

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Criminal Action
	)	No. 13-10200-GAO
	)	
DZHOKHAR A. TSARNAEV, also	)	
known as Jahar Tsarni,	)	
	)	
Defendant.	)	
	)	

BEFORE THE HONORABLE GEORGE A. O'TOOLE, JR.  
UNITED STATES DISTRICT JUDGE

**STATUS CONFERENCE**

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Monday, September 23, 2013  
10 a.m.

Marcia G. Patrisso, RMR, CRR  
Official Court Reporter  
John J. Moakley U.S. Courthouse  
One Courthouse Way, Room 3510  
Boston, Massachusetts 02210  
(617) 737-8728

Mechanical Steno - Computer-Aided Transcript

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES:

OFFICE OF THE UNITED STATES ATTORNEY  
By: William D. Weinreb, Alope Chakravarty and  
Nadine Pellegrini, Assistant U.S. Attorneys  
John Joseph Moakley Federal Courthouse  
Suite 9200  
Boston, Massachusetts 02210  
On Behalf of the Government

FEDERAL PUBLIC DEFENDER OFFICE  
By: Miriam Conrad, Esq.  
Timothy G. Watkins, Esq.  
51 Sleeper Street  
Fifth Floor  
Boston, Massachusetts 02210

- and -  
CLARKE & RICE, APC  
By: Judy Clarke, Esq.  
1010 Second Avenue  
Suite 1800  
San Diego, California 92101  
On Behalf of the Defendant

1 P R O C E E D I N G S

2 THE CLERK: All rise.

3 (The Court enters the courtroom at 9:59 a.m.)

4 THE CLERK: The United States District Court for the  
5 District of Massachusetts.

6 Court is in session. Be seated.

7 For an initial status conference, the case of United  
8 States versus Dzhokhar Tsarnaev, Docket 13-10200. Will counsel  
9 identify yourselves for the record.

10 MR. WEINREB: Good morning, your Honor. William  
11 Weinreb for the United States.

12 MR. CHAKRAVARTY: Alope Chakravarty for the United  
13 States.

14 MS. PELLEGRINI: Nadine Pellegrini for the United  
15 States.

16 THE COURT: Good morning.

17 MS. CONRAD: Good morning, your Honor. Miriam Conrad,  
18 federal public defender for Mr. Tsarnaev. And with me are Judy  
19 Clarke and assistant public defender Tim Watkins.

20 THE COURT: Good morning. Thank you for the status  
21 report. I appreciate that.

22 Let's start with whatever issues there may be with  
23 respect to discovery. I guess maybe the place to start is with  
24 the defense, who indicated there may be some -- you may be  
25 interested in something beyond what you've already gotten. Is

1 that right?

2 MS. CONRAD: Yes, your Honor. We do plan to deliver,  
3 hopefully by the close of business today, to the government a  
4 fairly detailed discovery request letter. But this is not  
5 going to be the be-all and end-all discovery request in this  
6 case.

7 We received automatic discovery -- what the government  
8 defines as automatic discovery on September 3rd. This included  
9 a large amount of digital evidence, including videos and  
10 computer and telephone hard drives, but also a number of  
11 reports of interviews with witnesses that we're going through.

12 Notably, missing from that discovery is information  
13 such as interviews or grand jury testimony of family members  
14 and other information that would -- we would deem to be  
15 relevant and, in fact, potentially exculpatory with respect to  
16 sentencing.

17 So the biggest sort of philosophical dispute we have  
18 with the government right now is the timing of disclosure of  
19 information that would tend to support mitigation of  
20 punishment, which, of course, is defined under *Brady* as  
21 exculpatory evidence.

22 It is particularly -- well, I think I would just note,  
23 your Honor, that the local rules don't really address the  
24 procedure for disclosure of mitigating evidence in a death  
25 penalty case. There is timing for disclosure of mitigation in

1 a usual case, but that timing doesn't really work in a  
2 potential death penalty case where we are obligated to make a  
3 presentation to the U.S. Attorney and to the Department of  
4 Justice in the coming months about reasons why the government  
5 should not seek the death penalty in this case.

