, '*...every hour, we are getting closer*' describing the progress of the FBI murder investigation of two people. Such was the heightened expectation of an arrest that a media scrum converged in front of the Federal Courthouse in Boston expecting the suspect to be produced.

Abuse of process complaint by Dzhokhar Tsarnaev's attorneys

The media crowd dispersed after authorities said there was no suspect in custody, but not before the FBI's stinging rebuke of the media, which was undoubtedly with justification.

The media's reckless publications could hamper any prosecution of the persons who did this terrible act if defence counsel were to make a complaint of 'abuse of process'⁵¹ in the face of media comments in thousands of instances. The case made by the Legal Defence Team that a fair trial would not ensue should the Defendant, Dzhokhar Tsarnaev be tried in the city of Boston, was *unsuccessful* and the trial did take place in Boston, Massachusetts, United States at courtroom.

An FBI spokesperson issued this statement in April 2013 in Boston:

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CHAPTER FOUR

Nail bombing occurred 12 years after 9/11 terrorism

This attack at the Marathon race in Boston is still of unknown affiliation. Not a single terrorist organisation has claimed responsibility and it is now apparent that this was a single criminal, vengeful outrage by person or persons holding a grudge.⁵² This Boston Marathon bomb had occurred twelve years after the World Trade Centre in New York was attacked by airplanes driven into the World Trade Centre buildings on 11 September 2001 and cannot be compared to it.

FBI- lying to the FBI'-17 years jail

Since the Boston bombing, several of Mr Dzhokhar Tsarnaev's college friend⁵³s faced criminal charges and court trials. Today, it has been alleged that his many supporters have turned against Dzhokhar Tsarnaev as his criminal trial begins, afraid of being connected to the alleged bomber.⁵⁴ Several other former friends of Dzhokhar Tsarnaev have suffered traumatic court trials⁵⁵ and it is possible that some of his former friends will be called as prosecution witnesses in his court trial on many charges, aiding a death sentence conviction for Dzhokhar Tsarnaev.⁵⁶ This however, can be argued by Defence Attorneys as being from the poisoned cup and should be disallowed as evidence in Dzhokhar Tsarnaev's forthcoming trial. Dzhokhar Tsarnaev was deemed well enough to attend court on 5 January 2015, before US Distr. Judge George O'Toole (Jnr).

2001 PATRIOT Act

Three persons died and many were injured by debris after the makeshift pipe bombs exploded. The applicable law to the charges brought against Dzhokhar Tsarnaev is the US PATRIOT Act 2001 which allows for the executive response of detention for up to six months at a time, of non-citizens who are certified as suspected terrorists. The

PATRIOT Act was as a result of the use of emergency powers exercised to enable the Act to be proposed, enacted and signed into law some 45 days after the '9/11' terrorist attacks on New York 's World Trade Centre buildings in 2001. To date, this power has not been invoked but was amended in 2011.

1996 US Anti-terrorism and Effective Death Penalty Act

Even before the enforcement of the PATRIOT Act 2001, there was the Anti-terrorism and Effective Death Penalty Act of 1996 which modified a federal habeas court's role in reviewing state prisoner's applications in order to prevent federal *habeas* 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law.⁵⁷

No habeas corpus

An application for a writ of *habeas corpus*⁵⁸ on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the US Supreme Court.⁵⁹

Defence attorney's request for trial delay refused

Dzhokhar Tsarnaev legal defence team had requested a delay of his trial until September 2015, on the grounds that the January 2015 European *Charlie Hebdo* shootings in Paris bore similarities with the Boston bombings and therefore the similarities and psychological effects on the jury will not be lost, but this request has been denied.⁶⁰ Unfortunately, judges do not need to make citations to support their decisions at this stage, an unfair lack of criminal procedure, especially in such an important case in which the US criminal justice system should not be seen by the watching world to be a law unto themselves or above the law with no validity to their decisions.⁶¹

Defence attorney's request for change of trial jurisdiction refused

For a long time, Tsarnaev's attorney Judy Clarke had been pleading for his case to be heard in another jurisdiction because she claimed that he will not get a fair trial in Boston. It now appears that the trial judge will now have a hearing with Tsarnaev's legal team on the matter of changing the venue for Tsarnaev's trial⁶² on the basis of 'saturation publicity' about the case, in which Dzhokhar Tsarnaev faces 30 criminal charges, not just the two charges as per the FBI agent's Affidavit in April 2013 (see Appendix 1).⁶³ Attorney Judith Mizner had represented Dzhokhar Tsarnaev initially and she had complained to the court that even today in 2015, press reports about Dzhokhar Tsarnaev 'continues unabated'.

Attorney Judith Mizner, who fought for the Tsarnaev criminal trial to be moved away from the jurisdiction of the city of Boston, also argued also that many of the chosen jury have close personal ties to the case and therefore cannot make reliable and unbiased decisions as to the verdict.⁶⁴

Withdrawal of citizenship would leave defendant a stateless refugee

It is noted, in the wake of this forthcoming trial, treated as a terrorism trial in law, that the alternative US system for terrorism is military detention of foreign alleged terrorists at *Guantanamo*. There have been two cases of US citizens detained without trial and held in military custody in the US: one case was resolved in a criminal prosecution, conviction and imprisonment and the second case led to expulsion from the US and withdrawal of citizenship. (See caselaw *Hamdi v Rumsfeld, Secretary of Defence, et al*⁶⁵; *Rumsfeld v Padilla*⁶⁶). This is pertinent to the 2015 Dzhokhar Tsarnaev trial in Boston on 30 criminal charges, including possessing and using a 'weapon of mass destruction', many of which charges being capital offences. All these relevant facts wherever touched on at trial.

As Professor Stephen Vladeck stated:

‘While the debate over the availability of habeas corpus to non-citizens detained outside the territorial United States - including those held as “enemy combatants ” at Guantánamo Bay- ventured into complicated gray areas, cases involving US citizens should be ” black and white ” ’ .⁶⁷

Citizenship and its impact on the 2015 Boston trial of *US v Tsarnaev*

The defendant Dzhokhar Tsarnaev is a US citizen. The issue that rankles the writer concerns a potential death sentence and/or withdrawal of citizenship and reminds the writer that the Nazi regime in Germany did just that to German Jews before killing 12 million Jews. We should never forget the implications of removing a person’s citizenship. The German Nazis removed German Jews citizenship by legislation (Danzig Decree) making the German Jews essentially stateless refugees.⁶⁸ In the Nazi 25-point Party Program, published in 1920, Nazi party members had publicly declared, in documentary evidence, their intention to segregate Jews from ‘Aryan’ society and to abrogate Jews’ political, legal, and civil rights. Nazi leaders began to make good on their pledge to persecute German Jews soon after their assumption of power. They passed 400 racist German decrees and new legislation in the first six years of Nazi governance under Adolf Hitler’s dictatorship, from 1933 until the outbreak of war in 1939, and Jews felt the effects of the 400 (four hundred) decrees and regulations that restricted all aspects of Jewish public and private life.⁶⁹

Legislative “creep” of racism in the US

The legislative creep of racism as in the *Danzig Decree* during the Nazi regime alerts the writer to be critically aware of the US state of Massachusetts, which, after the ‘Boston bombing’ in April 2013, decided to reinstate capital punishment, despite the fact that since 2007, the United Nation’s General Assembly adopted a resolution calling for a worldwide moratorium on executions.

Mayor Menino of Boston, Massachusetts in April 2013

The amateur bombing of the marathon race in Boston, Massachusetts caused the long serving Mayor of Boston, Menino, since deceased, to release this response immediately he learnt of the explosion, even though on 15 April 2013, he himself was recovering in hospital from a broken foot at the time.⁷⁰ He discharged himself from hospital in order to perform his mayoral duties at this critical time and gave a press conference in which he said:

‘Tonight, City of Boston officials coordinated with state and local partners in an ongoing response to today’s tragic events. Patriots Day and Marathon Monday are usually celebrated all across Boston, but today our cheers were turned to prayers. Boston is strong and resilient, and we come together in times of need. We will get through this, and we will find those responsible. Two explosions occurred within moments of each other at about 2:50 p.m. yesterday, near the Boston Marathon Finish Line and at Boylston and Fairfield streets. Boston EMS transported 90 of the patients to Boston hospitals. The Castle at Park Plaza, at the intersection of Columbus Avenue and Arlington Street, will be open until 11 p.m. tonight, as a resource and information centre, and it will re-open at 9 a.m. Tuesday. Members of the public can come in for information on counselling services. Displaced residents can receive information on sheltering services. Runners can pick up their belongings that were left this morning on the marathon’s shuttle buses. Runners can re-connect with friends and family. Shelter services will be offered at the Castle overnight for displaced residents. .’

FBI, State Police, Armed Guards and other armed government officers arrived

For several days after the nail bombs exploded at the annual 2013 Boston Marathon, Boylston Street was closed to traffic and to pedestrians from Berkley Street to Massachusetts Avenue. All side streets along Boylston Street were closed from Huntington Avenue to Newbury Street. Buildings were inaccessible whilst the crime

scene was active. The city of Boston provided shelter services to some displaced residents. For a few days thereafter, there was a police and National Guard, the FBI, and other armed officers present in the city. The FBI had also set-up 1-800-CALL-FBI (1-800-225-5324), prompt #3, for anyone who had information, visual images, and/or details regarding the explosions along the Boston Marathon route and elsewhere. Mayor Menino reminded those with concerns about their family members or friends who were at the race to call the Mayor's 24-Hour Hotline at 617-635-4500. Boston Public Schools were already closed for April recess.⁷¹

Police shot one suspect dead after the bombing

Rapid developments brought the death of one of the two terrorist suspects.⁷² This followed an incident at the Massachusetts Institute of Technology at which one police officer was shot dead. Police released images of the two suspects. CCTV showed these two men moving towards the finishing line of the marathon race, both men carrying backpacks. When police tried to arrest them, there were gunshots and one suspect was killed. The second suspect, also shot by police in his legs, head and arms, ran away and police could not see him. The wounded suspect has run down a street and spotted a boat in a householder's back garden, where he headed and hid there for one day. The boat owner saw blood on the boat and suspected that this was from the man police were searching for. Police arrived and arrested him, having 'thrown a grenade into the boat to stun him first'. Police had warned local citizens not to approach the second suspect if they saw him.⁷³

Tamerlan Tsarnaev emotionally bullied his young brother to carry one nail bomb under duress

It must be remembered that terrorism does not mean Islamic extremism. The two are to a certain extent, mutually exclusive, even though Islamic terrorism is militant in tone and tenor and is an ideology, as indeed the *Klu Klux Klan* is. However, the scope of insider threat is virtually unprecedented.⁷⁴ Lederman, as spokesperson for the United States

Senate Homeland Security and Governmental Affairs Committee, stated that the existence of the Internet enables radical and violent extremism, which, with the help of modern technology, can enable extremists to kill millions of people ‘*or to hobble critical infrastructure*’.⁷⁵

There have been at least two reported cases of US citizens who were detained without trial and held in military custody in the US.

The organised crime and terrorism expert Jerome P. Bjelopera said this:

*‘Since May 2009, the U.S. has seen 32 cases of home-grown violent Islamic extremism by American citizens, legal permanent residents, or visitors radicalised in the US.’*⁷⁶

A single borrowed second-hand gun –newspapers called this an ‘arsenal’

Newspapers and television and Internet media have tremendous power over democratic nations and although persons in government do not run them across the world, online media, Television channels worldwide and Local, National and International newspaper publications have enormous powers of persuasion on the ordinary man, who, in democracies, is the ‘holy grail’. Yet the media continue to improperly make mis-statements, misrepresentations, hearsay statements as real evidence and often outright criminal wrongdoings in their competition to make profits and sell more and more news. This must stop soon.

Lies to the police, by the police, for the police? People are confused

The media hound and harass, convey and are conveyed informally, mostly incorrect information, to and from the police authorities who groom the media in order to set out as implicit fact, events that often transpire to be totally untrue. It is therefore ironic that a college friend of Tsarnaev, the Defendant, must waste his whole life in a US high

security prison because he allegedly told ‘lies’ to the FBI.⁷⁷ Dzhokhar Tsarnaev’s college friend was a very well connected, decent, academic bright young man, Robel Phillipos, 19 years old in April 2013 whose young life is practically over.

2013: Tamerlan Tsarnaev and 19-year-old Dzhokhar Tsarnaev

The two men suspected in the Boston Marathon bombings, one Defendant in the terrorism trial, convicted of all 30 counts against him, and older brother Tamerlan, killed in April 2013, were allegedly armed with one second-hand, borrowed gun, and two nail bombs, it eventually transpired, rather than the earlier newspaper reports of ‘an arsenal of ammunition’, whipping up much fear, hostility, and mass hatred in Boston of foreigners and fear of organised terrorist gangs among them, all totally incorrect. The Tsarnaevs were very poor, living in poverty, and with no money whatever. They had no food. Newspapers fervently speculated that the Tsarnaev brothers were planning many other bombings, according to what reporters stated that American police told them.

Citizens of the United States

The plain facts are, however, that the two young men were brothers of Russian origin, brought with their two young sisters to the US by their parents, now with American citizenship, having moved to the US when they were children and living with their parents and two sisters in the US until a few years ago when their parents felt that they had to return to live in Russia.

