

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

**JURY TRIAL - DAY FIFTY-NINE**

John J. Moakley United States Courthouse  
Courtroom No. 9  
One Courthouse Way  
Boston, Massachusetts 02210  
Wednesday, May 13, 2015  
9:36 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 APPEARANCES:

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14 On Behalf of the Government

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On Behalf of the Defendant

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I N D E X

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P R O C E E D I N G S

1

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

2

3

(The Court and jury enter the courtroom at 9:36 a.m.)

4

THE CLERK: Be seated.

5

THE COURT: Good morning, jurors.

6

THE JURORS: Good morning, your Honor.

7

THE COURT: Once again, I will ask you whether you

8

have all faithfully abided by my instructions to avoid any

9

discussion of the case with anyone, including yourselves. Is

10

that true?

11

THE JURORS: Yes.

12

THE COURT: And, again, have you also insulated

13

yourself, as far as practicable, from any media accounts of the

14

case?

15

THE JURORS: Yes.

16

THE COURT: Yes? All right.

17

Members of the jury, it is again my duty to instruct

18

you as to the law applicable to this sentencing phase of the

19

case. The sole question before you is whether Dzhokhar

20

Tsarnaev should be sentenced for his capital offenses to either

21

the death penalty or to life imprisonment without the

22

possibility of release.

23

There is no parole in the federal system. Life

24

without possibility of release means just that.

25

The choice between these very serious alternatives is

1   yours, and yours alone, to make. If you determine on any  
2   particular count that Mr. Tsarnaev should be sentenced to death  
3   or that he should be sentenced to life imprisonment without the  
4   possibility of release, the Court is required to impose  
5   whatever sentence you choose as to that count.

6           Remember that you have previously found Mr. Tsarnaev  
7   guilty of the following capital counts in the indictment:  
8   Counts 1 through 10 and Counts 12 through 18. Substantively,  
9   those counts are conspiracy to use a weapon of mass destruction  
10   resulting in death, use of a weapon of mass destruction  
11   resulting in death, conspiracy to bomb a place of public use  
12   resulting in death, bombing of a public place -- place of  
13   public use resulting in death, malicious destruction of  
14   property resulting in personal injury and death, and possession  
15   and use of a firearm during and in relation to a crime of  
16   violence resulting in death.

17           Even though there are a total of 17 capital counts at  
18   issue here, you must still approach the sentencing decisions  
19   before you separately as to each count.

20           I stress to you the importance of you giving careful  
21   and thorough consideration to all of the evidence. As I  
22   previously said to you, you must follow the principles of law  
23   given to you in these instructions, regardless of any other  
24   thought or opinion you may have as to what the law may be or  
25   should be.

1           The instructions I am giving you now are a complete  
2 set of instructions on the law applicable to the sentencing  
3 decision as to Mr. Tsarnaev. During your deliberations, you  
4 should, thus, rely on these instructions.

5           We've also prepared a special verdict form that you  
6 must complete. The form details the special findings you must  
7 make, and it will aid you in properly performing your  
8 deliberative duties.

9           Now, although Congress in the relevant statute has  
10 left it wholly to you, the jury, to decide Mr. Tsarnaev's  
11 proper punishment, it has narrowed and channeled your  
12 discretion in specific ways by requiring you to consider and  
13 weigh any aggravating and mitigating factors that are present  
14 in this case.

15           As I explained previously, aggravating and mitigating  
16 factors pertain to the circumstances of the crime or the  
17 personal traits, character or background of Mr. Tsarnaev or  
18 anything else relevant to the sentencing decision.

19           Aggravating factors are those that would tend to  
20 support imposition of the death penalty. By contrast,  
21 mitigating factors are those that suggest life in prison  
22 without the possibility of release is an appropriate sentence  
23 in this case.

24           By requiring you to consider what aggravating factors  
25 and mitigating factors are present in this case, the statute

1 requires that you make a unique, individualized choice between  
2 the death penalty and life in prison without the possibility of  
3 release as to the appropriate sentence for the crimes  
4 Mr. Tsarnaev has been convicted of.

5 The government at all times and as to each capital  
6 count has the burden of proving its sentencing allegations  
7 against the defendant beyond a reasonable doubt. I have  
8 previously instructed you about proof beyond a reasonable  
9 doubt. Let me remind you of those instructions.

10 The requirement of proof beyond a reasonable doubt is  
11 a strict and heavy burden, but it is not an impossible one. It  
12 does not require the government to prove a necessary fact or  
13 proposition beyond all possible, hypothetical or speculative  
14 doubt. There are probably very few, if any, things in human  
15 affairs that can be proved to an absolute certainty. The law  
16 does not require that. But the evidence must exclude, in your  
17 minds, any reasonable doubt about the existence of the fact or  
18 proposition in question.

19 A reasonable doubt may arise from the evidence  
20 produced or from a lack of evidence. If you conclude that the  
21 evidence may reasonably permit alternate conclusions with  
22 respect to the fact or proposition in question, then the  
23 government has not proved that fact or proposition beyond a  
24 reasonable doubt.

25 Reasonable doubt exists when, after you've considered,

1 compared and weighed all the evidence using your reason and  
2 your common sense, you cannot say that you have a settled  
3 conviction that the fact or proposition is true or correct.  
4 Conversely, we say a fact is proved beyond a reasonable doubt  
5 if, after careful consideration of all the evidence, you are  
6 left with a settled conviction based on the evidence and your  
7 reasoning about it that the fact or proposition is correct.