6 There are other issues that are relatively less  
7 global, if you will, or philosophical in nature, such as  
8 questions regarding some of the digital evidence, questions  
9 regarding some of the redactions -- in some cases extensive  
10 redactions -- that have been made by the government which we  
11 feel are unnecessary, especially in light of the fact that we  
12 have a fairly restrictive protective order in place with  
13 respect to the discovery that we have received.

14 Can I just check with my co-counsel for a moment to  
15 see if I've missed anything?

16 (Pause.)

17 THE COURT: No?

18 MS. CONRAD: That's it for discovery, your Honor.

19 Sorry.

20 THE COURT: Mr. Weinreb?

21 MR. WEINREB: Your Honor, it's the government's view  
22 automatic discovery is complete. And although we haven't yet  
23 received this letter from the defense, I've heard nothing  
24 mentioned to date that would fall into the category of  
25 automatic discovery.

1           We have provided a great deal of information, in our  
2 view, all of the information that we were required to produce  
3 under the law. And we've also produced a great deal of  
4 additional information just in the event the defense finds it  
5 useful in preparation for defense.

6           We produced a very detailed index to that information;  
7 in fact, it's the same index we prepared for ourselves and  
8 shared with the defense. And there is a quantity of evidence  
9 that has been made available to them at this point just for  
10 inspection and review, meaning we haven't actually given them  
11 copies of things.

12           And we actually do intend, over the coming weeks, just  
13 as a courtesy to the defense, to produce copies of things that  
14 right now are available for inspection and review. But not  
15 because they are automatic discovery in our view, simply  
16 because it will expedite the case.

17           Until we get the request from the defense along with  
18 whatever legal basis they're going to cite for anything else  
19 they believe they deserve, I can't really comment on the  
20 government's position on those matters.

21           THE COURT: Well, we'll let that, I guess, take its  
22 course when the formal request is made, and then we'll get a  
23 formal response, and I guess we'll deal with that.

24           You've, in the status report, suggested some timing  
25 for that. That seems fine. The defense submission today, and

1 then I guess it's basically two weeks for the government to  
2 respond. I'm not sure -- well, I won't fine-tune it, I guess.

3 I'm not sure we need to wait after the government's  
4 response another two weeks for a motion since you know what you  
5 want and you'll know what they have said should be possible to  
6 generate the motion, but for the sake of a week or two, I'll go  
7 by your dates.

8 And then I think, just to jump ahead to that, we can  
9 set a status conference. You suggested jointly the 12th of  
10 November. We actually have matters scheduled then, but the  
11 13th, the next day, is open for us. So if that's okay with  
12 counsel, I'd like to schedule it in the afternoon of the 13th  
13 of November at two o'clock.

14 MR. WEINREB: That's fine with the government, your  
15 Honor.

16 MS. CONRAD: Your Honor, Ms. Clarke has obligations  
17 out of state on the 13th. If it would be possible to either  
18 schedule it -- if it would be possible to schedule it in the  
19 morning on the 13th, then that would accommodate her travel  
20 schedule, if your Honor would be so kind.

21 THE COURT: Yes, we could do that, I think. Let me  
22 just get the date here.

23 (Pause.)

24 THE COURT: That's fine. If we could do it in the  
25 morning -- then let's make it ten o'clock in the morning on the

1 13th.

2 MR. CHAKRAVARTY: Your Honor, we'd expect to have  
3 argument on any motions that we've filed?

4 THE COURT: Yes. We'll let you know that beforehand,  
5 but, yes, that's -- I mean, the timing is such that it would be  
6 appropriate to do that. I wouldn't see any reason not to.

7 MR. WEINREB: Your Honor, as long as we're on the  
8 business of scheduling, I would just like to add that the  
9 defense has indicated that these are preliminary discovery  
10 requests, they may have additional ones. And I understand from  
11 things counsel has said on the phone that some of those may be  
12 relatively uncontroversial in the sense of they have video but  
13 lack the Kodak that's necessary to view a particular piece of  
14 video, or there's something redacted that they want unredacted.