The financial crisis of the United States

It is not a crime to become a citizen of the US. After all, originally, all Caucasians in the US travelled there from Europe, including the UK and Southern Ireland and elsewhere, to seek their fortunes, to run slave plantations and even as refugees from criminal justice of other jurisdictions. The United States today is thought to be the super-power of the planet

Earth, even though federal accounts showed the US to be near bankruptcy a few years ago.⁷⁸

Tsarnaev suspects were poor and unemployed

The Tsarnaev brothers had both been unemployed at the time of the Boston marathon and the older brother Tamerlan Tsarnaev was trying to make a career out of his boxing skills but he did not succeed in becoming good enough as to earn a living from it. Three years before 2013, he had met and married a young American girl, a former university student colleague. They both dropped out of their respective degree courses and they married when his wife was pregnant with child. Tamerlan Tsarnaev's wife gave birth to a baby girl, born in the US.

Tamerlan Tsarnaev: 'house-husband' and 'carer' of his daughter

For two full years he had been a 'house-husband' and the main 'carer' for the couple's baby for sixty hours a week whilst his wife worked in a private auxiliary nursing role for minimum wages. His wife, Katherine Russell, is the daughter of a medical doctor and a nurse and she was brought up in a leafy suburb. Katherine Russell had decided to become a Muslim and so she dressed demurely, accordingly. They lived in a tiny apartment several floors up which must have been very difficult for a young couple with a pram and shopping to manoeuvre up those stairs.

Second suspect, Dzhokhar Tamerlan - also poor

Tamerlan Tsarnaev's younger brother was also very poor and he also worked hard at his studies, in order to gain scholarship entrance to university, despite having very little to live on. Neither men neither smoked cigarettes nor drank alcohol; indeed they would

never have been able to afford to smoke and drink like most American youths do. Tamerlan Tsarnaev's younger brother applied for and was awarded a scholarship to study at Massachusetts Institute of Technology ('MIT'), one of the top universities in the US and this was no mean feat for a boy who hardly had enough to eat. Nor did it appear that he was dysfunctional because his university colleagues as being easy-going and friendly described him. Until the state prosecuted some of his friends, no one had come forward to say anything bad about his character.

Tsarnaev parents had fled US and brothers fended for themselves

Newspapers reported that the brothers were left to fend for themselves after their parents were forced to return to the predominantly Muslim republic of Chechnya in southern Russia because their mother had allegedly resorted to some shop-lifting and was afraid of being deported because she failed to attend the court hearing on that charge.

Other Tsarnaev relatives reside in the US

The Tsarnaevs have other relatives who live in the US and whose circumstances are more fortunate than the circumstances in which the two brothers found themselves. Living in the US is an uncle who managed to make a living for his immediate family from a legal career more in line with the *American Dream* which most immigrants aspire to when they travel to the US to make their home there.

CHAPTER FOUR

What led Tamerlan Tsarnaev to allegedly commit a crime?

From a criminological and political viewpoint, many wonder how this tragedy came about: an apparent deliberate act which caused two deaths and much injury, grief and sorrow. Not to be dismissed is the total financial cost of this stupid criminal act on the US government, which will have to pay out hundreds of millions of dollars in compensation to the injured, and the family of the two who died from the explosion at the Boston Marathon 2013.

Conspiracy just between two brothers or was this act of one man roping in his coerced younger filially obligated brother?

Even before the suspects were found, the FBI told the media that this was a single incident unattached to any organisation and with one party already deceased, there could be no possible reason for the FBI to hold the younger brother and interrogate him without counsel for a full 16 hours before telling him he had a right to remain silent.

Illegal search by police helicopter thermal imaging device

Furthermore, the younger Dzhokhar Tsarnaev was 'searched' within the meaning of the Fourth Amendment when police used, without a court warrant, a thermal-imaging device at a private property from a helicopter to detect relative amounts of heat within the backyard boat.⁷⁹

In the case of *Olmstead v United States* (1928)⁸⁰ the Supreme Court held that the warrantless wiretapping of phone lines did not constitute an unreasonable search under the Fourth Amendment and the court stated that what was required was 'physical intrusion

into a given area (and not a mere voice amplification) is required for an action to constitute a Fourth Amendment search.⁸¹

2001 PATRIOT Act

Three persons died and many were injured by debris after the makeshift pipe bombs exploded. The applicable law to the charges brought against Dzhokhar Tsarnaev is the US PATRIOT Act 2001 which allows for the executive response of detention for up to six months at a time, of non-citizens who are certified as suspected terrorists. The PATRIOT Act was as a result of the use of emergency powers exercised to enable the Act to be proposed, enacted and signed into law some 45 days after the '9/11' terrorist attacks on New York 's World Trade Centre buildings in 2001. To date, this power has not been invoked but was amended in 2011.

1996 US Anti-terrorism and Effective Death Penalty Act

Even before the enforcement of the PATRIOT Act 2001, there was the Anti-terrorism and Effective Death Penalty Act of 1996 which modified a federal habeas court's role in reviewing state prisoner's applications in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law.⁸²

No habeas corpus

An application for a writ of habeas corpus⁸³ on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim resulted in a decision that was contrary to, or involved an unreasonable application of clearly established Federal law, as determined by the US Supreme Court.⁸⁴

Defence attorney's request for trial delay was refused

Dzhokhar Tsarnaev's legal defence team had requested a delay of his trial until September 2015, on the grounds that the January 2015 European *Charlie Hebdo* shootings in Paris bore similarities with the Boston bombings and therefore the similarities and psychological effects on the jury will not be lost, but this request has been denied.⁸⁵ Unfortunately, judges do not need to make citations to support their decisions at this stage, an unfair lack of criminal procedure, especially in such an important case in which the US criminal justice system should not be seen by the watching world to be a law unto themselves or above the law with no validity to their decisions.⁸⁶

Defence attorney's request for change of trial jurisdiction refused

For a long time, Tsarnaev's attorney Judy Clarke had been pleading for his case to be heard in another jurisdiction because she claimed that he will not get a fair trial in Boston. It now appears that the trial judge will now have a hearing with Tsarnaev's legal team on the matter of changing the venue for Tsarnaev's trial⁸⁷ on the basis of 'saturation publicity' about the case, in which Dzhokhar Tsarnaev faces 30 criminal charges, not just the two charges as per the FBI agent's Affidavit in April 2013 (see Appendix 1).⁸⁸ Attorney Judith Mizner had represented Dzhokhar Tsarnaev initially and she had complained to the court that even today in 2015, press reports about Dzhokhar Tsarnaev 'continues unabated'.

Attorney Judith Mizner, who fought for the Tsarnaev criminal trial to be moved away from the jurisdiction of the city of Boston, also argued also that many of the chosen jury have close personal ties to the case and therefore cannot make reliable and unbiased decisions as to the verdict.⁸⁹

Withdrawal of citizenship would leave defendant a stateless refugee

It is noted, in the wake of this forthcoming trial, treated as a terrorism trial in law, that the alternative US system for terrorism is military detention of foreign alleged terrorists at *Guantanamo*. There have been two cases of US citizens detained without trial and held in military custody in the US: one case was resolved in a criminal prosecution, conviction and imprisonment and the second case led to expulsion from the US and withdrawal of citizenship. (See caselaw *Hamdi v Rumsfeld, Secretary of Defence, et al*⁹⁰; *Rumsfeld v Padilla*⁹¹). This is pertinent to the 2015 Dzhokhar Tsarnaev trial in Boston on 30 criminal charges, including possessing and using a ‘weapon of mass destruction’, many of which charges being capital offences. All these relevant facts were touched on at trial.

As Professor Stephen Vladeck stated:

‘While the debate over the availability of habeas corpus to non-citizens detained outside the territorial United States - including those held as “enemy combatants” at Guantánamo Bay- ventured into complicated gray areas, cases involving US citizens should be “black and white”’.⁹²

Citizenship and its impact on the 2015 Boston trial of US v Tsarnaev

The defendant Dzhokhar Tsarnaev is a US citizen. The issue that rankles the writer concerns a potential death sentence and/or withdrawal of citizenship and reminds the writer that the Nazi regime in Germany did just that to German Jews before killing 12 million Jews. We should never forget the implications of removing a person’s citizenship. The German Nazis removed German Jews citizenship by legislation (Danzig Decree) making the German Jews essentially stateless refugees.⁹³ In the Nazi 25-point Party Program, published in 1920, Nazi party members had publicly declared, in documentary evidence, their intention to segregate Jews from ‘Aryan’ society and to abrogate Jews’ political, legal, and civil rights. Nazi leaders began to make good on their pledge to persecute German Jews soon after their assumption of power. They passed 400 racist

German decrees and new legislation in the first six years of Nazi governance under Adolf Hitler's dictatorship, from 1933 until the outbreak of war in 1939, and Jews felt the effects of the 400 (four hundred) decrees and regulations that restricted all aspects of Jewish public and private life. ⁹⁴

Legislative “creep” of racism in the US

The legislative creep of racism as in the *Danzig Decrees* during the Nazi regime alerts the writer to be critically aware of the US state of Massachusetts, which, after the ‘Boston bombing’ in April 2013, decided to reinstate capital punishment, despite the fact that since 2007, the United Nation’s General Assembly adopted a resolution calling for a worldwide moratorium on executions.

Mayor Menino of Boston, Massachusetts in April 2013

The amateur bombing of the marathon race in Boston, Massachusetts caused the long serving Mayor of Boston, Menino, since deceased, to release this response immediately he learnt of the explosion, even though on 15 April 2013, he himself was recovering in hospital from a broken foot at the time. ⁹⁵ He discharged himself from hospital in order to perform his mayoral duties at this critical time and gave a press conference in which he said:

‘Tonight, City of Boston officials coordinated with state and local partners in an ongoing response to today's tragic events. Patriots Day and Marathon Monday are usually celebrated all across Boston, but today our cheers were turned to prayers. But Boston is strong and resilient, and we come together in times of need. We will get through this, and we will find those responsible. Two explosions occurred within moments of each other at about 2:50 p.m. yesterday, near the Boston Marathon Finish Line and at Boylston and Fairfield streets. Boston EMS transported 90 of the patients to Boston hospitals. The Castle at Park Plaza, at the intersection of Columbus Avenue

and Arlington Street, will be open until 11 p.m. tonight, as a resource and information centre, and it will re-open at 9 a.m. Tuesday. Members of the public can come in for information on counselling services. Displaced residents can receive information on sheltering services. Runners can pick up their belongings that were left this morning on the marathon's shuttle buses. Runners can re-connect with friends and family. Shelter services will be offered at the Castle overnight for displaced residents. . '

FBI, State Police, Armed Guards and other armed government officers arrived

For several days after the nail bombs exploded at the annual 2013 Boston Marathon, Boylston Street was closed to traffic and to pedestrians from Berkley Street to Massachusetts Avenue. All side streets along Boylston Street were closed from Huntington Avenue to Newbury Street. Buildings were inaccessible whilst the crime scene was active. The city of Boston provided shelter services to some displaced residents. For a few days thereafter, there was a police and National Guard, the FBI, and other armed officers present in the city. The FBI had also set-up 1-800-CALL-FBI (1-800-225-5324), prompt #3, for anyone who had information, visual images, and/or details regarding the explosions along the Boston Marathon route and elsewhere. Mayor Menino reminded those with concerns about their family members or friends who were at the race to call the Mayor's 24-Hour Hotline at 617-635-4500. Boston Public Schools were already closed for April recess.⁹⁶

Police shot one suspect dead after the bombing

Rapid developments brought the death of one of the two terrorist suspects.⁹⁷ This followed an incident at the Massachusetts Institute of Technology at which one police

officer was shot dead. Police released images of the two suspects. CCTV showed these two men moving towards the finishing line of the marathon race, both men carrying backpacks. When police tried to arrest them, there were gunshots and one suspect was killed. The second suspect, also shot by police in his legs, head and arms, ran away and police could not see him. The wounded suspect has run down a street and spotted a boat in a householder's back garden, where he headed and hid there for one day. The boat owner saw blood on the boat and suspected that this was from the man police were searching for. Police arrived and arrested him, having 'thrown a grenade into the boat to stun him first'. Police had warned local citizens not to approach the second suspect if they saw him.⁹⁸

Tamerlan Tsarnaev emotionally bullied his young brother to carry one nail bomb

It must be remembered that terrorism does not mean Islamic extremism. The two are to a certain extent, mutually exclusive, even though Islamic terrorism is militant in tone and tenor and is an ideology, as indeed the *Klu Klux Klan* is. However the scope of insider threat is virtually unprecedented.⁹⁹ Lederman, as spokesperson for the United States Senate Homeland Security and Governmental Affairs Committee, stated that the existence of the Internet enables radical and violent extremism, which, with the help of modern technology, can enable extremists to kill millions of people '*or to hobble critical infrastructure*'.¹⁰⁰

There have been at least two reported cases of US citizens who were detained without trial and held in military custody in the US.

The organised crime and terrorism expert Jerome P. Bjelopera said this:

*'Since May 2009, the U.S. has seen 32 cases of home-grown violent Islamic extremism by American citizens, legal permanent residents, or visitors radicalised in the US.'*¹⁰¹

A single borrowed second-hand gun is not an 'arsenal'

Newspapers and television and Internet media have tremendous power over democratic nations and although they are not run by persons in government across the world, Online media, Television channels worldwide and Local, National and International newspaper publications have enormous powers of persuasion on the ordinary man, who, in democracies, is the 'holy grail'. Yet the media continue to improperly make mis-statements, misrepresentations, hearsay statements as real evidence and often outright criminal wrongdoings in their competition to make profits and sell more and more news. This must stop soon.

Lies to the police, by the police, for the police? People are confused

The media hound and harass, convey and are conveyed informally, mostly incorrect information, to and from the police authorities who groom the media in order to set out as implicit fact, events that often transpire to be totally untrue. It is therefore ironic that a college friend of Tsarnaev, the Defendant, must waste his whole life in a US high security prison because he allegedly told 'lies' to the FBI.¹⁰² Dzhokhar Tsarnaev's college friend was a very well connected, decent, academic bright young man, Robel Phillipos, 19 years old in April 2013 whose young life is practically over.