8           While the law does not require proof that overcomes  
9 every conceivable or possible doubt, it is not enough for the  
10 government to show that the fact or proposition it argues for  
11 is probably true. The government's burden is to convince you  
12 that there is no reasonable doubt that the fact or proposition  
13 it argues for is correct.

14           A defendant never has the burden of disproving the  
15 existence of anything which the government must prove beyond a  
16 reasonable doubt. The burden is wholly upon the government.  
17 The law does not at all require Mr. Tsarnaev to produce  
18 evidence that a particular aggravating factor does not exist or  
19 that death is not the appropriate sentence.

20           However, in this case, as he is entitled to do,  
21 Mr. Tsarnaev asserts that there are mitigating factors that  
22 should lead you to conclude that, all things considered, the  
23 death penalty is not the appropriate punishment for his  
24 offenses. It is the defendant's burden to establish any  
25 mitigating factor by a preponderance of the evidence.



1           Requiring something to be proved by a preponderance of  
2 the evidence is a lesser standard of proof than proof beyond a  
3 reasonable doubt. To prove something by a preponderance of the  
4 evidence is to prove that it is more likely true than not; that  
5 it is supported by the greater weight of the reliable evidence.  
6 If, however, the evidence is equally balanced as to a  
7 mitigating fact or proposition, the defendant will not have  
8 carried the burden of proving the fact or proposition by a  
9 preponderance of the evidence. The preponderance of the  
10 evidence is not determined by the number of witnesses or the  
11 volume of evidence, but by the quality and persuasiveness of  
12 the relevant evidence.

13           In making the determinations you're required to make  
14 at this stage, you must consider the information presented  
15 during this penalty phase. You may also consider the evidence  
16 previously admitted in the prior liability phase. Let me  
17 provide some reminders about evidence and how to think about  
18 the evidence that you will remember from the first phase of the  
19 trial.

20           First I'll remind you what is not evidence. The  
21 lawyers' summaries of the evidence in their openings, when  
22 they're telling you what they expect the evidence will be, and  
23 now, today, in their closings, when they try to recall it for  
24 you, are not part of the evidence. The summaries are an  
25 attempt to marshal the evidence for you, to try to persuade you

1 to understand it in a way that is consistent with their view of  
2 the case. But to the extent your collective appreciation of  
3 the evidence differs in any way from the way the lawyers have  
4 predicted it or argued it, it is your understanding and your  
5 assessment of the evidence that controls.

6 What the lawyers say in their closing statements  
7 cannot add or subtract -- add to or subtract from the evidence.  
8 You have heard the evidence, and it is your judgment on that  
9 evidence that matters.

10 I told you at the beginning, and you have seen, that  
11 I'd be ruling on any questions of the admissibility of evidence  
12 as they have arisen. I remind you there is no significance,  
13 for your purposes, to any of the rulings, either admitting or  
14 excluding evidence. Those considerations are wholly separate  
15 from the kinds of decisions you'll have to make, and you should  
16 give no consideration of significance to any of my evidence  
17 rulings.

18 I remind you that evidence that is offered but not  
19 admitted is not to be considered by you. Similarly, questions  
20 by the attorneys which are not answered by the witness produce  
21 no evidence.

22 The indictment is not evidence. Anything you may have  
23 read in the press, seen on television, heard on the radio,  
24 viewed online or heard from others outside the courtroom at any  
25 point is, of course, not evidence.

1           You have repeatedly assured me that you have abided by  
2 my instructions to avoid such information which is not part of  
3 the evidence in the case. To the extent you had any prior  
4 impressions of the facts of this case from the time before you  
5 were called to be jurors, you must completely set aside any  
6 such impressions. Again, in the jury selection process, you  
7 assured me that you could do that; and, frankly, I had -- if I  
8 had not trusted your answers in that respect, you would not be  
9 sitting here today. Your focus as you deliberate must be  
10 entirely and exclusively on the body of evidence produced in  
11 the course of the trial. It would be unfair and a violation of  
12 your jurors' oath to do otherwise.

13           Let me now address some of the things that are  
14 information or evidence for you to evaluate in this stage of  
15 the case. You have a very large number of exhibits in the  
16 case. You'll have access to all the exhibits that have been  
17 admitted in evidence in both phases of the trial, and you may  
18 consider those exhibits and give them whatever weight, value or  
19 significance you think they are fairly entitled to receive.  
20 The judgment is entirely yours.

21           The digital exhibits, which is a technical matter, can  
22 be put on the JERS system, which you used in your prior  
23 deliberations; will again be available to you via the monitor  
24 in the jury room. Because of some certain technical  
25 limitations, some other exhibits are available to you by means

1 of a laptop computer, which does not have any other programs or  
2 capabilities, such as word-processing or the Internet --  
3 Internet access. And I remind you there's no significance  
4 regarding which exhibits are on JERS and which are on the  
5 laptop.

6 Many exhibits in the case have been physical exhibits  
7 or actual items. As before, those are available to you as  
8 well. If you would like to view any of the physical exhibits,  
9 you shall simply write a note indicating what exhibit or  
10 exhibits you would like to view and give it to the court  
11 security office, and we'll arrange for you to view those  
12 exhibits.

13 Remember that sometimes a particular item of evidence  
14 is received for a limited purpose rather than for general  
15 consideration. For example, some of the exhibits were admitted  
16 under a limitation that they could be considered as evidence  
17 that a particular event occurred, for example, that somebody  
18 said something on a particular occasion, but not as evidence  
19 that any affirmative assertion contained in that evidence was  
20 accurate or true.