15 We are happy to entertain those in the meantime --  
16 there's no need to resolve the initial discovery request --  
17 before we get to the next round, if the next round really  
18 doesn't have to deal with the resolution first round. So we  
19 would be more than happy to have those as soon as they're ready  
20 and be prepared to discuss them and, if necessary, argue them  
21 at this status hearing.

22 MS. CONRAD: That's fine, your Honor. That's what we  
23 anticipated doing.

24 THE COURT: Okay. The more we can do that day, the  
25 better.

1           With respect to -- let me just say something about the  
2 protective order that has been entered, jointly proposed by the  
3 parties, and, more generally, about sealing matters in the  
4 case.

5           As Judge Bowler indicated in one of her conferences  
6 with counsel, she was concerned about the level of sealing and  
7 urged people to look at that. And you know that since then  
8 I've entered an order unsealing some of the matters that have  
9 been sealed.

10           Unfortunately, our local rule with respect to the  
11 impoundment of documents predates CM/ECF and other  
12 technological advances and needs to be reconsidered. And our  
13 local rules committee is going to undertake that. But pending  
14 that, I thought it would be appropriate to have an  
15 order regarding -- a procedural order regarding sealed motions.  
16 And really, it won't be particularly surprising to anyone.  
17 It's simply going to try to add some order to the process.

18           In brief, I anticipate that the order will say that  
19 before something can be filed under seal, there must be a  
20 motion to seal explaining the reason why the matter should be  
21 placed under seal, and it will include a provision that is in  
22 our local rule now that when such a motion is made, it should  
23 indicate when the matter might be unsealed.

24           The order would then provide that after the motion's  
25 made there has to be an order granting or denying the motion,

1 what are the reasons for that, and then if it's granted, the  
2 sealed matter may be filed under seal. It's simply to make  
3 sure we have a step-by-step record of the application, the  
4 order on it, and then the matter, okay?

5 MR. CHAKRAVARTY: Your Honor, just on that point --

6 THE COURT: Yes.

7 MR. CHAKRAVARTY: -- customarily when a motion is  
8 filed, there's a time for response. In the case of some  
9 exigency, should we file and explain whether we've been able to  
10 obtain the assent of the other party?

11 THE COURT: That would be helpful, I guess. And of  
12 course, as you know, it's not uncommon in cases like this for  
13 matters to be filed under seal and ex parte. As a matter of  
14 fact, the bulk of the filings tend to be that in a  
15 CJA-regulated case where the defense is required to get  
16 approval for various actions. And so those are, of course, ex  
17 parte and appropriately under seal. And I think some of the  
18 concern that has been voiced about sealing in this case may  
19 have come from a lack of familiarity with the ordinary progress  
20 of a CJA-controlled case.

21 So anyway, I anticipate -- there will be nothing  
22 really surprising about the order. I just want to be sure that  
23 we are turning square corners on these matters. And I hope it  
24 won't slow things down. In other words, we're going to try  
25 to -- you know, we'll act on the motion to seal as promptly as

1 possible so the matter can then be placed on the record. And  
2 if there's a response to be made, then the time will be started  
3 for that response and so on and so forth.

4 So with respect to the protective order, which is  
5 where I started, the protective order provides for some  
6 sensitive material -- or information, as defined in the order,  
7 to be filed under seal. And I think the order is -- is an  
8 order that allows that to be done without further motion as  
9 long as it's identified as sensitive as the parties understand  
10 that.

11 I would urge that if that happens -- because some of  
12 the examples given were personal medical information or other  
13 private identifiers that already are to be -- under the  
14 e-filing regimen are already to be redacted, but I would urge  
15 that there be a redacted copy of the host document, if  
16 possible, placed in the public record with the unredacted filed  
17 under seal in case of sensitive information. That's with  
18 respect to sort of -- that's a gloss on the protective order.