2013: Tamerlan Tsarnaev and 19-year-old Dzhokhar Tsarnaev

The two men suspected in the Boston Marathon bombings, one Defendant in the terrorism trial, convicted of all 30 counts against him, and older brother Tamerlan, killed in April 2013, were allegedly armed with one second-hand, borrowed gun, and two nail bombs, it eventually transpired, rather than the earlier newspaper reports of 'an arsenal of ammunition', whipping up much fear, hostility, and mass hatred in Boston of foreigners and fear of organised terrorist gangs among them, all totally incorrect. The Tsarnaevs

were very poor, living in poverty, and with no money whatever. They had no food. Newspapers fervently speculated that the Tsarnaev brothers were planning many other bombings, according to what reporters stated that American police told them.

Citizens of the United States

The plain facts are, however, that the two young men were brothers of Russian origin, brought with their two young sisters to the US by their parents, now with American citizenship, having moved to the US when they were children and living with their parents and two sisters in the US until a few years ago when their parents felt that they had to return to live in Russia.

The financial crisis of the United States

It is not a crime to become a citizen of the US. After all, originally, all Caucasians in the US travelled there from Europe, including the UK and Southern Ireland and elsewhere, to seek their fortunes, to run slave plantations and even as refugees from criminal justice of other jurisdictions. The United States today is thought to be the super-power of the planet Earth, even though federal accounts showed the US to be near bankruptcy a few years ago.¹⁰³

Tsarnaev suspects were poor and unemployed

The Tsarnaev brothers had both been unemployed at the time of the Boston marathon and the older brother Tamerlan Tsarnaev was trying to make a career out of his boxing skills but he did not succeed in becoming good enough as to earn a living from it. Three years before 2013, he had met and married a young American girl, a former university student colleague. They both dropped out of their respective degree courses and they married when his wife was pregnant with child. Tamerlan Tsarnaev's wife gave birth to a baby girl, born in the US.

Tamerlan Tsarnaev: 'house-husband' and 'carer' of his daughter

For two full years he had been a 'house-husband' and the main 'carer' for the couple's baby for sixty hours a week whilst his wife worked in a private auxiliary nursing role for minimum wages. His wife, Katherine Russell, is the daughter of a medical doctor and a nurse and she was brought up in a leafy suburb. Katherine Russell had decided to become a Muslim and so she dressed demurely, accordingly. They lived in a tiny apartment several floors up which must have been very difficult for a young couple with a pram and shopping to manoeuvre up those stairs.

Second suspect, Dzhokhar Tamerlan - also poor

Tamerlan Tsarnaev's younger brother was also very poor and he also worked hard at his studies, in order to gain scholarship entrance to university, despite having very little to live on. Neither men neither smoked cigarettes nor drank alcohol; indeed they would never have been able to afford to smoke and drink like most American youths do. Tamerlan Tsarnaev's younger brother applied for and was awarded a scholarship to study at Massachusetts Institute of Technology ('MIT'), one of the top universities in the US and this was no mean feat for a boy who hardly had enough to eat. Nor did it appear that he was dysfunctional because he was described by his university colleagues as being easy-going and friendly. Until the state prosecuted some of his friends, no one had come forward to say anything bad about his character.

Tsarnaev parents had fled US and brothers fended for themselves

Newspapers reported that the brothers were left to fend for themselves after their parents were forced to return to the predominantly Muslim republic of Chechnya in southern

Russia because their mother had allegedly resorted to some shop-lifting and was afraid of being deported because she failed to attend the court hearing on that charge.

Other Tsarnaev relatives reside in the US

The Tsarnaevs have other relatives who live in the US and whose circumstances are more fortunate than the circumstances in which the two brothers found themselves. Living in the US is an uncle who managed to make a living for his immediate family from a legal career more in line with the *American Dream* which most immigrants aspire to when they travel to the US to make their home there.

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Furthermore, the younger Dzhokhar Tsarnaev was ‘searched’ within the meaning of the Fourth Amendment when police used, without a court warrant, a thermal-imaging device at a private property from a helicopter to detect relative amounts of heat within the backyard boat.¹⁰⁴ In the case of *Olmstead v United States* (1928)¹⁰⁵ the Supreme Court held that the warrantless wiretapping of phone lines did not constitute an unreasonable search under the Fourth Amendment and the court stated that what was required was ‘physical intrusion into a given area (and not a mere voice amplification) is required for an action to constitute a Fourth Amendment search.’¹⁰⁶

Illegal search of the Boston private boat parked on private property

The *Fourth Amendment to the US Constitution* is the part of the Bill of Rights that prohibits unreasonable searches and seizures and requires a warrant be judicially sanctioned and supported by probable cause. Evidence that US police allege that Tsarnaev has scrawled on paper whilst lying very badly injured in somebody’s boat in his or her backyard is unbelievable. This alleged documentary evidence should be deemed inadmissible at Dzhokhar Tsarnaev’s forthcoming court trial because it is evidence obtained through a Fourth Amendment violation and also because it was discovered as a later result of the illegal search a breach of the Fourth Amendment. There was no excuse for this illegal search since the police already had captured Dzhokhar Tsarnaev, extremely seriously injured as he was and taken him to a hospital. The proper thing to do, knowing that this important criminal trial would result, unless Dzhokhar Tsarnaev died from his police wounds, was to properly seek a Court Order to search the private boat which neither Boston police nor the FBI had done. The police in the US, unlike the police in the UK, who would often be paid bribes by newspaper reporters to give confidential information to newspapers, are nevertheless, not as careful in their dealing with the media. In fact, according to newspaper reports, many government officials spoke ‘anonymously’ to newspaper reporters. Whether they received bribes is not known.

US law enforcement fed the media with much unofficial ‘information’

Mr Edward Davis, Boston’s Police Commissioner, allegedly told the media that the US authorities believed then that the captured suspect, Dzhokhar Tsarnaev, and his gunned down twenty-six year old brother, Tamerlan Tsarnaev, deceased, had planned more attacks beyond the bombings at the finishing line at the Boston Marathon. It was reported in the newspapers that US law enforcement recovered ‘four guns-an M-4 carbine rifle; two handguns and a BB gun’.¹⁰⁷ Days later, however, newspapers reported that there was only one gun.¹⁰⁸

First opinion of FBI: self-motivated and not in a terrorist organisation

Early on after the Boston bombings and on several occasions thereafter, US police officials allegedly told news reporters that it was almost certain that the two suspects had acted on their own, but, negating this statement, the US police told the media that in searching for their motive to commit this heinous crime, police are looking for any hints that someone had trained or inspired them, a *non sequitur*, surely. After Tamerlan Tsarnaev was gunned down by police and after his brother, Dzhokhar was also injured by gunfire then arrested and taken to hospital, US police travelled to Russia to discuss the case and to follow up on alleged Russian information to them in 2011 (that the elder Tsarnaev brother had been reading extremist material on the Internet). It was reported in newspapers through official leaks that Russian Officials confirmed that Tamerlan met no extremists in person whilst he spent several months in Russia in 2012. The hearsay evidence in this case is astonishing. The conjectured scientific evidence is awaited.¹⁰⁹

US Government liability for policing their Internet

If a US citizen or a person with permanent residence in the US was found to have accessed extremist material on the Internet, there would be a case against the US government for allowing that website or website into their jurisdiction. Katherine Russell, Tamerlan Tsarnaev's wife, could very well have a valid case against the US government for being so slack as to allow those websites in the US by which her depressed husband was influenced. Defence lawyers must attempt to show that metadata cannot be preserved and thus such electronic evidence may be partly unreliable.

Financing the Boston bombing-less than US \$100

The financing of 'a hoard of arms', *if there were an ounce of truth in it*, is a matter that US police would have had to solve, as the surviving brother, now Defendant to two serious criminal charges, was living on a scholarship fund¹¹⁰ and the older brother depended on state benefits and latterly on his wife's minimum-wage income as a low-paid worker. The brothers did not have rich relative and could be classed as very poor indeed. On the subject of finance, it is known that the deceased brother travelled to Russia in 2012 where he stayed mostly with relatives, probable sleeping on the floor. It is possible, as is common, that he booked very cheap flight months ahead of the date of travel and his relatives would not have expected money for his stay with them. It was reported in the newspapers that US police recovered 'four guns-an M-4 carbine rifle; two handguns and a BB gun'. When days later, police reports stated that there was only one gun, one is led to believe that officers were speaking to the press without authorisation. As it turned out there was no 'hoard of arms' as police anonymously told newspapers.

Financing a homemade bomb

The pipe bombs could have cost very little if they used second-hand pressure cooker pots and cheap fireworks, with scraps of nails and metal. It is believed that they used a design for the pressure-cooker bombs they allegedly downloaded from a manual published in the online

Disruption of general public may have been objective

Tamerlan Tsarnaev may have read extremist magazines that were published Online on how to create bombs and how to disrupt the general public. Tamerlan Tsarnaev may have read such material at home whilst his younger brother was studying at college.

Boston attack cannot be compared to 9/11 attack where 3000 died

The Boston Marathon attack, although heinous, can never be compared to 9/11 Trade Centre outrage. The 9/11 attacks came to reality with the use of third party commercial airplanes being hijacked, direct costing being few airplane lessons and two airline single passenger tickets; indirect costing being millions of pounds of commercial airplanes. Al Qaeda was responsible for 9/11.

Only Tamerlan Tsarnaev could have been responsible for his violent acts

Nobody but Tamerlan Tsarnaev was responsible for the Boston bombings, in contrast and this outrage cost Tamerlan Tsarnaev no more than US \$100, in terms of money as time cannot be costed since the older brother, Tamerlan Tsarnaev, had been unemployed.

High-technology equipment and thousands of police officers to catch one poverty-stricken young Caucasian American father and his coerced younger brother

In contrast to the poverty¹¹¹ of the two alleged criminals, the Tsarnaev brothers, the government of the US had immediate access to several thousand armed police officers, sent to Boston and as much high-tech equipment as was needed, together with state-of-the-art-helicopters and electronic communications equipment. Analysts and agents for the FBI used special video technology that allowed them to string together hours and hours of footage and to enhance the quality. They used heat-seeking equipment from a helicopter. There were 1000 armed police and FBI agents and dozens of police road vehicles and helicopters there as police turned to high-technology equipment to help them capture this injured man.

FBI negligence record

Analysts have noted that Tamerlan Tsarnaev was the fifth person since the terrorist attack on the US on 11 September 2001 attacks (the 9/11 outrage) to be suspected of *committing terrorism whilst under investigation by the FBI*. Agents had questioned Tamerlan in 2011 in response to an alleged notification from the Russian government, a year before he travelled to Chechnya¹¹² and Dagestan in Russia.

Russia informed FBI of Internet visits to radical websites in the year 2011

The Russian government feared that Tamerlan Tsarnaev could be a risk, and their notification of the US government was *'based on information that he was a follower of radical Islam and a strong believer, and that he had changed drastically since 2010 as he prepared to leave the United States for travel to the country's region to join unspecified*

underground groups', according to an FBI spokesperson. They did not arrest him on his subsequent visit to Russia because he was y then an American citizen.

FBI had been in communication with Russian officials

The FBI told the media that they did respond to the notification from Russian officials about Tamerlan's Internet activities by checking US government databases and other information to look for such things as derogatory telephone communications; possible use of online sites associated with the promotion of radical activity; associations with other persons of interest; travel history and plans; and education history. Furthermore the FBI sent two counter terrorism agents from its Boston field office to interview Tamerlan Tsarnaev and his family members but did not find any domestic or foreign terrorist activity and conveyed to the Russian government those findings in that same summer of 2011.

Metadata disclosure not forthcoming to defence legal team

Who checks whether the metadata of the alleged FBI correspondence to and from Russia is fictitious and non-existing?

What protocols does the FBI use in collecting evidence?

Who monitors the evidence the FBI bring to criminal trials?

Who checks for illegal corrections in evidence statements?

Who checks for forgeries and counterfeiting of documents, which are presented as documentary evidence at trial?

Why was Tamerlan identified as a threat based on 'links to radical websites'?

According to the present US government's administration law, terrorism suspects arrested inside the United States must be dealt within the US criminal justice system. This meant that Russia had no jurisdiction over the actions of Tamerlan Tsarnaev.

Miranda Rights not read in hospital- breach of citizen's human rights to a fair trial

The younger brother Tsarnaev seriously injured and ill, was not read his Miranda Rights in hospital until after sixteen hours of police ‘chatted’ with him, at which point he realised that this was not casual conversation and he became silent thereafter. This was a trick on the defendant. In *Gideon v Wainwright*¹¹³ it was held that the Sixth Amendment’s guarantee of the right to state-appointed counsel, firmly established in federal court proceedings in *Johnson v Zerbst*¹¹⁴ applies to state criminal prosecutions through the Fourteenth Amendment. The scope of this right was clarified in *Argersinger*, when it was held that an indigent defender must be offered counsel in any misdemeanour case ‘that actually leads to imprisonment’. *Scott* later confirmed *Argersinger*’s delimitation. Uncounselled conviction will lead to imprisonment and that is precisely what the *Sixth Amendment* does not allow.

Coerced younger brother acting under duress?

There is no evidence suggesting that Tsarnaev is or was part of Al Qaeda; and furthermore the United States is engaged in an armed conflict with Al Qaeda, not all Muslim extremists, if indeed he is a Muslim extremist and not merely a bullied younger brother who complied with his older brother’s wishes. An analogy is the example of millions of people who view illicit child pornography on the Internet. They are not all classified automatically as sex offenders,

Investigation of the Tsarnaevs

FBI agents, in investigating this crime, examined the credit card records and other material seized from Tamerlan’s apartment and his motorcar for evidence of bomb components; evidence of the backpacks used; and any other evidence that would tie the Tsarnaevs to the Boston Marathon bombings.