21 Of course, in addition to the exhibits, you have the  
22 testimony of the witnesses who appeared here in the courtroom  
23 and one via videoconference from abroad, who answered questions  
24 that were put to them. You ought to give the testimony of each  
25 witness whatever weight, value or significance in your judgment

1 it is fairly entitled to receive. With respect to each  
2 witness, you should think about the testimony and decide how  
3 much value or meaning it ought to have to fair-minded people  
4 like yourselves who are looking for the truth.

5           You may find, as you think about the evidence from any  
6 particular witness, that you find credible, reliable or  
7 meaningful just about everything that the witness has said,  
8 perhaps just about nothing that the witness has said, and  
9 perhaps something in between. Maybe there are some things from  
10 a particular witness you find credible and reliable and other  
11 things from the same witness you're more skeptical of or  
12 doubtful about. There is no automatic rule. You don't have to  
13 accept any given witness's testimony in total or reject it in  
14 total. You should think about the testimony itself and accept  
15 what is meaningful and reliable and reject what is not.

16           In deciding the credibility of a witness, you may  
17 consider the witness's appearance or demeanor on the witness  
18 stand as he or she testified, to the extent any such  
19 observations may have any bearing on your assessment of the  
20 reliability of that evidence. The appearance or demeanor of  
21 other people in the courtroom, including the defendant, the  
22 lawyers for each side, spectators in the gallery or even me,  
23 should not be taken by you as evidence for any proposition or  
24 conclusion in the case.

25           You may also take into account any partiality or bias

1 that a witness might have toward one side or the other. Does  
2 the witness have any reason, motive or interest in the outcome  
3 of the case or anything else that would lead the witness to  
4 favor one side or the other in the testimony? A tendency to  
5 favor one side or the other might be deliberate, an intentional  
6 effort to favor one side, or it might be unconscious, arising  
7 out of some affiliation or affinity with one side or the other.  
8 Again, such tendencies could affect the reliability of the  
9 testimony, and you ought to consider whether there has been  
10 such an effect with respect to the testimony you've heard.

11           Again, keep in mind in every case there are people who  
12 have an association or connection with one side or the other,  
13 and it is not automatic, of course, that people -- those people  
14 must therefore be distrusted. But potential bias or  
15 partiality, conscious or unconscious, by a witness is a factor  
16 that you can think about in evaluating the evidence.

17           You have heard testimony from witnesses described  
18 generally as experts. An expert witness is a witness who has  
19 special knowledge or experience that allows the witness to  
20 testify about matters within his or her expertise and to give  
21 an opinion about the issues in the case based on his or her  
22 knowledge and experience. You should evaluate the testimony of  
23 an expert witness with the same care that you employ in  
24 evaluating the testimony of any other witness. You may accept  
25 or reject testimony of an expert witness as you judge is

1 appropriate.

2 In weighing expert testimony, you should consider the  
3 factors that generally bear upon the credibility of witnesses  
4 as well as the particular expert's qualifications, such as  
5 education and experience, the soundness of the reasons given  
6 for any opinion and any other evidence in the case that you  
7 consider pertinent. Remember that you alone decide how much of  
8 a witness's testimony to believe and how much weight it should  
9 be given.

10 You have heard the testimony of a number of law  
11 enforcement officials. The fact that a witness may be employed  
12 as a law enforcement official does not mean that his or her  
13 testimony is deserving of either more or less consideration or  
14 greater or less weight than any other witness. It is  
15 legitimate for defense counsel to question the credibility or  
16 reliability of a law enforcement witness on the ground that his  
17 or her testimony may be colored by personal or professional  
18 interest in the outcome of the case. As with any witness, it  
19 is up to you, after considering the matter, whether to accept  
20 and rely on the testimony of a law enforcement witness, just as  
21 with any other witness.

22 Consider the evidence as a whole. You ought to  
23 consider the evidence from each witness not only by itself, in  
24 isolation, as if that witness were the only person to testify,  
25 but also in the context of all the other evidence you have

1 heard. For example, there might be a piece of evidence about  
2 which you were originally skeptical, and then you might hear  
3 other evidence that leads you to reexamine your initial  
4 impression, and you being to trust the questioned evidence a  
5 bit more.

6           The opposite might happen, of course. You might tend  
7 to accept something that sounds pretty good at first. Then you  
8 consider other pieces of evidence; you might begin to doubt  
9 what you had first accepted. So, again, think of the evidence  
10 sensibly as a whole as you make sound judgments about it.

11           You may make inferences from the evidence. An  
12 inference is simply a conclusion that you might draw from the  
13 available information that you have found to be reliable. You  
14 will recall I illustrated this point in my instructions at the  
15 end of the first phase of the trial by pointing out that you  
16 could draw an inference about how hot a stove burner is from  
17 the observation of steam coming out of the teakettle on the  
18 burner. You must be careful that any inferences that you draw  
19 are those that are genuinely supported by the information you  
20 are relying on to make the inference.

21           An inference, and consequently proof of a fact by  
22 circumstantial evidence, cannot be an excuse for guessing or  
23 speculating. If there are alternate possible inferences from  
24 the evidence, you can't just pick one you happen to like. You  
25 have to be persuaded that any inference that you make is



1 superior to other possible inferences based on the same  
2 evidence and information.

3 And, of course, to the extent that you rely in a  
4 criminal case on an inference by circumstantial evidence, in  
5 the end, any conclusions accepting the government's  
6 propositions must be those that convince you beyond a  
7 reasonable doubt.