19 So I guess the next topic is something that was -- has  
20 been addressed last week by filings, and that is when the  
21 government expects to be able to file a notice of election with  
22 respect to the penalty.

23 MR. WEINREB: Your Honor, the U.S. Attorney -- under  
24 the Department of Justice's own internal guidelines, the U.S.  
25 Attorney is to file a -- make a submission to the Attorney

1 General that includes information that would be useful for the  
2 Capital Case Unit in the Department of Justice, and ultimately  
3 the Attorney General, to make a decision on whether to  
4 authorize the seeking of the death penalty.

5 The U.S. Attorney intends to make that submission on  
6 or before October 31st. The death penalty protocol asks,  
7 essentially, the U.S. Attorney to make that no more than 90  
8 days before a death penalty authorization decision needs to be  
9 made, so that the Capital Case Unit, the review committee and  
10 the Department of Justice, the Attorney General, has sufficient  
11 time to consider it.

12 And just as the defense is invited to provide any  
13 input to that decision that they wish to provide to the U.S.  
14 Attorney, they also have a second chance to provide input to  
15 the Capital Case Unit when the time comes. And so 90 days is  
16 the amount that the death penalty protocol asks the government  
17 to seek for that.

18 That is why we have -- we're not asking the Court to  
19 set a deadline. We intend to file any notice respecting  
20 seeking the death penalty as expeditiously as possible. But if  
21 the Court is inclined to set one, then we ask that it be set no  
22 earlier than January 31st to allow for that 30-day period for  
23 consideration.

24 MS. CLARKE: Well, we're not -- good morning. We're  
25 not asking the Court to set a notice-of-intent or

1 lack-of-notice-of-intent deadline right now. What we would  
2 like the Court to do is direct the delay in the defense  
3 submission -- mitigation submission.

4 We're really talking about a couple of things here,  
5 and one is fairness. And the government filed a short brief on  
6 Friday about the authority of the Court to weigh in on the  
7 scheduling matters. And we can file a brief this week setting  
8 forth what we think is the Court's authority to do that, should  
9 the Court want us to do that.

10 We have attached the CJA guideline and Judge Gleeson's  
11 memo -- 2008 memo -- which sort of sets forth the reasons that  
12 the Court should weigh in on that scheduling. And it was a  
13 process by which the Department of Justice was involved. So  
14 it's not like some judges have imposed some authority on the  
15 Department of Justice; they were involved in the promulgation  
16 of that guideline, and it is a guideline that is aimed at  
17 fairness and a reasonable opportunity for both sides to do the  
18 work necessary to make a reasonably accurate determination  
19 whether the government should or should not seek the death  
20 penalty.

21 The government has said in its pleading that gave us  
22 an August 23rd deadline initially that we asked for some more  
23 time. It's a little bit more complicated than that. The  
24 government, without notice to us, without discussion, gave us  
25 an August 23 deadline, which was some ten days before

1 production of any discovery in the case. And we essentially  
2 wrote back and said, "You know, this is a big, complex case.  
3 We agreed to certain decline extensions that you requested, and  
4 we'd request a reasonable opportunity to prepare for this  
5 presentation. Post-discovery we'd like to meet with you and  
6 talk about it." And without any of that, their meeting and  
7 talking about it, the government then decided an October 23rd  
8 mitigation submission deadline would be appropriate.

9           It's in the absence of some pretty critical discovery  
10 that we believe that the government has. Now, the government  
11 has taken a position with us, "Look, we know what we have, and  
12 we don't need you to comment on it." Well, that sort of defies  
13 the role of defense counsel, and it seems to me the Attorney  
14 General of United States would like to know whether they have  
15 accurate information that they're considering in making the  
16 determination of whether or not to seek the death penalty.