Well-being of the defendant/patient

One very real fear that police must address is the prospect of a suicide attempt by the surviving Defendant especially as he has been reported as making one attempt before arrest and because half the suicides among prisoners are among those on remand.

America's established record of over-criminalisation

William J. Stuntz wrote in 2001 of the phenomenon of over-criminalisation. He said that it was a product of institutional incentives rather than ideologies or politics. He said that federal and state legislators have strong incentives to expand criminal liability¹¹⁵. He said:

*'On the one hand, expansion deflects blame for the harm caused by the newly criminalized activities. On the other hand, when blameless defendants are caught in the expanding net of criminal liability, legislators can blame overzealous prosecutors for abusing their discretion. One might suppose that, for just this reason, prosecutors would resist this expansion, but in fact they too argue for it because it eases their task of proving cases and inducing guilty pleas. Few interest groups oppose this united front...'*¹¹⁶

The 'Beck' Suicide Index

The Beck Suicide Index is helpful in measuring changes in this risk.¹¹⁷

Homeland Security examined intelligence failure

On 24 April 2013, Congress questioned FBI senior officials who were summoned. Congress questioned US security officials on whether they mishandled information about

the Boston bomb suspect Tamerlan Tsarnaev. Why has the Senate Intelligence Committee failed to investigate the FBI's failure to act on Russian concerns that Tamerlan Tsarnaev was 'becoming radicalised', apart from a casual, no warning-conversation with his family as FBI alleged. It is alleged that FBI met with the Tsarnaev family and were satisfied that they were not radicals. At this 'closed hearing', Members of Congress interrogated the FBI officials as to why no further action was taken after Tamerlan Tsarnaev was investigated in 2011 at the request of the Russian government. This was a 'closed hearing', yet the media were allegedly told afterwards that among the topics discussed was the suggestion by senators that 'steps could be taken to improve information sharing between agencies'.

Homeland Security Committee: FBI were negligent

As scrutiny increased as to how the brothers had been allegedly radicalised, Representative Michael McCall (a Texas Republican who headed the Homeland Security Committee) and Representative Peter T. King, a New York Republican on the panel, sent a letter to the directors of three of the nation's leading intelligence gathering agencies in which he allegedly stated that the FBI's handling of the case was an intelligence failure, newspapers reported.

Potential Class-action corporate negligence against the FBI

This is an important matter as regards the hundreds at the Boston Marathon who may bring a class action for compensation of corporate negligence against the FBI.

Miller called for autopsy of boxer Tamerlan Tsarnaev's brain

Michael Craig Miller should have approached the President to the United States instead of contributing to a newspaper article. That would have been the correct procedure. Newspapers of the world are not yet, though they think they are, the power of the world because they carry lies, hearsay, emotional disturbance and riotous articles a lot of the

time, sometimes fabricating 'news'. Boston Marathon bombing suspect Tamerlan Tsarnaev probably never imagined leaving his brain to science, conjectured one newspaper who interviewed a former director of a Boston hospital who believes that his boxing hobby could be the cause of his apparent violent which could have internalised to his making a bomb all by himself out of pure rage and violence due to brain damage from boxing. The newspaper suggested that the idea of examining Tamerlan's brain should be suggested to whoever has custody of his remains and neuroscientists should be given the chance to examine his brain closely.¹¹⁸ This is not a wildcard idea but a very feasible possibility. Although Tamerlan cannot be compared with Hitler, for example, it is widely known that Hitler was very troubled with illnesses, which caused him constipation, and stomach problems, which may be why he was always irritable.

US now acknowledge brain concussion and its serious after- effects

On Thursday 23 April 2015, it was announced on ITN News report at 15:35 hours, GMT, that

Sporting brain injuries such as concussion has been deliberately under-played. In the Chicago Tribune on 23 April 2015, it was reported that ¹¹⁹ the US Soccer Federation has admitted that the case of injury resulting in concussion was not properly set out with clear guidance and training of coaches, referees, and players. A female soccer player, Abby Wambach was injured whilst playing the sport on 20 and 24 April 2013. Wambach, luckily, was medically monitored and was found by baseline tests still show that she has symptoms of concussion in 2015 from the injuries she sustained in 2014. She was properly monitored by medically trained persons for two years, as should occur with suspicion of concussion. ¹²⁰ The US Soccer Federation consulted with experts including Dr Ruben Echemeridia, a neuro-psychologist and concussion researcher working with US national soccer teams.

Charles Whitman asked for brain autopsy

Consider the murders that Charles Whitman committed. In the early hours of 1 August 1966, he killed his mother, and then his wife. Later that morning, he organized himself and proceeded to purchase firearms and ammunition and brought them, along with his sniper's skill, to the top of a tower at the University of Texas in Austin. He began shooting and by the time an Austin policeman's bullets shot him dead, he had killed 17 people and wounded 32 others. In the 24 hours before the end of his siege, Whitman wrote several notes, *including one requesting an autopsy to determine whether or not something was wrong with his brain, said Michael Craig Miller*¹²¹ who called for the testing of the brain of deceased boxer Tamerlan Tsarnaev, albeit via a news article, the incorrect non-procedural path to take for such a request.

Autopsy of Charles Miller's brain resulted in finding a tumor in the brain of this killer. In this case the medical examiner found a small tumor pressing on a brain region, the amygdala, known to regulate emotion and since then, there have been newspaper reports of his anger and intensity.

Tamerlan Tsarnaev suffered bouts of anger - frustrated violence

A local Imam¹²² has described angry disruptions at a Cambridge mosque. In 2009, Tsarnaev faced domestic violence charges that were later dismissed. He had attracted local attention as a boxer and was a martial arts enthusiast. The biology of Tamerlan's violent behaviour has not received any attention and Dr Michael Craig Miller suggested a study of Tamerlan Tsarnaev's brain.

Chronic traumatic encephalopathy

Dr Robert Cantu and Dr Robert Stern of Boston University's Centre for the Study of Chronic Traumatic Encephalopathy had also expressed their interest in examining Tamerlan's brain. Tsarnaev's high-level participation in boxing may have exposed him to multiple head knocks. In other words, he may have endured repetitive head injury and developed the brain disease that brain damage experts have studied in football players

and other athletes.¹²³ Dr Cantu and Dr Stern pointed out that, even if Tamerlan Tsarnaev showed evidence of chronic traumatic Encephalopathy or some other pathology, it might not however, have been the cause of allegedly premeditated, violent behaviour which the FBI have asserted, having illegally interviewed his younger brother in his almost-deathbed, under possible drugs or not, we will never know. Examination of the brain is extremely important: where does alleged psychopathy come from, if not the brain?

Police brutality

This case should be thrown out in the first instance because the FBI could be sued for malpractice and breach of legal procedures.

*The FBI leaked information to the media.

*The FBI interviewed Mr D Tsarnaev whilst seriously ill in hospital and initially without the presence of an attorney.

*The FBI was aware of Mr D Tsarnaev's dire financial straits and should have properly appointed a public defender for Mr D Tsarnaev.

* The FBI should have awaited a psychiatrist report on whether the hospitalised man was fit to make a statement.¹²⁴

*A court should have certified that Mr Tsarnaev was fit for interview at the time he was questioned as he lay critically ill in a hospital bed with an FBI bullet removed from his throat and under pain killing medication which must have interfered with his soundness to be questioned in his fragile physical and psychological state at the time, a travesty of injustice and an example of police brutality.¹²⁵

The brain is the mediator of all thought and behaviour

The brain is the mediator of all thought and behaviour and the killed-by-police-suspect Tamerlan Tsarnaev's brain might have taught the legal-medical world a small but important bit of information about the biology of violence. So experts should have had the chance to study Tamerlan Tsarnaev's brain. And they should have studied it as closely as forensic experts have studied the area a few blocks along Boylston Street. This

was not a terrorist outrage. There was no claim by any listed terrorist organisation. This was not terrorism. This was the act of a brain-injured young man, Tamerlan Tsarnaev who felt cheated because his young wife was forced to work unbelievably long hours in order to bring food to the table as the authorities did not see fit to allow them the benefits of an unemployed couple with a very young baby. They should have been entitled to state support at least with a rent subsidy.

US Intelligence Committee questioned FBI

On 24 April 2013, US security officials faced questions in Congress over whether they mishandled information about deceased Boston bombing suspect Tamerlan Tsarnaev, as was their very incompetence with the 9/11 tragedy. Indeed, the former director of the FBI learnt of the explosion at the World Trade Centre when his wife telephoned him to tell him she had just seen it on a newsflash. Indeed after the '9/11' outrage, so to speak, the FBI displayed their vast array of very expensive high technology weaponry and human officer force at their disposal, all too late.

'Closed hearing' of US Senate Intelligence Committee reported in newspapers: breach of confidentiality

The FBI briefed the Senate Intelligence Committee in a closed hearing after some US lawmakers accused the FBI of failing to act on Russian concerns.

The Senate posed these questions to the FBI:

1. Why was no further action taken after the 2011 investigation of Tamerlan Tsarnaev?
2. Why was Tamerlan Tsarnaev not identified as a threat based on links to radical websites?
3. Why were the authorities unaware of Tamerlan Tsarnaev's visit to Russia in 2012?

4. Democratic Senator Dianne Feinstein, Chair of the intelligence committee, had announced that the Intelligence Committee would have resolved these questions at the planned meeting with FBI officials on Tuesday, 24 April 2013, after which they were to brief the full Senate. Why have these questions not been resolved?
5. The facts were that Mr Tamerlan Tsarnaev was questioned in 2011 amid claims that he had adopted radical Islam. Why was he not questioned under caution, ie his Miranda¹²⁶ rights not read to him?
6. Why was the whole of the questioned family not been told of their Fifth Amendment¹²⁷ rights not to make any self-incriminating statements?

The Tsarnaev family were never warned that the meeting was an evidence-gathering police and Homeland Security matter and may later be used in any criminal trial. The conclusion is that none of the information thus garnered by the FBI before the Boston Marathon incident must be allowed to be admitted in evidence during the trial of Mr D Tsarnaev in 2015 in Boston, Massachusetts.

FBI's defence to Intelligence Committee- pre-released on 19 April 2013

The FBI's defence¹²⁸ was that FBI officials had run checks on the suspect but found no evidence of terrorist activity. A request to Russia for further information to justify more rigorous checks allegedly went unanswered, they claimed, and an interview by agents with Tamerlan Tsarnaev and his family also revealed nothing suspicious. In a press release after the interview on 24 April, Republican Senator Lindsey Graham, in Committee, allegedly questioned why the FBI was unable to identify Tamerlan Tsarnaev as a threat based on his alleged links to radical websites. Senator Lindsey Graham called for better co-operation with Russia and the amendment of privacy laws to allow closer scrutiny of suspects' Internet activity. Senator Lindsey Graham added that the US authorities did not know that Tamerlan Tsarnaev had travelled to Russia in 2012.¹²⁹ Tamerlan Tsarnaev had spent six months in Dagestan, another mainly Muslim Russian republic bordering Chechnya. During Tamerlan Tsarnaev's visit to Russia, where he

stayed for six months, he allegedly spent two days in Chechnya itself, newspapers reported.³¹

‘Leaks’ warrant immediate inquiry into bribery of US government officials

That the US warrants an inquiry similar to the UK’s Leveson Inquiry Report of 2012 is beyond question. Each and every newspaper in the world reported officers of the United States making anonymous statements about police matters and whether they were bribed or not we do not know, nor do we know whether these pieces of alleged information to the press were leaks to verify to the public that the police were doing their job, thus creating unofficial public confidence.

After surviving cruel method of capture, normal evidence gathering began, but no psychiatric assessment made of suspect

It was one week after the bombing that police began to take statements from relevant people in Boston, after Tamerlan Tsarnaev was killed by police gunfire and the his younger brother wounded and captured, newspapers worldwide spreading truth mixed with hearsay and then police tactics turned to basic communications with the defendant’s friends¹³⁰, neighbours and relatives¹³¹ as they collected statements and other evidence for a criminal trial. The then hospital patient or an expert witness now NOT now be called to assess the deviation from the standard of care that Mr Dzhokhar Tsarnaev received in April 2013 when the FBI interrogated him in his hospital bed with a police gunshot bullet removed from his throat. A qualified and experienced psychiatrist should have assessed this before the critically ill man Dzhokhar Tsarnaev before any FBI interrogation took place. We do not know what lies are contained in his medical notes made at that hospital or whether or not any medical notes were forged, counterfeited or destroyed since April 2013. We do not know whether Mr D Tsarnaev had been given, without his consent, any

medication such as *Amital* or who prescribed any medication or the true extent of Mr Dzhokhar Tsarnaev's injuries as they remain today.

Information gathering by US federal police

A comprehensive assessment of the defendant takes into account the defendant's history; his physical state; mental illnesses that he may suffer; results of psychometric assessments; collateral histories from family members; collateral histories from friends and colleagues; teachers; and others who have known the defendant for a considerable length of time.