8 Finally, I remind you that you will have the notes  
9 that you have taken in both phases of the trial. As before, do  
10 not assume that simply because something appears in somebody's  
11 notes it necessarily took place in the courtroom. Instead, it  
12 is your collective memory with respect to the information  
13 that -- evidence presented that must control.

14 As I have previously instructed you, a defendant has a  
15 constitutional right not to testify. There may be many reasons  
16 why a defendant would choose to invoke and exercise that right.  
17 You may not, under any circumstance, draw any inference or  
18 presumption against a defendant from his decision to invoke  
19 that right and to decline to testify. Accordingly, it should  
20 not be considered by you in any way or even discussed in  
21 arriving at any aspect of your sentencing decision, including  
22 the existence or nonexistence of an alleged aggravating or  
23 mitigating factor.

24 You must deliberate and determine the appropriate  
25 sentence for each of the capital counts individually. Although

1 I will be discussing the capital counts as a group, your  
2 findings as to Mr. Tsarnaev's age, the gateway factors,  
3 aggravating factors and all the other issues pertaining to  
4 those counts must address each of the counts individually.

5 It is possible that, although there may be parallels  
6 or connections between some counts, you may also find  
7 differences that would justify different sentences on different  
8 counts. You should understand, however, that if you impose the  
9 death penalty as to any count or counts, the death sentence  
10 will control, regardless of any life sentence or sentence that  
11 might be -- sentences that might be imposed on other counts.

12 As you know, there are 17 counts concerning a total of  
13 four homicides. You should not attach any significance to the  
14 fact that these four homicides have given rise to more than  
15 four capital counts. The government is entitled to bring  
16 multiple charges with respect to each homicide, but the number  
17 of counts does not by itself mean that the defendant's conduct  
18 is more blameworthy or that he is deserving of greater  
19 punishment.

20 The instructions that I am going to give you, as well  
21 as the verdict form that you will be completing, will address  
22 first -- will first address your findings, if any, with respect  
23 to the defendant's age at the time of the offenses, the four  
24 so-called gateway factors, and the statutory aggravating  
25 factors identified by the government with respect to each

1 capital count.

2 The instructions on the verdict form thereafter  
3 address your findings, if any, as to each capital count  
4 regarding the existence of any non-statutory aggravating  
5 factors and mitigating factors, as well as the weighing of  
6 aggravating and mitigating factors.

7 So let me now discuss with you in summary form, first,  
8 the deliberative steps that you must follow in considering the  
9 issues before you as to each capital offense. I will then  
10 discuss in greater detail each of these steps.

11 First, you will consider whether the government has  
12 proven beyond a reasonable doubt and to your unanimous  
13 satisfaction that the defendant was at least 18 years old at  
14 the time of the capital offenses for which you have found him  
15 guilty.

16 Second, you will consider, as appropriate, whether the  
17 government has proven beyond a reasonable doubt and to your  
18 unanimous satisfaction one or more threshold intent factors or  
19 gateway factors established by Congress as to each of the  
20 capital offenses for which you have found the defendant was at  
21 least 18 years old at the time of the capital offense.

22 Third, you will consider, as appropriate, whether the  
23 government has proven beyond a reasonable doubt and to your  
24 unanimous satisfaction at least one statutory aggravating  
25 factor alleged as to each of the capital offenses for which you

1 have found the defendant was at least 18 years of age at the  
2 time of the capital offense and have found the existence of at  
3 least one gateway factor.

4 Fourth, you will consider, as appropriate, whether any  
5 non-statutory aggravating factors identified by the government  
6 have been proven beyond a reasonable doubt and to your  
7 unanimous satisfaction as to each of the capital offenses for  
8 which you have found the defendant was at least 18 years of age  
9 at the time of the offense and have also found the existence of  
10 at least one gateway factor and the existence of at least one  
11 statutory aggravating factor.

12 Fifth, you will consider, as appropriate, whether any  
13 of you individually or together with other jurors find that the  
14 defendant has proved, by a preponderance of the evidence, any  
15 mitigating factor or factors.

16 Sixth, if you have found the defendant was at least 18  
17 years of age at the time of the particular offense under  
18 consideration, and at least one gateway factor and at least one  
19 statutory aggravating factor, you must then weigh the  
20 aggravating factors, statutory and non-statutory, that you have  
21 unanimously found to exist and any mitigating factors that you  
22 personally have found to exist to determine the appropriate  
23 sentence.

24 You must decide, in regard to that particular capital  
25 offense, whether the aggravating factors that have been found

1 to exist sufficiently outweigh the mitigating factors found to  
2 exist for that offense so as to justify imposing a sentence of  
3 death on the defendant for that offense; or, if you do not find  
4 any mitigating factors, whether the aggravating factors alone  
5 are sufficient to justify imposing a sentence of death on the  
6 defendant for that offense.

7 Now let me give you some greater detail. Excuse me.  
8 I'm fighting a spring cold here at an inopportune time.

9 Before you may consider the imposition of the death  
10 penalty, you must first unanimously agree beyond a reasonable  
11 doubt that Mr. Tsarnaev was 18 years of age or older at the  
12 time of the offense.

13 I'm going to put on your monitors because we're going  
14 to display for you the verdict slip that you will be filling  
15 out because I think it may help you to track these instructions  
16 as I go through them.

17 So in the event that you unanimously find beyond a  
18 reasonable doubt that Mr. Tsarnaev was 18 years of age or older  
19 at the time of the offenses as to all counts, you are to  
20 indicate that finding on the appropriate line in Section I of  
21 the verdict form. And you'll see that's the top line, the  
22 first one of the three.