17           So we think it's a matter of fairness that the Court  
18 should regulate the scheduling process. If the government  
19 needs a deadline for the notice of intent, that's a matter for  
20 another day. We think that when the government sees our  
21 letter, we hope they will reconsider their position on what we  
22 view as critical *Brady* exculpatory evidence with regard to  
23 penalty.

24           I recognize that the local rules don't directly  
25 address death penalty cases, but the spirit does, because the

1 spirit is that you get sentencing -- relevant sentencing  
2 material prior to the sentencing process. And the Department  
3 of Justice making a decision about the death penalty is part of  
4 what we really think of as the sentencing process.

5 So we'd ask that the Court do two things today: One  
6 is delay the mitigation submission deadline and set it after  
7 we've had an opportunity for the Court to rule on -- or the  
8 government to reconsider its own view of what is *Brady*.

9 I can't stop without reminding the Court that it was  
10 at the government's request that the -- and our acquiescence in  
11 a collegial sense that they delay the indictment an additional  
12 30 days -- and it was at the government's request and for good  
13 reason, the complex complexity of the case, that we agreed to  
14 the delay of the initial -- the production of automatic  
15 discovery.

16 So it's a little bit stunning for the government now  
17 to say that it's the defense delaying things, and that it's six  
18 months after the event that the defense wants more time. We'd  
19 be well ahead of the game, had the government not asked for and  
20 we accessed, again, an extension of time to file the indictment  
21 and an extension of time for the automatic discovery.

22 So what we would ask the Court to do is vacate the  
23 August 23rd deadline and reset that as we -- after we've had an  
24 opportunity to convince the government their view of *Brady* is  
25 wrong or the Court has reevaluated.

1 THE COURT: Mr. Weinreb?

2 MR. WEINREB: Your Honor, the deadline of August 23rd  
3 isn't an order of the Court --

4 THE COURT: I think you're both talking about October  
5 31st.

6 MR. WEINREB: October 31st. Thank you.

7 The Attorney General has the -- the law requires the  
8 Attorney General to file a notice of intent to seek the death  
9 penalty in a case where the government intends to seek it. The  
10 law does not require that the Attorney General make that  
11 decision in any particular way or on any particular timeline.

12 We don't question the Court's authority to set a  
13 deadline for the Court to file a notice, but how the Attorney  
14 General makes up his mind, what information he deems is  
15 appropriate to consider, according to what timeline, are all a  
16 pure executive function. The deadline that the -- the deadline  
17 set by the death penalty protocol are simply internal Justice  
18 Department -- Department of Justice matters that the Attorney  
19 General has decided upon for the orderly progression of cases  
20 within the Department of Justice.

21 It doesn't clearly -- clearly it doesn't create any  
22 rights in the defense, and I don't believe that the defense has  
23 any authority to come in here and say that as a matter of what  
24 they perceive to be fairness, or what they deem to be a  
25 reasonable time, they can subgrade that into a law that then

1 the Court is free to impose on the government in making this  
2 decision.

3 The Attorney General has deemed this to be a  
4 reasonable time and the -- I think that although it's a  
5 non-judicable question, we believe -- we think that six months  
6 is a reasonable time in a case like this. Although it is true  
7 that the defense has not had an opportunity to thoroughly  
8 review and comment on every piece of the government's evidence,  
9 the U.S. Attorney in this case is fully aware of all the  
10 government's evidence, and in order to make this decision, the  
11 Attorney General does not need the defense's thorough  
12 consideration and commentary on all of it.

13 What we seek from the defense presentation is whatever  
14 they may have come up with through their own investigation of  
15 the case. And that, added to what the government has come up  
16 with from its investigation, is sufficient to make the  
17 recommendation or the decision in this case. So I don't  
18 believe the defense's argument is well taken as a matter of  
19 law, as a matter of fairness, or as a matter of common sense.

20 THE COURT: Ms. Clarke?

21 MS. CLARKE: Your Honor, the government did file  
22 something late on Friday, mid-afternoon Friday. If the Court's  
23 concerned about its authority, we could file something this  
24 week regarding that. And I can tell you that there are two  
25 district courts that have said, "We've got the authority to

1 delay the mitigation submission," and two district courts that  
2 say no.