Police will also collect his medical records; any hospital records; social services records; police criminal records and police intelligence reports; witness statements; housing and hostel records; and employment records.¹³² This information thus gathered is evidence that may be presented to a court to prove or rebut this criminal case. Evidence can be used to support or corroborate or contradict a specific piece of evidence; or the status, demeanour or credibility of the witness. The US White House press secretary Jay Carney had said in his press briefing on 22 April 2013, that Dzhokhar Anzorovich Tsarnaev¹³³ will be tried in the US civilian court system, meaning that they considered him a political terrorist but that he would be tried in the civilian court system because they recognised his US citizenship.¹³⁴

However, shortly after April 2013, the state of Massachusetts decided to reintroduce the capital death sentence.¹³⁵

Police say brother-killed Tamerlan

Relevant evidence will go some way to showing whether a fact did or did not exist, but even relevant evidence may be inadmissible because of perceived unfairness in the way it was collected or because it was more prejudicial than probative, ie, it does little to prove one side's case, while tending to make a party look bad or immoral. After Tamerlan Tsarnaev shot *at* police and apparently ran out of bullets, the police chief said, officers tackled him. They were applying handcuffs when the SUV came at them, it being driven by Dzhokhar Anzorovich Tsarnaev. The officers scattered, they said, and left the first suspect in the road and the SUV allegedly ran over Tamerlan Tsarnaev and killed him, police alleged.

Second hand and third-hand hearsay evidence

The brothers' uncle Ruslan Tsarni (who lives in Maryland) told newspapers in an interview that he had first noticed a change in the older brother, Tamerlan Tsarnaev, in 2009.¹³⁶ After being 'disturbed by his nephew Tamerlan's change in attitude', Tsarni told newspapers that he sought advice from a family friend, who told him that in 2009 Tamerlan Tsarnaev's alleged radicalisation had begun after he met a convert to Islam in Boston. Tsarni said he had later learned from a relative that his nephew Tamerlan had met the convert in 2007.¹³⁷ He made no mention whatsoever about his younger nephew Dzhokhar Tsarnaev. Being a lawyer, it is beyond belief that he should speak to a newspaper reporter.¹³⁸ It has been reported that in 1995, Ruslan Tsarni incorporated in the US a group called the Congress of Chechen International Organizations, from the home of Graham Fuller, the one-time vice chairman of the National Intelligence Council at the CIA under President Reagan. The Congress of Chechen International Organizations

helped supply Islamist insurgents in Chechnya with items like mine-resistant combat boots.¹³⁹

Hearsay evidence: converting to Islam

It is to be noted that to convert to Islam is not a crime anywhere in the world.

A Human Rights aspect is that the refusal of US authorities to read the Boston Marathon bombing suspect his rights has not gone unnoticed by the world's legal observers.

It is believed that this defendant was interrogated whilst in his hospital bed and that he responded by writing. Whether he was threatened with withdrawing his life support or given drugs to make these actions is not known.

It is noted also noted that interrogators did not read Mr Tsarnaev his Miranda rights¹⁴⁰ until they had the statements they wanted from him and this took sixteen hours of questioning. This exception is allowed on a limited basis when the public may be in immediate danger. However, it cannot be said that the public are in danger from a gravely wounded man in a hospital bed, unable to speak because of an alleged gunshot wound to the throat, according to US newspapers that stated that they quoted anonymous sources as saying he had been responding to questions in writing.

Boston's then Mayor Tom Menino told ABC News, before the charges against D. Tsarnaev were announced, that:

'We don't know if we'll ever be able to question the individual'.¹⁴¹

Newspaper reports stated that they were anonymously informed that the federal public defender's office in Massachusetts had agreed to represent Mr Tsarnaev after charges were made. However, a different attorney eventually represented Tsarnaev.

Conclusions

The above dozens of pages illustrate a defence of duress suffered from the older brother (who might have become insane or brain damaged due to boxing injury) and has realistic potential to succeed, bearing in mind the mitigation as set out in this paper.¹⁴²

Criminal actions leave victims behind, including the person who acted on his own criminal intention, Tamerlan Tsarnaev, now deceased, and notwithstanding that convicted Dzhokhar Tsarnaev had his constitutional rights violated because he had requested a lawyer on many instances from his hospital bed after being arrested, yet investigators continued pressuring him to answer questions without a lawyer being present. This, Dzhokhar Tsarnaev's legal defence team told the judge in court.

Agents from the FBI had interrogated a very injured and critically ill Dzhokhar Tsarnaev, even though he indicated from his hospital bed (recovering from gunshot wounds to the face, throat, head, and jaw) that he wanted an attorney, following his arrest in Watertown, Massachusetts. When two defence attorneys arrived at Beth Israel Deaconess Medical Center, disclosure revealed that an FBI agent told the attorneys that Dzhokhar Tsarnaev was not in custody. Dzhokhar Tsarnaev's legal defence team asked US District Court Judge George O'Toole to strike from evidence any statements or comments Tsarnaev made in the hours directly after his arrest, claiming that the FBI had violated the Defendant's constitutional rights.

The Defence Legal Team also asked the court to declare the death penalty unconstitutional in this case because capital punishments are not carried out in Massachusetts. This point has become the crux of the case.

APPENDIX 1

A complaint was filed against Dzhokhar Anzorovich Tsarnaev during a court hearing held around his hospital bed). *Note that since this date a total of 30 (thirty) offences have been filed against Dzhokhar Tsarnaev.*

AFFIDAVIT OF FBI SPECIAL AGENT DANIEL R. GENCK

“I, Daniel R. Genck, being duly sworn, depose and state:

1. I am a Special Agent with the Federal Bureau of Investigation (‘FBI’) and have been so employed since 2009. I am currently assigned to one of the Boston Field Office's Counter-terrorism Squads. Among other things, I am responsible for conducting national security investigations of potential violations of federal criminal laws as a member of the Joint Terrorism Task Force (‘JTTF’). During my tenure as an agent, I have participated in numerous national security investigations. I have received extensive training and experience in the conduct of national security investigations, and those matters involving domestic and international terrorism.

2. During my employment with the FBI, I have conducted and participated in many investigations involving violations of United States laws relating to the provision of **material** support to terrorism. I have participated in the execution of numerous federal search and arrest warrants in such investigations. I have had extensive training in many methods used to commit acts of terrorism contrary to United States law.

3. This affidavit is submitted in support of an application for a complaint charging DZHOKHAR ANZOROVICH TSARNAEV of Cambridge, Massachusetts ("DZHOKHAR ANZOROVICH TSARNAEV") with using a weapon of mass destruction against persons and property at the Boston Marathon on April 15, 2013, resulting in death. More specifically, I submit this affidavit in support of **an application for a** complaint charging DZHOKHAR ANZOROVICH TSARNAEV with

(1) unlawfully using and conspiring to use a weapon of mass destruction (namely, an improvised explosive device) against persons and property within the United States used in interstate and foreign commerce and in an activity that affects interstate and foreign

commerce, which offence and its results affected interstate and foreign commerce (including, but not limited to, the Boston Marathon, private businesses in Eastern Massachusetts, and the City of Boston itself), resulting in death, in violation of 18 U.S.C. § 2332a; and

(2) maliciously damaging and destroying, by means of an explosive, real and personal property used in interstate and foreign commerce and in an activity affecting interstate and foreign commerce, resulting in personal injury and death, in violation of 18 U.S.C. § 844(i).

4. This affidavit is based upon my personal involvement in this investigation, my training and experience, my review of relevant evidence, and information supplied to me by other law enforcement officers. It does not include each and every fact known to me about the investigation, but rather only those facts that I believe are sufficient to establish the requisite probable cause.

The Boston Marathon Explosions Facts and Circumstances

5. The Boston Marathon is an annual race that attracts runners from all over the United States and the world. According to the Boston Athletic Association, which administers the Marathon, over 23,000 runners participated in this year's race. The Marathon has a substantial impact on interstate and foreign commerce. For example, based on publicly available information, I believe that the runners and their families - including those who travel to the Boston area from other states and countries - typically spend tens of millions of dollars each year at local area hotels, restaurants and shops, in the days before, during, and after the Marathon. In addition, a number of the restaurants and stores in the area near the finish line have special events for spectators.

6. The final stretch of the Boston Marathon runs eastward along the center of Boylston Street in Boston from Hereford Street to the finish line, which is located between Exeter and Dartmouth Streets. Low metal barriers line both edges of the street and separate the spectators from the runners. Many businesses line the streets of the Marathon route. In the area near the finish line, businesses are located on both sides of Boylston Street, including restaurants, a department store, a hotel and various retail stores.

7. On April 15, 2013, at approximately 2:49 p.m., while the Marathon was still underway, two explosions occurred on the north side of Boylston Street along the Marathon's final stretch. The first explosion occurred in front of 671 Boylston Street and the second occurred approximately one block away in front of 755 Boylston Street. The explosive devices were placed near the metal barriers where hundreds of spectators were watching

runners approach the finish line. Each explosion killed at least one person, maimed, burned and wounded scores of others, and damaged public and private property, including the streets, sidewalk, barriers, and property owned by people and businesses in the locations where the explosions occurred. In total, three people were killed and over two hundred individuals were injured.

8. The explosions had a substantial impact on interstate and foreign commerce. Among other things, they forced a premature end to the Marathon and the evacuation and temporary closure of numerous businesses along Boylston Street for several days.

B. Surveillance Evidence

9. I have reviewed videotape footage taken from a security camera located on Boylston Street near the corner of Boylston and Gloucester Streets. At approximately 2:38 p.m. (based on the video's duration and timing of the explosions) - i.e., approximately 1 minute before the first

explosion - two young men can be seen turning left (eastward) onto Boylston from Gloucester Street. Both men are carrying large knapsacks. The first man, whom I refer to in this Affidavit as Bomber One, is a young male, wearing a dark-coloured baseball cap, sunglasses, a white shirt, dark coat, and tan pants. The second man, whom I refer to in this affidavit as Bomber Two, is a young male, wearing a white baseball cap backwards, a grey hooded sweatshirt, a lightweight black jacket, and dark pants. As set forth below, there is probable cause to believe that Bomber One is Tamerlan Tsarnaev and Bomber Two is his brother, DZHOKHAR ANZOROVICH TSAMAEVTSARNAEV.

10. After turning onto Boylston Street, Bomber One and Bomber Two can be seen walking eastward along the north side of the sidewalk towards the Marathon finish line. Bomber One is in front and Bomber Two is a few feet behind him. Additional security camera video taken from a location farther east on Boylston Street, as well as contemporaneous photographs taken from across the street, show the men continuing to walk together eastward along Boylston Street towards Fairfield Street.

11. I have also reviewed video footage taken from a security camera affixed above the doorway of the Forum Restaurant located at 755 Boylston Street, which was the site of the second explosion. This camera is located approximately midway between Fairfield and Exeter Streets and points out in the direction of Boylston and is turned slightly

towards Fairfield. At approximately 2:41 p.m. (based on the video's duration and the timing of the explosions), Bomber One and Bomber Two can be seen standing together approximately one half-block from the restaurant.

12. At approximately 2:42 p.m. (i.e., approximately seven minutes before the first explosion), Bomber One can be seen detaching himself from the crowd and walking east on Boylston Street towards the Marathon finish line. Approximately 15 seconds later, he can be seen passing directly in front of the Forum Restaurant and continuing in the direction of the location where the first explosion occurred. His knapsack is still on his back.

13. At approximately 2:45 p.m., Bomber Two can be seen detaching himself from the crowd and walking east on Boylston Street toward the Marathon finishing line. He appears to have the thumb of his right hand hooked under the strap of his knapsack and a cell phone in his left hand. Approximately 15 seconds later, he can be seen stopping directly in front of the 'Forum Restaurant' and standing near the metal barrier among numerous spectators, with his back to the camera, facing the runners. He then can be seen apparently slipping his knapsack onto the ground. A photograph taken from the opposite side of the street shows the knapsack on the ground at Bomber Two's feet.

14. The 'Forum Restaurant' video shows that Bomber Two remained in the same spot for approximately four minutes, occasionally looking at his cell phone and once appearing to take a picture with it. At some point he appears to look at his phone, which is held at approximately waist level, and may be manipulating the phone. Approximately 30 seconds before the first explosion, he lifts his phone to his ear as if he is speaking on his cell phone, and keeps it there for approximately 18 seconds. A few seconds after he finishes the call, the large crowd of people around him can be seen reacting to the first explosion. Virtually every

head turns to the east (towards the finish line) and stares in that direction in apparent bewilderment and alarm. Bomber Two, virtually alone among the individuals in front of the restaurant, appears calm. He glances to the east and then calmly but rapidly begins moving to the west, away from the direction of the **finish line. He walks away without his knapsack**, having left it on the ground where he had been standing. Approximately

10 seconds later, an explosion occurs in the location where Bomber Two had placed his knapsack.

15. I have observed video and photographic footage of the location where the second explosion occurred from a number of different viewpoints and angles, including from directly across the street. I can discern nothing in that location in the period before the explosion might have caused that explosion, other than Bomber Two's knapsack.

Photographic Identifications

16. I have compared a Massachusetts Registry of Motor Vehicles ('RMV') photograph of DZHOKHAR ANZOROVICH TSARNAEV with photographic and video images of Bomber Two, and I believe, based on their close physical resemblance, there is probable cause that they are one and the same person. Similarly, I have compared an RMV photograph of Tamerlan Tsarnaev with photographic and video images of Bomber One, and I likewise believe that they are one and the same person.

The Bombers Emerge

17. I base the allegations set forth in paragraphs 18 through 27 on information that has been provided to me by fellow law enforcement officers, including members of the JTTF and state and local law enforcement who responded to the crime scenes, as well as on publicly available information that I deem reliable.

18. At approximately 5:00 p.m. on April 18, 2013, the FBI published video and photographic images of Bomber One and Bomber Two on its web site. Those images were widely rebroadcast by media outlets all over the country and the world.