23 In the event that you unanimously find beyond a  
24 reasonable doubt that he was 18 years of age or older at the  
25 time of the offenses as to some of the counts but not others,

1 you're to indicate that finding on the appropriate line in  
2 Section I of the verdict form and also identify on the line  
3 provided, by count number, those specific counts as to which  
4 you find that he was at least 18. And that, you will see, is  
5 the third option.

6 If you do not unanimously find the government has  
7 proven beyond a reasonable doubt that the defendant was 18  
8 years of age or older as to any of the capital counts, then no  
9 further deliberations will be necessary as to any such count.  
10 And you see that's the second option: "We find unanimously  
11 that the age has not been proved as to any." So you have the  
12 three options to consider, and you'll indicate which represents  
13 your decision.

14 Again, before you may consider the imposition of the  
15 death penalty for any capital count, you must unanimously find  
16 beyond a reasonable doubt the existence as to that count of one  
17 of the so-called -- four so-called gateway factors, sometimes  
18 also referred to as threshold intent factors, alleged by the  
19 government.

20 The gateway factors alleged by the government are as  
21 follows, and they're reproduced on the verdict form in  
22 Section II: First, that Mr. Tsarnaev intentionally killed the  
23 victim or victims of that particular capital offense charged in  
24 the respective count of the indictment; or, Number 2, that  
25 Mr. Tsarnaev intentionally inflicted serious bodily injury that

1 resulted in the death of the victim or victims identified in  
2 the particular offense charged in the respective count of the  
3 indictment; or that Mr. Tsarnaev intentionally participated in  
4 an act contemplating that the life of a person would be taken  
5 or intending that lethal force would be used in connection with  
6 a person other than one of the participants in the offense, and  
7 the victim or victims of the particular capital offense charged  
8 in the respective account of the indictment died as a direct  
9 result of that act; and, fourth -- or, fourth, that  
10 Mr. Tsarnaev intentionally and specifically engaged in an act  
11 of violence, knowing that the act created a grave risk of death  
12 to a person other than one of the participants in the offense  
13 such that participation in the act constituted a reckless  
14 disregard for human life, and the victim or victims of the  
15 particular capital offense charged in the respective count of  
16 the indictment died as a direct result of that act.

17           Your findings as to whether the government has proven  
18 the existence beyond a reasonable doubt of a particular factor  
19 from among those four gateway factors must be individual and  
20 unanimous as to each capital count.

21           With regard to your findings, you may not rely solely  
22 on your first-phase verdict of guilt or your factual  
23 determinations in that phase. Instead, you must now each  
24 consider and decide the issue again for the purposes of this  
25 trial.

1           Any finding that a gateway factor has been proven as  
2 to a particular capital count must be based on Mr. Tsarnaev's  
3 personal actions and intent and not on the actions or intent of  
4 anyone else. Intent or knowledge may be proved like anything  
5 else. You may consider any statements made or acts done by  
6 Mr. Tsarnaev and all the facts and circumstances in evidence  
7 which may aid in a determination of Mr. Tsarnaev's knowledge or  
8 intent. You may, but are not required to, infer that a person  
9 intends the natural and probable consequences of acts knowingly  
10 done or knowingly omitted.

11           In the event you unanimously find beyond a reasonable  
12 doubt that a particular gateway factor exists as to all the  
13 capital counts, you're to indicate that finding on the  
14 appropriate line in Section II of the verdict form. I think  
15 you'll see, again, that is presented as the first of the  
16 multiple choices.

17           In the event that you unanimously find beyond a  
18 reasonable doubt that a particular gateway factor exists as to  
19 some but not all of the capital counts, you're to indicate that  
20 finding on the appropriate line in Section II and also identify  
21 on the line provided, by the count number, the specific counts  
22 as to which you find the gateway factor applies. You'll see  
23 that's the third choice presented again.

24           If you do not unanimously find a particular gateway  
25 factor has been proved beyond a reasonable doubt and with



1 respect to any of the capital counts, you shall mark the  
2 appropriate space in Section II, and that will be the second  
3 option of the three.

4 I instruct you that any gateway factor found by you to  
5 exist is not an aggravating factor -- that's a separate matter.  
6 These are gateway factors -- and may not be considered by you  
7 in the process of weighing any aggravating and mitigating  
8 factors in ultimately deciding whether or not to impose a  
9 sentence of death.

10 And for any capital count, if you do not unanimously  
11 find that the government has proven beyond a reasonable doubt  
12 the existence as to that count of any of the four gateway  
13 factors, your deliberative task is -- as to that capital count  
14 is over, and I will impose a mandatory sentence of life  
15 imprisonment without the possibility of release.

16 Now let me turn to the statutory aggravating factors.  
17 If you unanimously find the government has proven beyond a  
18 reasonable doubt that at least one of the four gateway factors  
19 exists as to a particular capital count and that the defendant  
20 was 18 years or older at the time of the offense, you must then  
21 proceed to determine whether the government has proven beyond a  
22 reasonable doubt the existence of any of the following  
23 statutory aggravating factors with respect to the same count.  
24 You may consider only statutory aggravators alleged as to the  
25 offenses for which you have found the defendant was 18 years

1 old and for which you have found at least one gateway factor.

2 The government alleges as a statutory aggravating  
3 factor for each capital offense that the death or deaths  
4 occurred during the commission of another crime or crimes. The  
5 government alleges as a statutory aggravating factor for each  
6 capital offense, Counts 1 through 10 and 12 through 18, that  
7 Mr. Tsarnaev knowingly created a grave risk of death to one or  
8 more persons in addition to the victim of the offense in the  
9 commission of the offense and in escaping apprehension for the  
10 violation of the offense.