3 And so I think that the Court can look at that. It's  
4 the -- it's really the implementation of Judge Gleeson's memo  
5 and the guideline that the Department of Justice did  
6 participate in and buy into.

7 It's of concern that the government believes that it  
8 can make a decision -- I don't think the Attorney General of  
9 the United States would agree with this. But it's pretty  
10 stunning to say that they can make a decision based on what  
11 they know without some defense input. They may have a  
12 completely erroneous story, that I think the protocol is  
13 designed to help -- allow us to help them see a different way.  
14 And to just doggedly go forward after getting extensions of  
15 time which delay this whole process, at their request, would be  
16 unfair.

17 But on the matter of the Court's authority, we would  
18 be happy to file a brief in the next couple of days just at  
19 least advising the Court of the status of the case law.

20 THE COURT: Okay. Well, I think for the time being I  
21 will not set a date by which the Court must be notified of the  
22 election. I understand the time frame of the protocol. I  
23 think not only the brief that Ms. Clarke just referred to from  
24 the defense, but also, I'd like to get a sense of the  
25 additional discovery requests and the government's response

1 because that may influence what is a realistic date for  
2 notifying the Court.

3 Let me ask, because we just touched on what further  
4 discovery might or might not occur, there was a reference in  
5 the status report about substantive motions from the defense.  
6 Can you tell us anything about that? Do you anticipate  
7 any -- on the discovery you have now. Obviously, if something  
8 comes up in additional discovery, that has to be evaluated.  
9 But on the discovery now, do you anticipate any substantive  
10 motions?

11 MS. CLARKE: I think our problem is we're -- you know,  
12 we received a substantial amount of stuff and we're not in a  
13 position really to stake that out right now. We hope to be  
14 able to advise the Court now by the 12th of November.

15 THE COURT: Okay. Let me ask a more pointed question:  
16 Do you anticipate any objection to venue?

17 MS. CONRAD: I think it's too early to address that,  
18 your Honor. We just haven't really thought about it, frankly.

19 THE COURT: Okay.

20 MS. CONRAD: Your Honor, may I just ask for  
21 clarification on one point? You indicated that you would  
22 accept a brief from us on this issue of the Court's authority  
23 regarding the death penalty protocol, but you also mentioned  
24 you would like to get a sense of the discovery request?

25 THE COURT: Well, you're going to be filing the

1 request today, I understand.

2 MS. CONRAD: Yes. But we hadn't anticipated filing  
3 them with the Court; we anticipated just sending them to the  
4 government. So I don't know if the Court wants us to file them  
5 with the Court. If we could, we would probably be asking --

6 THE COURT: I guess so. I guess my chance to be  
7 looking at them would be when you move after you're  
8 dissatisfied with the government's response.

9 MS. CONRAD: Unless you want us to file them under  
10 seal.

11 THE COURT: We can follow the normal practice. I  
12 don't have to get involved in the negotiations.

13 MS. CONRAD: Okay. Thank you.

14 THE COURT: So I guess that would be after -- on your  
15 schedule, that would be after October 21st.

16 MS. CONRAD: Right.

17 (Pause.)

18 THE COURT: I guess we have a problem with the date  
19 that we suggested. That's what the clerk was passing me a note  
20 on. He tells me that the sentencing in *United States versus*  
21 *Bulger* is set for that morning, so I think it would be  
22 impractical to try to have a case conference in this case at  
23 the same time.

24 So let me look at the calendar.

25 MS. CONRAD: I'm wondering if the 18th or 19th would

1 be possible, your Honor?

2 MR. WEINREB: Your Honor, if I might be heard, I would  
3 suggest compressing the schedule then. Because if the Court  
4 wants the benefit of defense motion on discovery before the  
5 current deadline that the government has set for defense  
6 submission, it's not going to get it on the current schedule.