19. Near midnight on April 18, 2013, an individual carjacked a vehicle at gunpoint in Cambridge, Massachusetts. A victim of the carjacking was interviewed by law **enforcement** and provided the following information. The victim stated that while he was sitting in his car on a road in Cambridge, a man approached and tapped on his passenger-side window. When the victim rolled down the window, the man reached in, opened the door, and entered the victim's vehicle. The man pointed a firearm at the victim and stated, "Did you hear about the Boston explosion?" and "I did that." The man removed the magazine from his gun and showed the victim that it had a bullet in it, and then re-inserted the magazine. The man then stated, 'I am serious.'

20. The man with the gun forced the victim to drive to another location, where they picked up a second man. The two men put something in the trunk of the victim's vehicle. The man with the gun took the victim's keys and sat in the driver's seat, while the victim moved to the front passenger seat. The second man entered the victim's vehicle and sat in

the rear passenger seat. The man with the gun and the second man spoke to each other in a foreign language.

21. While they were driving, the man with the gun demanded money from the victim, who gave the man 45 dollars. One of the men compelled the victim to hand over his ATM card and password. They then drove to an ATM machine and attempted to withdraw money from the victim's account. The two men and the victim then drove to a gas station/convenience store in the vicinity of 816 Memorial Drive, Cambridge. The two men got out of the car, at which point the victim managed to escape.

22. A short time later, the stolen vehicle was located by law enforcement in Watertown, Massachusetts. As the men drove down Dexter Street in Watertown, they threw at least two small-improvised explosive devices ("IEDs") out of the car. A gunfight ensued between the car's occupants and law enforcement officers in which numerous shots were fired. One of the men was severely injured and remained at the scene; the other managed to escape in the car. That car was later found abandoned a short distance away, and an intact low-grade explosive device was discovered inside it. In addition, from the scene of the shootout on Laurel Street in Watertown, the FBI has recovered two unexploded IEDs, as well as the remnants of numerous exploded IEDs.

Identification of Carjackers

23. I have reviewed images of two men taken at approximately 12:17 a.m. by a security camera at the ATM and the gas station/convenience store where the two carjackers drove with the victim in his car. Based on the men's close physical resemblance to RMV photos of Tamerlan and DZHOKHAR ANZOROVICH TSARNAEV, I believe the two men who carjacked, kidnapped, and robbed the victim are Tamerlan and DZHOKHAR ANZOROVICH TSARNAEV. In addition, the carjacker who was severely injured during the shoot-out in Watertown was taken to Beth Israel Hospital, where he was pronounced dead. FBI fingerprint analysis confirms that he is Tamerlan Tsarnaev and the man's face matches the RMV photograph of Tamerlan Tsarnaev. RMV records indicate that Tamerlan Tsarnaev and DZHOKHAR ANZOROVICH TSARNAEV share the same address on Norfolk Street in Cambridge, Massachusetts. According to Department of Homeland Security immigration records, Tamerlan Tsarnaev and DZHOKHAR ANZOROVICH TSARNAEV are brothers. Tamerlan Tsarnaev was a

Lawful Permanent Resident. DZHOKHAR ANZOROVICH TSARNAEV entered the United States on April 12, 2002, and is a naturalized U.S. citizen.

Preliminary Examination of the Explosives

24. A preliminary examination of the remains of the explosive devices that were used at the Boston Marathon revealed that they were low-grade explosives that were housed in pressure cookers. Both pressure cookers were of the same brand. The pressure cookers also contained metallic BBs and nails. Many of the BBs were contained within an adhesive material. The explosives contained green-colored hobby fuse.

25. A preliminary examination of the explosive devices that were discovered at the scene of the shootout in Watertown and in the abandoned vehicle has revealed similarities to the explosives used at the Boston Marathon. The remnants of at least one of the exploded IEDs at the scene of the shootout indicate that a low-grade explosive had been contained in a pressure cooker. The pressure cooker was of the same brand as the ones used in the Marathon explosions. The explosive also contained metallic BBs contained within an adhesive material as well as green-colored hobby fuse. The intact low-grade explosive device found in the abandoned car was in a plastic container and wrapped with green-colour hobby fuse.

DZHOKHAR ANZOROVICH TSARNAEV is Located

26. On the evening of April 19, 2013, police investigation revealed that there was an individual in a covered boat located at 67 Franklin Street in Watertown. After a stand-off between the boat's occupant and the police involving gunfire, the individual was removed from the boat and searched. A University of Massachusetts at Dartmouth identification card, credit cards, and other forms of identification were found in his pockets. All of them identified the man as DZHOKHAR ANZOROVICH TSARNAEV. He had visible injuries, including apparent gunshot wounds to the head, neck, legs, and hand.

DZHOKHAR ANZOROVICH TSARNAEV's wounds were triaged and he was brought to an area hospital, where he remains for medical treatment.

27. On April 21, 2013, the FBI searched DZHOKHAR ANZOROVICH TSARNAEV's dormitory room at 7341 Pine Dale Hall at the University of Massachusetts at Dartmouth, pursuant to a search warrant. The FBI seized from his room, among other things, a large pyrotechnic, a black jacket and a white hat of the same general appearance as those worn by Bomber Two at the Boston Marathon on April 15, 2013, and BBs.

Conclusion

28. Based on the foregoing, there is probable cause to believe that on or about April 15, 2013, DZHOKHAR ANZOROVICH TSARNAEV violated 18 U.S.C. §§ 2332a (using and conspiring to use a weapon of mass destruction, resulting in death) and 844(i) (malicious destruction of property by means of an explosive device, resulting in death). Accordingly, I respectfully request that the Court issue a complaint charging DZHOKHAR ANZOROVICH TSARNAEV with those crimes.

Special Agent Mel R. Genck

Federal Bureau of Investigation

Sworn and signed 21st day of April 2013.

U.S. District Court - District of Massachusetts

Place of Offence: City Boston County Suffolk

Superseding Ind.I Inf. Same Defendant

Magistrate Judge Case Number

Search Warrant Case Number R 20/R 40 from District of

Defendant Information:

Defendant Name Dzhokhar Anzorovich Tsarnaev

Juvenile: Yes

Is this person an attorney and/or a member of any state/federal bar: D NO

Alias Name Jahar Tsarnaev

Address (City & State) Cambridge, MA

Birth date (Yr only): 1993 SSN (last4#): 0491 Sex M Race: Caucasian

Nationality: USA

Defence Counsel if known: None

Address

Bar Number

U.S. Attorney Information: A USA William D. Weinreb

Interpreter: Yes Alope Chakravarty

List language and/or dialect:

Victims: [Duo]

If yes, are there multiple crime victims under 18 USC§377I (d) (2) Yes

Matter to be SEALED: Yes

Warrant Requested D

Regular Process D
In Custody

Location Status:

Arrest Date 04/19/2013

Already in Federal Custody as of 04/19/2013 in FBI-Beth Israel Hospital

D Already in State Custody waiting Trial

D On Pretrial Release:

Ordered by:

On

I hereby certify that the case numbers of any prior proceedings before a Magistrate Judge are accurately set forth above.

Date: 04/21/2013

JS 45 (5/97) (Revised U.S.D.C. MA 12/7/05)

District Court Case Number (To be filled in by deputy clerk):

Name of Defendant Dzhokhar Anzorovich TsarnaevTsarnaev

U.S.C. Citations

Index Key/Code Description of Offence Charged Count Numbers

Use of Weapon of Mass Destruction

Set 1 18 U.S.C 2332a (a)

Malicious Destruction of Property Resulting in Death

Set 2 18 U.S.C 844(i)".

Appendix Two

Relevant amendments to the United States

Constitution referred to in this article

First Amendment

The US Constitution has 27 (twenty-seven) amendments and the Constitution's original text and all prior amendments remain untouched by precedent in 1789 when Congress considered and proposed the first several Constitutional amendments, these being Amendments 1 to 10, collectively known as the Bill of Rights, and Amendments 13 to 15, known as the Reconstruction Amendments. The Bill of Rights offers specific protections of individual liberty and justice and place restrictions on the powers of government.

The First Amendment prohibits Congress from obstructing the exercise of certain individual freedoms, these being freedom of religion, freedom of speech, freedom of the press, freedom of assembly, and the right to petition.

The First Amendment includes a Free Exercise Clause which guarantees a person's right to hold whatever religious beliefs he or she wants, and to freely exercise that belief.

The First Amendment also includes an Establishment Clause which prevents the federal government from creating an official national church or favoring one set of religious beliefs over another.

The First Amendment guarantees an individual's right to express and to be exposed to a wide range of opinions and views. It was intended to ensure a free exchange of ideas even if the ideas are unpopular. It also guarantees an individual's right to physically gather with a group of people to picket or protest; or associate with others in groups for economic, political or religious purposes. It also guarantees an individual's right to petition the government for a redress of grievances. There are many instances of government information gathering can implicate First Amendment freedoms of speech, association, and religion

Fourth Amendment

Under the Fourth Amendment, search and seizure (including arrest) should be limited in scope according to specific information supplied to the issuing court, usually by a law enforcement officer who has sworn by it.

Fourth Amendment case law deals with three central questions: what government activities constitute search and seizure; what constitutes probable cause for these actions; and how violations of Fourth Amendment rights should be addressed.

Early court decisions limited the Fourth Amendment's scope to a law enforcement officer's physical intrusion onto private property, but after the decision in *Katz v United States*, 389 US 347 (1967), the Supreme Court held that its protections, such as the warrant requirement, extend to the privacy of individuals as well as physical locations. Law enforcement officers need a warrant for most search and seizure activities, but the Court has defined a series of exceptions for consent searches, motor vehicle searches, evidence in plain view, exigent circumstances, border searches, and other situations. The exclusionary rule is one way the amendment is enforced. Established in *Weeks v United States* (1914), this rule holds that evidence obtained through a Fourth Amendment violation is generally inadmissible at criminal trials. Evidence discovered as a later result of an illegal search may also be inadmissible as 'fruit of the poisonous tree' unless it inevitably would have been discovered by legal means.

It states:

'The right of the people to be secure in their persons, houses, papers, and effects,^[a] against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

Sixth Amendment

The Sixth Amendment (Amendment VI) to the United States Constitution is the part of the United States Bill of Rights that sets forth rights related to criminal prosecutions. The Supreme Court has applied the protections of this amendment to the states through the Due Process Clause of the Fourteenth Amendment.

It states:

'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the

nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.'

Fourteenth Amendment

The amendment addresses citizenship rights and equal protection of the laws, and was proposed in response to issues related to former slaves following the American Civil War.

It states:

Section 1 (14th Amendment)

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2 (14th Amendment)

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3 (14th Amendment)

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4 (14th Amendment)

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume

or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5 (14th Amendment)

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

ENDNOTES

- ¹ Sally Ramage is editor of *The Criminal Lawyer*, Bloomsbury Professional.
- ² Part One of this paper can be found in the Newsletter of the *Socio-Legal Studies Association*, June 2013 and in the *Law and Society Journal*, Justor.
- ³ The use, sale, and possession of cannabis (marijuana) in the United States is illegal but the federal government decided that if a state wants to pass a law to decriminalize cannabis for recreational use they can do so, but they need to have a regulation system in place for cannabis.
- ⁴ This means that the substance has been decided by the federal government to have both high abuse potential and no established, safe medical use.
- ⁵ Editor, ‘Nepal earthquake: Hundreds die, many feared trapped, *BBC News*, Saturday, 25 April 2015.
- ⁶ Editor, ‘Germanwings plane crash: Who were the victims?, *BBC News*, 27 March 2015.
- ⁷ The people of Boston, mostly Catholic, are hugely intolerant of foreigners and of other religions and this trial are feared to have sadly bolstered their intolerance.
- ⁸ No murder of three innocent persons and injuries to several others can ever be condoned. All murders are heinous, including the shooting dead of innocent and unarmed persons by police officers.
- ⁹ [1982] AC 510. Lord Diplock formulated a standard direction to a jury based on reckless manslaughter.
- ¹⁰ Sally Ramage, (2008) ‘Witchcraft, Lollardy and the meaning of evil, *The Criminal Lawyer*, Tottel Publishing, Issue No 187, November/December 2008, at pages 9-10.
- ¹¹ **Lollardy** was a political and religious movement that existed from the mid-14th Century to the English Reformation.
- ¹² **2 All ER 43, House of Lords.**
- ¹³ The House of Lords reminded the court that the presumption *doli incapax* was abolished in English by the Crime and Disorder Act 1998, and that judges, even though they have discretion in decision-making, should beware of imposing a

remedy where the solution to a problem is doubtful; and judges should not lightly set aside fundamental legal doctrines nor change the law unless they can achieve finality and certainty.

¹⁴ Violent crime of any degree is terrible, but this was not an act of military terror, but a sole actor like the US Unabomber and the UK nail-bomber.

¹⁵ See Danziger, D. and Gillingham, J. (2004) *1215 The year of Magna Carta*, London: Hodder & Stoughton.

¹⁶ See *Furman v Georgia* 408 US 238 (1972); *Gregg v Georgia* 428 US 153 (1976) and *Woodson v North Carolina* 428 US 280 (1976).

¹⁷ Horder, J. (2007) *Homicide Law in comparative perspective*, Oxford: Hart Publishing, at pg 83. (Jeremy Horder was Law Commissioner for England and Wales, UK).

¹⁸ Muncie, J. and McLaughlin, E. (2001) *The problem of crime*, London: Sage Publications, chapter 2, pgs 110-114.

¹⁹ Benjamin Rush was born December 24, 1745 near Philadelphia. His great-great-grandfather John Rush was an officer in Cromwell's army. In 1683 at the age of 63, he became a Quaker and emigrated from England to Pennsylvania, with his children and grandchildren.

²⁰ Benjamin Rush was a social activist, a prominent advocate for the abolition of slavery, and advocate for education for the masses, for public clinics to treat the poor and compassionate treatment for the mentally ill. See <http://www.dsdi1776.com/signers-by-state/benjamin-ross/>, accessed 1.2.2014.