11 The government alleges, as to Counts 1 through 10 and  
12 12 through 15, excluding those that exclusively charge the  
13 death of Sean Collier, that Mr. Tsarnaev committed the offense  
14 in an especially heinous, cruel and depraved manner and that it  
15 involved serious physical abuse to the victim; that he  
16 committed the offense after substantial planning and  
17 premeditation to cause the death of a person and to commit an  
18 act of terrorism; and that he intentionally killed and  
19 attempted to kill more than one person in a single criminal  
20 episode.

21 The government also alleges, as to Counts 1, 4, 5, 6,  
22 9, 10, 14 and 15, those involving the death of Martin Richard,  
23 that the defendant is responsible for the death of a victim,  
24 Martin Richard, who was particularly vulnerable due to youth.

25 At this step, the law directs you to consider and

1 decide separately, as to each of the capital counts for which  
2 you have unanimously found that the defendant was at least 18  
3 at the time of the crime and the existence of at least one  
4 gateway factor, whether the government has proved to you  
5 unanimously and beyond a reasonable doubt the existence of any  
6 one or more of the statutory aggravating factors that are  
7 specifically alleged.

8 Any finding that one or more of these factors has been  
9 proven must be based on Mr. Tsarnaev's personal actions and  
10 intent. In making your findings regarding the statutory  
11 aggravating factor, you may not rely solely on your previous  
12 verdict of guilt or your factual determinations therein.  
13 Instead, you must now consider and decide the issues presented  
14 in the present context.

15 In the event that you find unanimously beyond a  
16 reasonable doubt that a particular statutory aggravating factor  
17 exists as to all relevant capital counts for which you have  
18 found the defendant was age 18 or older and the existence of at  
19 least one gateway or threshold intent factor, you are to  
20 indicate that finding on the appropriate line in Section III of  
21 the verdict form. And, again, you will see that is presented  
22 as the first of the three options.

23 In the event you unanimously find beyond a reasonable  
24 doubt that a particular statutory aggravating factor has been  
25 proven as to some but not all of the relevant capital counts

1 for which you have found the evidence of at least one gateway  
2 factor or threshold intent factor, you ought to indicate that  
3 finding on the appropriate line in Section III of the verdict  
4 form. You're also to identify on the line provided, by count  
5 number, those particular counts as to which you have found the  
6 statutory aggravating factor applies.

7 If you do not unanimously find that a particular  
8 statutory aggravating factor has been proved beyond a  
9 reasonable doubt with respect to any of the relevant capital  
10 counts that you're considering, you should mark that in the  
11 appropriate space in Section III of the verdict form.

12 If you do not unanimously find that, as to any capital  
13 count, the government has proved the existence of at least one  
14 statutory aggravating factor, then your deliberative task on  
15 that count will be over and I will impose a mandatory sentence  
16 on that count of life imprisonment without the possibility of  
17 release.

18 Let me now set forth for you in detail the specific  
19 elements necessary for the government to prove any of the  
20 alleged statutory aggravating factors.

21 The government alleges, as to all of the capital  
22 counts, that death or injury resulting in death occurred during  
23 the commission of or during the immediate flight from the  
24 commission of another offense or offenses. Specifically, the  
25 government alleges that the death or deaths occurred during the

1 commission of a conspiracy to use a weapon of mass destruction  
2 in violation of Title 18, United States Code, Section 2332(a)  
3 or during the commission or immediate flight from the  
4 commission of the use of a weapon of mass destruction, also a  
5 violation of Title 18 of the United States Code,  
6 Section 2332(a).

7 With regard to Counts 1 through 10 and 12 through 15,  
8 that is the counts not addressed specifically to the death of  
9 Sean Collier, the government alleges, in the alternative, that  
10 the death occurred during the commission or during the  
11 immediate flight from the commission of the destruction of  
12 property affecting interstate commerce by explosive, a  
13 violation of Title 18 of the United States Code,  
14 Section 844(i).

15 Though you have already, in the prior phase, convicted  
16 the defendant of those crimes, I will summarize for you again  
17 the elements of those offenses so that you can determine  
18 whether the deaths alleged occurred during the course of that  
19 conduct.

20 The crime of conspiracy to use a weapon of mass  
21 destruction has two elements: First, that the defendant and  
22 another agreed to use a weapon of mass distraction; and,  
23 second, that the defendant knowingly and voluntarily joined in  
24 the agreement, intending that the crime of using a weapon of  
25 mass destruction be committed.

1           The crime of the use of a weapon of mass destruction  
2 has three elements: first, that the defendant knowingly used a  
3 weapon of mass destruction; second, that it was knowingly used  
4 against a person or against personal property within the United  
5 States; and, third, that such property was used in interstate  
6 or foreign commerce or in an activity that affects interstate  
7 or foreign commerce or, alternatively, that the offense or the  
8 results of the offense affected interstate or foreign commerce.

9           "A weapon of mass destruction" means a destructive  
10 device, which is defined by statute to include any explosive  
11 bomb.

12           "Knowingly" in this context means that the act was  
13 done voluntarily and intentionally and not because of mistake  
14 or accident.

15           The crime of destruction of property affecting  
16 interstate commerce by explosive has four elements: first,  
17 that the defendant damaged or destroyed or attempted to damage  
18 or destroy, by means of fire or an explosive, any building,  
19 vehicle or other personal property; second, that the defendant  
20 did so maliciously; third, that he did so by means of fire or  
21 an explosive; and fourth, that the building, vehicle or other  
22 real or personal property was used in interstate or foreign  
23 commerce or in an activity affecting interstate or foreign  
24 commerce.