7 But if the defense is prepared to file their discovery  
8 request today, we won't need two weeks to respond. I mean,  
9 they'll need two weeks to file a motion. And there's no need  
10 then to set the further status conference even further out. I  
11 would suggest we set it earlier and the parties simply work out  
12 a more compressed schedule to address these matters.

13 MS. CONRAD: That's fine with us.

14 THE COURT: Well, how about just taking one week out  
15 of each of those periods; that is, the government response to  
16 today's request by next Monday, and then the following Monday,  
17 the 7th, would be a motion due. And then you want two weeks  
18 for the response or do you want to respond faster than that?

19 MR. WEINREB: Actually, on that score, we would like  
20 the two weeks because we have no idea what's coming.

21 THE COURT: Right. Right. That's fair enough. So  
22 that gets us to the 21st of October. So we can move it maybe  
23 forward. Actually, we could do it the 1st or 2nd of  
24 October -- I'm sorry. I'm in the wrong month.

25 MS. CLARKE: Will the 4th work?

1 THE COURT: No, the 4th will not work.

2 MS. CONRAD: Your Honor, if I may, if the government's  
3 goal was to get a status conference before the current deadline  
4 for the submission to the U.S. Attorney, which I believe is  
5 actually October 24th, then --

6 MR. WEINREB: No, that wasn't the goal.

7 MS. CONRAD: Okay. Then I misunderstood.

8 MR. WEINREB: It was simply to allow the defense time  
9 to file their motions so the Court could have a sense of what  
10 the discovery requests are.

11 MS. CONRAD: Okay.

12 THE COURT: How about Friday, November 8th?

13 MS. CLARKE: Your Honor, if it could be a Monday,  
14 Tuesday or Wednesday, that would work a whole lot better.

15 (Pause.)

16 THE COURT: Let's go back to the 12th of November. I  
17 have a trial scheduled the previous week, which may go into  
18 that week, which is why I avoided the morning before, but we  
19 can perhaps work around it. So let's make it ten o'clock on  
20 the morning of November 12th for the next status conference.

21 MS. CLARKE: Have we compressed the other deadlines  
22 and --

23 THE COURT: Yes, we have compressed the other  
24 deadlines but...

25 MS. CLARKE: And we'll still have the hearing on the

1 12th?

2 THE COURT: Well, yes, among other things. In other  
3 words, that's the next status conference. One thing we can  
4 consider are the motions.

5 Any other matters now?

6 MR. WEINREB: Nothing from the government, your Honor.

7 MS. CLARKE: Does the Court have a preference as to  
8 when we should file the brief this week?

9 THE COURT: No.

10 MS. CLARKE: By Friday?

11 THE COURT: By Friday is fine.

12 MS. CLARKE: Thank you, your Honor.

13 THE COURT: So we'll set the next status conference on  
14 the 12th of November. The time intervening will be excluded  
15 under the Speedy Trial Act pursuant to Section  
16 3161(h)(7)(B)(ii), complex case requiring additional time. I  
17 think that's fairly obvious.

18 Okay. That's all for now. I would -- if counsel for  
19 the defense are available, I would like to have a very brief ex  
20 parte conference regarding the budget for the case.

21 MS. CLARKE: Thank you, your Honor.

22 THE COURT: We'll be in recess.

23 MR. WEINREB: Thank you, your Honor.

24 MR. CHAKRAVARTY: Thank you, Judge.

25 THE CLERK: All rise for the Court.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(The Court exits the courtroom.)

THE CLERK: The Court will be in recess.

(The proceedings adjourned at 10:33 a.m.)

C E R T I F I C A T E

I, Marcia G. Patrisso, RMR, CRR, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript constitutes, to the best of my skill and ability, a true and accurate transcription of my stenotype notes taken in the matter of Criminal Action No. 13-10200-GAO, United States of America v. Dzhokhar A. Tsarnaev.

/s/ Marcia G. Patrisso  
MARCIA G. PATRISSO, RMR, CRR  
Official Court Reporter

Date: 9/24/13