²¹ See <https://www.walden.org/Explore/>

²² 408 US 238 (1972). In 1972, William Henry Furman, a 26-year-old African American, had broken into a house in Savannah, Georgia. The homeowner discovered Furman presence, and realized Furman was carrying a gun on his person. After realizing he had been caught, Furman ran away, he tripped, "accidentally" firing the gun. The homeowner, William Joseph Micke, died on the

spot. After a quick, one day long trial in Chatham County, Georgia, Furman was found guilty of murder and faced the death penalty.

²³ 428 US 153 (1976).

²⁴ Masur, L.P. (1989), *Rites of Execution: Capital punishment and the transformation of American culture, 1776-1865*, New York: Oxford University Press.

²⁵ Editor, (2004) ‘Embedded information in electronic documents’, *Applied Discovery –LexisNexis*. See www.lexisnexis.com/applieddiscovery/, accessed 30.4.2013.

²⁶ In Formal Opinion 05-437, the American Bar Association’s Standing Committee on Ethics and Professional Responsibility pointed out that while Rule 4.4(b) obligated the receiving lawyer to notify the sender of the inadvertent transmission promptly, the Rule did ‘*not require the receiving lawyer either to refrain from examining the materials or to abide by the instructions of the sending lawyer.*’ Comment 2 to Model Rule 4.4 explains that ‘*whether the lawyer is required to take additional steps, such as returning the original document, is a matter of law beyond the scope of these Rules, as is the question of whether the privileged status of a document has been waived.*’

²⁷ Adam Hersh, ‘FBI: We Gave Flawed Testimony in 6 Pennsylvania Death Row Cases,’ *Philadelphia Magazine*, April 22, 2015. See ‘Innocence and Arbitrariness.’

²⁸ Chidanand Rajghatta, ‘FBI hunt for men isolated in video grab; no arrests yet’, *Times of India*, 18 April 2013.

UNSCR 1373 is a counter-terrorism measure passed following the 11 September terrorist attacks on the United States in 2001. The resolution was adopted under Chapter VII of the United Nations Charter, and is therefore binding on all UN member states. Article 2 (e) ‘ensures that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensures that, in addition to any other measures against them, such terrorist acts are established as serious criminal

offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts’.

²⁹ Of people of different religious traditions.

³⁰ Editor, ‘News Corp won’t be prosecuted- US in relation to phone hacking’, The Guardian Newspaper, Monday, 2 February 2015. It was revealed that News Corporation has been notified that the company will not face charges in the United States (‘US’) in relation to phone hacking and payments to public officials by the US authorities. See also US SEC Form 8-K, News Corporation at www.investors.newscorp.com/secfiling.cfm? FilingID=1299933-15-161&C1K=1564708, accessed 23-2-2015.

³¹ Richard L. Cassin, ‘DOJ declinations for News Corp and 21st Century Fox’, FCPA Blog, 3 February 2015. See www.fcpablog.com/2015/2/3/doj-declinations-for-news-corp-and-21st-cwntury-fox.html, accessed on 23-2-15. According to Wall Street Journal, a publication owned by News Corp and 21st Century Fox, an amount of \$551 million had been spent to June 2013⁴ in settlement and legal fees connected to the UK phone hacking scandal.

³² Wells, C. (2011) Abuse of process, Bristol: Jordan Publishing Ltd, at chapter 9 on adverse publicity. See Choo, A. (2008) Abuse of Process and Judicial Stays of Criminal Proceedings, New York: Oxford University Press, at chapter 1.

³³ See Young, D., Summers, M., Corker, D., Evans, M., and Bafadhel, S. (2014) Abuse of Process in Criminal Proceedings, West Sussex: Bloomsbury Professional, at page 370, where, in the case *A-G v News Group Newspapers* [1987] QB1, Sir John Donaldson, Master of the Rolls said at para 16: ‘*Proximity to the trial is clearly a factor of great importance and this trial will not have taken place for another ten months by which time many wickets will have fallen, not to mention much water having flowed under many bridges, all of which would blunt the impact of publications..*’

³⁴ McQuigg, R.J.A. (2014) *Bill of Rights: A comparative perspective*, Cambridge: Intersentia Publishing., at pgs 189-196.

³⁵ The obligation to bring terrorists to justice is specified by article 2 (e) of the United Nations Security Council Resolution ('UNSCR') 1373.

³⁶ Editor, 'Trial of Boston Bomber's friend', *Associated Press*, 24 October 2014. Robel Phillipos was a college friend of the alleged Boston Marathon bomber Dzhokhar Tsarnaev, and he was charged because he lied to the FBI about his whereabouts. Defence attorney Derege Demissie represented him at his trial in Boston on 27 October 2014. He faces a potential 16-year-prison sentence for lying to the FBI about his whereabouts on the night when Dzhokhar Tsarnaev was allegedly escaping from police.

³⁷ Tamerlan Tsarnaev, aged 26 in 2013, died after a gunfight with police. His younger 19-year-old brother Dzhokhar Tsarnaev was badly wounded, full of gunshots, later arrested and treated in one prison hospital, then moved to a second hospital.

³⁸ Three people were killed and more than dozens injured on 15 April 2013 when two bombs exploded near the marathon's finish line.

³⁹ One friend allegedly threw this backpack in the garbage, and it allegedly wound up in a landfill in Bedford, Massachusetts, where law enforcement officers allegedly discovered it with fireworks inside.

⁴⁰ Bridget Murphy and Denise Lavoie, 'FBI: 3 removed backpack from suspect's room', *Associated Press*, 2.3.13.

⁴¹ In January 2013, Azamat Tazhayakov had been allowed to re-enter the US from Kazakhstan despite not having a valid student visa, *a federal law enforcement official told The Associated Press*. Azamat Tazhayakov's student visa status had been terminated because he had been academically dismissed from the university, *said the official, 'who was not authorised to discuss the case and spoke on condition of anonymity'*.

⁴² Editor, 'FBI admits forensic evidence errors in hundreds of cases', *BBC News*, 20 April 2015.

See <http://www.bbc.co.uk/news/world-us-canada-32380051>, accessed 21 April 2015.

⁴³ Editor, 'Fury of former friends of "gentle" Boston bomber Dzhokhar Tsarnaev as they turn from defending him to lashing out at horror of attack that killed four', *Daily Mail*, 23 February 2015.

See www.dailymail.co.uk/news/article=2964010/, accessed 23-2-15.

⁴⁴ Denise Lavoie, 'Robel Phillipos, Boston bombing suspect's friend, convicted of lying to FBI', *Huff Post*, 28 October 2014. See www.huffingtonpost.com/2014/10/28/bombing-suspects-friend-convicted-n-6061096.html, accessed on 1-11-14. Two other friends of Tsarnaev were charged, tried and convicted of the criminal offences of 'conspiracy' and 'obstruction of justice'.

⁴⁵ Tsarnaev is being legally represented by attorneys Judy Clarke, William Fink and Timothy Watkins.

⁴⁶ An old term given to 'something that seems very good when it is first received, but in fact does great harm to the person who receives it'. (Cambridge English Dictionary).

⁴⁷ Koehler, S.A., Moore, P. and Owen, D. (2009) *Jumped, fell or pushed*, London: Reader's Digest, at chapter 6.

⁴⁸ Of people of different religious traditions.

⁴⁹ Editor, 'News Corp won't be prosecuted- US in relation to phone hacking', *The Guardian Newspaper*, Monday, 2 February 2015. It was revealed that News Corporation has been notified that the company will not face charges in the United States ('US') in relation to phone hacking and payments to public officials by the US authorities. See also US SEC Form 8-K, News Corporation at www.investors.newscorp.com/secfiling.cfm? FilingID=1299933-15-161&C1K=1564708, accessed 23-2-2015.

⁵⁰ Richard L. Cassin, 'DOJ declinations for News Corp and 21st Century Fox', *FCPA Blog*, 3 February 2015. See www.fcpablog.com/2015/2/3/doj-declinations-for-news-corp-and-21st-cwntury-fox.html, accessed on 23-2-15. According to *Wall Street Journal*, a publication owned by News Corp and 21st Century Fox, an amount of \$551 million had been spent to June 20134 in settlement and legal fees connected to the UK phone hacking scandal.

⁵¹ Wells, C. (2011) *Abuse of process*, Bristol: Jordan Publishing Ltd, at chapter 9 on adverse publicity. See Young, D., Summers, M., Corker, D., Evans, M., and Bafadhel, S. (2014) *Abuse of Process in Criminal Proceedings*, West Sussex: Bloomsbury Professional, chapters 9 and 10. See Choo, A. (2008) *Abuse of Process and Judicial Stays of Criminal Proceedings*, New York: Oxford University Press, at chapter 1.

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⁵⁵ Denise Lavoie, 'Robel Phillipos, Boston bombing suspect's friend, convicted of lying to FBI', *Huff Post*, 28 October 2014. See www.huffingtonpost.com/2014/10/28/bombing-suspects-friend-convicted-n-6061096.html, accessed on 1-11-14. Two other friends of Tsarnaev were charged, tried and convicted of the criminal offences of 'conspiracy' and 'obstruction of justice'.

⁵⁶ Tsarnaev is being legally represented by attorneys Judy Clarke, William Fink and Timothy Watkins.

⁵⁷ See *Williams v Taylor*, 529 U.S. 362 (2000).

⁵⁸ A *habeas corpus* is a legal writ, a feature of UK and US law that protects an individual against arbitrary imprisonment by requiring that any person arrested be

brought before a court for formal charge. When the writ is executed, the court hears the complaint under which the person has been detained and rules on the validity of the arrest. If the charge is considered valid, the person must submit to trial; if not, the person goes free. So, when a lawyer threatens, "I will slap a habeas corpus on you so fast, it will make your head swim", full protection of the law is being sought for the accused. See Ehrlich, E. (1999), *Nil desperandum*, (7th edn.), London: BCA Publishers.

⁵⁹ Section 2254 (d (1)).

⁶⁰ Editor, 'Judge denies Tsarnaev lawyers' motion to delay trial in wake of Charlie Hobo attack', *UK Guardian*, 14 January 2015.

⁶¹ Wrightsman, L.S. (1999) *Judicial decision making*, New York: Kluwer Academic/Plenum Publishers, Chpt 6.

⁶² Joan Vennoch, 'The judge who wants to move the Tsarnaev trial', *Boston Globe*, 24 February 2015. See www.bostonglobe.com/opinion/2015/02/23, accessed on 24-2-15.

⁶³ Denise Lavoie, 'Tsarnaev lawyers ask US Appeals Court to move bombing trial', *Associated Press*, 19 February, 2015. See www.wbur.org/2015/02/19/tsarnaev-asks-appeals-court-move-trial accessed on 19-2-15.

⁶⁴ It was reported that in one example, a male juror had admitted to the judge that his wife is a nurse

In addition, she had treated victims in an intensive care unit on the day of the bombings. It is to be noted that this jury selection has not yet been completed and that there is a final stage of the selection process of this *voir dire* to be completed. Initially the number of potential jurors was 1, 373, reaching 61 before the final stage of choosing the jury.

⁶⁵ (2004) 542 US 507. Hamden was an American citizen whom the Government had classified as an 'enemy combatant' for allegedly taking up arms with the Taliban in Afghanistan. He was captured in Afghanistan and was detained at a naval brig in Charleston. Hamdi's father filed *Habeas Corpus* but it was decided that, because it was undisputed that Hamdi was captured in an active combat zone, no factual

inquiry or evidentiary hearing would be necessary for Hamzi to be heard or for him to be able to rebut the Government's assertions.

⁶⁶ (2004) 542 U.S. 426. The facts in this case were that Padilla, a US citizen, was detained under warrant in federal criminal custody. He filed a motion to vacate the warrant but in the meantime, the US President issued an order to US Secretary of Defence, Ronald Rumsfeld, designating Padilla an 'enemy combatant' and directing that he be detained in military custody. Later he was moved to a navy brig, at which point his defence attorney filed a *habeas corpus* in the Southern District. The court accepted the Government's contention that the US President has authority as Commander in Chief to detain as 'enemy combatants' citizens captured on US soil during a time of war. The Second Circuit agreed that the US Secretary of Defence was a proper respondent and that the Southern District had jurisdiction over the US Secretary of Defence under New York's long-arm statute. The Court of Appeal reversed on the merits, holding that the US President lacked authority to detain Padilla militarily.

⁶⁷ Vladeck, S., 'Habeas Corpus, US citizens and Iraq: why *Omar* and *Munaf* matter', *American University Washington College of Law*, 4 October 2008. It has long been settled that US citizens have a constitutional right to the writ of *habeas corpus* in order to access the federal courts to challenge executive detention.

⁶⁸ Anti-Semitism and the persecution of Jews represented a central tenet of Nazi ideology.

⁶⁹ Many of those laws were national ones that had been issued by the German administration and affected all Jews. But state, regional, and municipal officials, on their own initiative, also promulgated a barrage of exclusionary decrees in their own communities. Thus, hundreds of individuals in all levels of government throughout the country were involved in the persecution of Jews as they conceived, discussed, drafted, adopted, enforced, and supported anti-Jewish legislation. Then at their annual party rally held in Nuremberg in September 1935, the Nazi leaders announced new laws which institutionalized many of the racial theories prevalent in Nazi ideology. *These 'Nuremberg Laws' excluded German Jews from Reich*

citizenship and prohibited them from marrying or having sexual relations with persons of ‘German or German-related blood.’

⁷⁰ Michael Zenne, ‘Thomas Menino dead at 71: Longtime Boston mayor who led city through marathon bombing succumbs to cancer’, *Daily Mail*, 30 October 2014. See <http://www.dailymail.co.uk/news/article-2814445/> accessed 1 November 2014.