25           "Explosive" in this context means gunpowders, powders

1 used for blasting, blasting materials, fuses other than  
2 electric circuit breakers, detonators and other detonating  
3 agents, or a device that contains any oxidizing and combustible  
4 units or other ingredients in such proportions, quantities or  
5 packing that ignition by fire or detonation of the compound,  
6 mixture or about device on the part -- or any part thereof may  
7 cause an explosion.

8 To act maliciously means to act intentionally or with  
9 deliberate disregard of the likelihood that damage or injury  
10 will result.

11 "Use in interstate or foreign commerce or in any  
12 activity affecting interstate or foreign commerce" means  
13 current, active employment for commercial purposes and not  
14 merely a passive, passing or past connection to commerce.  
15 Property's function must affect interstate commerce.

16 As I instructed you during the liability phase, a  
17 person may be found guilty of a non-conspiracy federal offense  
18 if he aided or abetted another person in committing the  
19 offense. To aid or abet means intentionally to help someone  
20 else commit an offense.

21 Aiding and abetting has two elements: first, that  
22 someone else committed the charged crime; and, second, that the  
23 defendant consciously shared the other person's knowledge of  
24 the underlying criminal act, intended to help him, and  
25 willfully took some part in the criminal endeavor seeking to

1 help it succeed. An act is done willfully if it is done  
2 voluntarily and intelligently -- and intentionally. I'm sorry.  
3 Voluntarily and intentionally.

4 A person who aids and abets another to commit a crime  
5 need not be present when the underlying criminal act is  
6 performed or be aware of all the details of its commission to  
7 be guilty of the crime by aiding and abetting, but a general  
8 suspicion that a crime may -- an unlawful act or a crime may  
9 occur or that something criminal is happening is not enough.  
10 Mere presence at the scene of a crime and knowledge that the  
11 crime is being committed are also not sufficient to establish  
12 aiding and abetting. To be guilty of a crime by aiding and  
13 abetting, a person must act in some way to affirmatively assist  
14 another person to commit that crime.

15 The government must prove beyond a reasonable doubt  
16 that the death or deaths charged in a given count occurred  
17 during at least one of the offenses identified in the alleged  
18 aggravating factor. Whereas here there are alternate ways of  
19 proving the existence of the factor, you must be unanimous as  
20 to which alternative or alternatives you find to have been  
21 proved.

22 Your determination of which offense or offenses the  
23 defendant was committing when he caused the charged death or  
24 deaths must be unanimous. Likewise, your determination as to  
25 which death, if any, was caused by the given offense must be



1 unanimous.

2           Your finding as to this statutory aggravating factor  
3 must be indicated in the appropriate space in Section III of  
4 the verdict form.

5           The next statutory aggravating factor alleged by the  
6 government with regard to all capital counts is that, in the  
7 commission of the particular offenses and in escaping  
8 apprehension for the offense, Mr. Tsarnaev knowingly created a  
9 grave risk of death to one or more persons in addition to the  
10 deceased victim or victims identified in the particular count.

11           To establish the existence of this aggravating factor,  
12 the government must prove beyond a reasonable doubt that  
13 Mr. Tsarnaev, in committing the offense described in the  
14 capital count you're considering, knowingly created a grave  
15 risk of death to one or more persons in addition to the  
16 deceased victim or victims identified in a particular count.

17           "Knowingly" creating such a risk means that  
18 Mr. Tsarnaev was conscious and aware that his conduct in the  
19 course of committing the offense might realistically have this  
20 result. His conduct cannot merely have been the product of  
21 ignorance, mistake or accident. Knowledge, again, may be  
22 proved, like anything else. You may consider any statements  
23 made or acts done by Mr. Tsarnaev and all the facts and  
24 circumstances in the evidence which may aid in a determination  
25 of Mr. Tsarnaev's knowledge.

1            "A grave risk of death" means a significant or  
2 considerable possibility that another person might be killed.

3            In order to find that the government has proven this  
4 factor beyond a reasonable doubt, you must unanimously agree on  
5 the particular person or class of persons who were placed in  
6 danger by Mr. Tsarnaev's actions.

7            Persons in addition to the victims include innocent  
8 bystanders in the zone of danger created by the defendant's  
9 acts but do not include other participants in the offense, such  
10 as Tamerlan Tsarnaev.

11           Your finding as to this statutory aggravating factor  
12 must be indicated in the appropriate space in Section III of  
13 the form.

14           The next statutory aggravating factor alleged by the  
15 government with regard to certain capital counts is that  
16 Mr. Tsarnaev committed the offenses in an especially heinous,  
17 cruel and depraved manner in that it involved serious physical  
18 abuse to the victim. The government alleges this factor with  
19 respect to Counts 1 through 10 and 12 through 15 only, again,  
20 omitting the counts specifically relating to Sean Collier.

21           "Heinous" means shockingly atrocious. For the killing  
22 to be heinous, it must involve such additional acts of serious  
23 physical abuse of the victim as to set it apart from other  
24 killings.

25           "Cruel" means the defendant intended to inflict a high

1 degree of pain by serious physical abuse of the victim in  
2 addition to killing the victims.

3 "Depraved" means that the defendant relished the  
4 killing or showed indifference to the suffering of the victim,  
5 as evidenced by the serious physical abuse of the victim.