⁷¹ Counselling help at website

http://www.nasponline.org/resources/crisis_safety/helpingchildrencope.aspx.

⁷² Chris Parsons, ‘Boston Marathon suspect SHOT DEAD as police hunt second terrorist after fatal shooting of police officer’, *Yahoo News*, 19 April 2013, accessed on 19.04.2013. See <http://uk.news.yahoo.com/boston-shooting--one-man-dead-but-marathon-bombing-suspect-still-at-large-083644140.html#h5tTDf1>.

⁷³ Dominic Waghorn, ‘Boston marathon bombings: suspects on CCTV’, *Sky News Online*, 19 April 2013.

⁷⁴ According to Gordon Lederman, September 11 Commission Intelligence Reform staff member. Lederman was Majority Staff Counsel on the Senate Homeland Security and Governmental Affairs Committee. He is Former Director of Legal Affairs for the Project on National Security Reform in Washington, DC. The Project is a non-partisan, non-profit initiative funded by Congress and the Executive Branch to recommend reorganization of the U.S. Government to enable it to meet 21st Century national security threats. Gordon supervised a team of four full-time attorneys. Today he is associate chief director and chief counsel at the United States Senate in Washington DC, in the District of Columbia, U.S.

⁷⁵ Richard Brust, ‘Insider threats’, *American Bar Association Journal*, July 2012, pgs 42-49.

⁷⁶ *Ibid* 10.

⁷⁷ Editor, ‘Tsarnaev friend convicted of lying to FBI after Boston Marathon bombing’, *Associated Press*, 28 October 2014. See <http://>

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⁷⁸ See my article, cited in the federal government report on the US housing crisis and frauds that did not actually kill any person, but made several hundreds of thousands of US citizens bankrupt and homeless, many forced to live in the woods and in the streets of this great nation.

⁷⁹ Contrary to *Kyllo v United States* 533 US 27 (2001). A warrantless search of a 'home' or 'private property' is unreasonable because it can be argued that a Fourth Amendment search has taken place.

⁸⁰ *Olmstead v US*, 277 US 438 (1928).

⁸¹ This is known as the *trespass doctrine* in federal law; in *Katz v US*, 389 US 347 (1967) the court decided that 'what a person seeks to preserve as private even in an area accessible to the public, may be constitutionally protected'. Tsarnaev was badly injured. He was preserving his physical body in a private boat, not owned by him, but a private place, nevertheless.

⁸² See *Williams v Taylor*, 529 U.S. 362 (2000).

⁸³ A *habeas corpus* is a legal writ, a feature of UK and US law that protects an individual against arbitrary imprisonment by requiring that any person arrested be brought before a court for formal charge. When the writ is executed, the court hears the complaint under which the person has been detained and rules on the validity of the arrest. If the charge is considered valid, the person must submit to trial; if not, the person goes free. So, when a lawyer threatens, "I will slap a habeas corpus on you so fast, it will make your head swim", full protection of the law is being sought for the accused. See Ehrlich, E. (1999), *Nil desperandum*, (7th edn.), London: BCA Publishers.

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¹⁰² **Editor, ‘Tsarnaev friend convicted of lying to FBI after Boston Marathon bombing’, *Associated Press*, 28 October 2014. See <http://www.theguardian.com/us-news/2014/oct/28/friend-dzhokhar-tsarnaev-convicted-boston-marathon>, accessed on 30.11.2014.**

¹⁰³ **See my article, cited in the federal government report on the US housing crisis and frauds that did not actually kill any person, but made several hundreds of thousands of US citizens bankrupt and homeless, many forced to live in the woods and in the streets of this great nation.**

¹⁰⁴ **Contrary to *Kyllo v United States* 533 US 27 (2001). A warrantless search of a ‘home’ or ‘private property’ is unreasonable because it can be argued that a Fourth Amendment search has taken place.**

¹⁰⁵ ***Olmstead v US*, 277 US 438 (1928).**

¹⁰⁶ **This is known as the *trespass doctrine* in federal law; in *Katz v US*, 389 US 347 (1967) the court decided that ‘what a person seeks to preserve as private even in an**

area accessible to the public, may be constitutionally protected'. Tsarnaev was badly injured. He was preserving his physical body in a private boat, not owned by him, but a private place, nevertheless.

¹⁰⁷ Editor, 'Accused Boston bombers used Cambridge arsenal in final fight: prosecutors', *Reuters*, 3 June 2014. Now federal prosecutors have filed this in court as a fact. If they had engaged in a gun battle with police why was nothing found in, the SUV after Tamerlan was shot and died and severely wounded Dzhokhar had abandoned the SUV on foot and crawled into someone's boat to hide? Why did one thousand police officers not go after him? Was it because they knew that he was so badly shot that he would die anyway? In addition, where is this 'arsenal'? And what of fingerprints etc? Are police fingerprints on this 'arsenal'?

¹⁰⁸ It is of note that UK police officers are forbidden from speaking their mind to the press and only a senior officer would be able to give the press a carefully scripted and measured report of the progress of the incident.

¹⁰⁹ See Harris, D. A. (2012) *Understanding failed evidence: why law enforcement resists science*, New York: New York University Press. Police tend to incentivise testing because it sounds like confession testimony and is often rich in detail, thus convincing, yet police often fail to comply with protocols and best practice. Police have the most leverage in shaping the way that the criminal justice system works.

¹¹⁰ Tamerlan Tsarnaev, 26, was an amateur boxer who was said to have taken a break from his college studies to train for a boxing competition.

¹¹¹ Many criminological theorists today consider poverty to be a key predictor of an individual's involvement in crime. In this case, poverty of the defendant in this wealthy city of Boston, means a sort of social exclusion or lack of economic resources or material deprivation, not necessarily meaning 'social isolation'. See chapter 14, Poverty and exclusion, in Coomber, R., Donnermeyer, J.F., McElrath, K., and Scott, J. (2015) *Key concepts in Crime and Society*, London: Sage Publications.

Chechnya's infrastructure has been affected by years of war between separatists and Russian forces, banditry and organised crime. Improved security situation has

led to increased investment in reconstruction projects. However, sporadic attacks by separatists continue. Dagestan, a southern Russian republic is famed for ethnic and linguistic diversity. Dagestan has oil reserves and a manufacturing sector, but it is said that rampant corruption and organised crime is to be found.

¹¹³ 372 US 335, 344-345 (1963).

¹¹⁴ 304 US 458 (1938).

¹¹⁵ See also, Jennifer Lebitz, ‘Citing ‘Fish’ Case at High Court, Judge Puts Boston Bombing Sentencing On Hold’, *Wall Street Journal*, 4 November 2014.

¹¹⁶ Klarman, M., Skeel, D., and Steiker, C. (2012) *The Political Heart of Criminal Procedure*, New York: Cambridge University Press, pg.11.

¹¹⁷ Beck, A.T; Brown, G.K.; Steer, R.A. (1997) ‘Psychometric characteristics of the Scale for Suicide Ideation with psychiatric outpatients’, *Behaviour Therapy*, 35:1039–1046.

¹¹⁸ Article by Miller in the *Boston Globe* on 27 April 2013.

¹¹⁹ Editor, ‘Ex-high school football player suing IHSA over concussions wants safer game - Elgin Courier-News’, *Chicago Tribune*, 23.04.2015. See also, Stefan Fatsis, ‘Coming to their senses: US soccer finally admits that Abby Wambach’s concussion was mishandled’, *Slate*, 23.04.2015 at http://www.slate.com/articles/sports/sports_nut/2013/05/abby_wambach_concussion_u_s_soccer_finally_admits_that_the_star_player_s.html, accessed 23.04.2015.

¹²⁰ With regard to brain injury, see Lewis, D.O. (1998) *Inside the mind of killers: Guilty by reason of insanity*, New York: Ballentine Publishing Group. Dr Lewis states in her book (and DVD) that in similar cases a neurologist should have been called to give expert witness at the court trial (had Tamerlan Tsarnaev survived, that is).

¹²¹ Dr Michael Craig Miller is former editor-in-chief of the *Harvard Mental Health Letter* and a psychiatrist at Beth Israel Deaconess Medical Centre.

¹²² An Imam is an Islamic community leader. The word Imam is commonly used in the context of a worship leader of a mosque for Sunni Muslims, and Tamerlan was

from a Sunni Muslim family in Russia. Imams usually lead Islamic worship services; serve as community leaders; and provide religious guidance.

¹²³ It is of note however; that the pathologist who discovered Charles Whitman's tumours said it was not related to his violent tear. He called Whitman a psychopath of the worst kind; although it must be noted that a pathologist is not a psychiatrist or a psychologist- just a pathologist. There should have been at least two examinations of Miller's brain by two different pathologists to examine whether the tear was caused after death or before death.

¹²⁴ To this day, any psychiatrist has not examined Mr Dzhokhar Tsarnaev as to his fitness to plead.

¹²⁵ It is noted here that a psychiatrist cannot now be called as an expert witness to assess the damage to Mr D Tsarnaev. The then hospital patient nor can an expert witness now e called to assess the deviation from the standard of care that Mr Dzhokhar Tsarnaev received in April 2013 when the FBI interrogated him in his hospital bed with a police gunshot bullet removed from his throat because he should have been assessed before any interrogation took place. We do not know what lies are contained in his medical notes made at that hospital or whether or not any medical noted were forged, counterfeited or destroyed since April 2013. We do not know whether Mr Dzhokhar Tsarnaev had been given, without his consent, any medication such as *Amital* or who prescribed any medication (without Tsarnaev's consent) or the true extent of Mr D Tsarnaev's injuries as they remain today.

¹²⁶ *Miranda v Arizona*, 384 US 436 (1966).

¹²⁷ See Appendix Two.

¹²⁸ Pre-released to newspapers in a statement on Friday 19 April, 2013. These breaches of Fifth Amendment Rights of Tsarnaev, as he was in police custody in hospital, are a travesty against his human rights to a fair trial and should be inadmissible in a court of law. He should have been told by police in hospital that this was not a friendly chat; that he was under arrest but because of his severe injuries, he had been taken to a hospital and that he had the right to remain silent;

and anything he said can and will be used in a court of law; that he had the right immediately to an attorney; and that one could be appointed for him, seeing that he was severely incapacitated;

³¹ Unofficial leaks to newspapers were that Tamerlan Tsarnaev's name was spelt incorrectly on his travel documents. This 'fact' can easily be verified or disputed from airline computers and Tsarnaev's passport.

¹³⁰ His two friends have since been arrested.

¹³¹ Here again, the police had no right to collect statements from anybody to be used in a criminal trial unless they informed them beforehand that their statement was to be used, as evidence in a federal criminal case. It may even be a breach of people's right to privacy, the recognition of which is deeply rooted in history. There is recognition of privacy in the Quran and in the sayings of Mohammed. The Bible has numerous references to privacy. Jewish law has long recognised the concept of being free from being watched. In 1890, American attorneys Samuel Warren and Louis Brandeis wrote a seminal piece on the right to privacy as a tort action, describing privacy as 'the right to be left alone'. The International Covenant on Civil and Political Rights, article 17, upholds privacy as does the 1948 Universal Declaration of Human Rights, Article 12.

¹³² Rules of evidence govern whether information in a case may be presented, when it is presented, and in what form. The rules of evidence are very tightly drawn within the criminal law.

¹³³ Then Dzhokhar Anzorovich Tsarnaev, also injured by police bullets, fled on foot, having abandoned the SUV.

¹³⁴ Whilst the FBI might have hoped to use the conviction of Tsarnaev's friends' conviction as evidence against him, the matter of this strategy may have been somewhat scuppered, at least temporarily. Editor, 'Judge delays sentencing in Tsarnaev friends' cases', Boston Globe, 7 Nov 2014. See <http://www.bostonglobe.com/metro/2014/11/07/supreme-court-case-could-impact-sentencing-friends-accused-boston-marathon-bomber/JusRpo0F67ahMV5HvHZhcL/story.html>, accessed 1 Dec 2014.

¹³⁵ **In the US, those awaiting sentence of death are called 'death row inmates', and are incarcerated in maximum security prisons where they have very little, in any, contact with other prisoners. The principle of extreme isolation has its roots in the ethos of Eastern State Penitentiary and violates prisoner's human rights. (Haney, 2008).**

¹³⁶ **This statement was more prejudicial than probative, ie, it does little to prove one side's case, while tending to make a party look bad or immoral.**

¹³⁷ **There are rules relating to facts described by a witness arising not directly from their own experience but from what they have heard from others and hearsay is usually excluded in criminal proceedings because the weight of this evidence cannot be tested for reliability by cross-examination.**

¹³⁸ **It is noted that neither the Boston police authority nor the FBI has made efforts to seek out any radical Islamists in Boston, if indeed there are any. It seems that the FBI stated initially that this was not a terrorist-related incident, and later maintained the same conviction that Tsarnaev acted alone or only with his brother, which is why the FBI focused their attention on Dzhokhar Tsarnaev's friends to establish his movements at the time of the incident. They knew that Tamerlan Tsarnaev was a loner.**

¹³⁹ **Patrick Martin, 'Who is Ruslan Tsarni', *World Socialist Web Site*, 29 June 2013. See www.wsws.org/en/article/2013/06/29/bos2-j2s, accessed 1.1.2014.**

¹⁴⁰ **...which guarantees the right to remain silent and the right to a lawyer.**

¹⁴¹ **Boston's Mayor Menino was careful not to use the word 'suspect' or 'terrorist' and his statement sounds sincere, which causes one to believe that the younger Tsarnaev brother was indeed very seriously wounded by the FBI.**

¹⁴² **See also 'Appendix Two' attached.**