6 "Serious physical abuse" means a significant or  
7 considerable amount of injury or damage to the victim's body,  
8 which involves a substantial risk of death, unconsciousness,  
9 extreme physical pain, substantial disfigurement or substantial  
10 impairment of a function of a bodily member, organ or mental  
11 faculty. The defendant must have specifically intended the  
12 abuse apart from the killing.

13 Pertinent factors in determining whether a killing was  
14 especially heinous, cruel or depraved include infliction of  
15 gratuitous violence upon the victim above and beyond that  
16 necessary to commit the killing, needless mutilation of the  
17 victim's body and helplessness of the victim.

18 For these purposes, the word "especially" should be  
19 given its ordinary, everyday meaning of being highly or  
20 unusually great, distinctive, peculiar, particular or  
21 significant.

22 For each of the capital counts you are considering  
23 with respect to this factor, in order to find that the  
24 government has satisfied its burden of proof beyond a  
25 reasonable doubt that Mr. Tsarnaev committed the offenses in an

1 especially heinous, cruel or depraved manner in that it  
2 involved serious physical abuse to the victim, you may only  
3 consider the acts of Mr. Tsarnaev. You may not consider the  
4 manner in which any accomplice or coconspirator committed the  
5 offenses.

6           Again, your finding as to this statutory factor must  
7 be indicated in the appropriate space in Section III of the  
8 verdict form.

9           The next statutory aggravating factor alleged by the  
10 government with regard to certain capital counts is that  
11 Mr. Tsarnaev committed the offenses under the particular counts  
12 after substantial planning and premeditation to cause the death  
13 of a person and to commit an act of terrorism. The government  
14 alleges this factor in connection in Counts 1 through 10 and 12  
15 through 15 only, again omitting the counts specific to Sean  
16 Collier.

17           "Planning" means mentally formulating a method for  
18 doing something or achieving some end.

19           "Premeditation" means thinking or deliberating about  
20 something and deciding beforehand what to do about it and  
21 whether to do it.

22           "Substantial planning and premeditation" means a  
23 considerable or significant amount of time -- or amount of  
24 planning or premeditation.

25           "An act of terrorism" for these purposes is an act

1 calculated to influence or affect the conduct of the United  
2 States government by intimidation or coercion or to retaliate  
3 against government conduct.

4 To find the defendant [sic] has satisfied its burden  
5 of proving beyond a reasonable doubt that Mr. Tsarnaev engaged  
6 in substantial planning and premeditation either to cause the  
7 death of a person or to commit an act of terrorism, you must  
8 unanimously agree on the particular object of the substantial  
9 planning and premeditation, either to cause the death of a  
10 person, to commit an act of terrorism or both.

11 Again, your finding as to this statutory aggravating  
12 factor must be indicated in the appropriate space in  
13 Section III of the verdict form.

14 I think it might be a good idea if everybody just  
15 stood and stretched for a minute.

16 MR. WEINREB: Does that include the lawyers?

17 THE COURT: It includes the lawyers. I don't think it  
18 includes the gallery.

19 (Brief pause.)

20 THE COURT: The next statutory aggravating factor  
21 alleged by the government with regard to certain capital counts  
22 is that Mr. Tsarnaev intentionally killed or -- and attempted  
23 to kill more than one person in a single criminal episode. The  
24 government alleges this factor in connection with Counts 1  
25 through 10 and 12 through 15 only, again excluding the counts

1     pertaining exclusively to the death of Sean Collier.

2             To establish the existence of this factor, the  
3     government must prove beyond a reasonable doubt that  
4     Mr. Tsarnaev intentionally killed or attempted to kill more  
5     than one person in a single criminal episode. You must  
6     unanimously agree on the particular actual or intended victims  
7     or class of intended victims in order to find that this factor  
8     has been proved beyond a reasonable doubt.

9             "More than one person" means one or more other people  
10    in addition to killing any single named homicide victim.

11            The government has named Krystle Campbell as a victim  
12    in Counts 1, 2, 3, 6, 7, 8, 12 and 13. It has named Lingzi Lu  
13    and Martin Richard as victims in Counts 1, 4, 5, 6, 9, 10, 14  
14    and 15. It has named Sean Collier as a victim, in relevant  
15    part, in Counts 1 and 6.

16            "Intentionally killing a person" means killing a  
17    person on purpose; that is, willfully, deliberately or with a  
18    conscious desire to cause a person's death, and not just  
19    accidentally or involuntarily.

20            "Attempting to kill" means purposely doing some act  
21    which constitutes a substantial step beyond mere preparation or  
22    planning toward killing a person and doing so with an intent to  
23    cause a person's death.

24            "A single criminal episode" is an act or series of  
25    related criminal acts which occur within a relatively limited

1 time and place or are directed at the same person or persons or  
2 are a part of a continuous course of conduct related in time,  
3 place or purpose.

4 Again, you may, but are not required to, infer that a  
5 person of sound mind intended the ordinary, natural and  
6 probable consequences of his knowing and voluntary acts. Thus,  
7 you may infer from Mr. Tsarnaev's conduct that he intended to  
8 kill a person if you find, first, that he was a person of sound  
9 mind; second, that the victim's death was an ordinary, natural  
10 and probable consequence of his acts, even if the death did not  
11 actually result, in the case of an attempt; and, third, that  
12 Mr. Tsarnaev committed these acts knowingly and voluntarily.  
13 Once again, you're not required to make any such inference.

14 Your finding as to this statutory factor again must be  
15 indicated in the appropriate place on Section III of the  
16 verdict slip.

17 The final statutory aggravating factor alleged by the  
18 government with regard to certain capital counts is that  
19 Mr. Tsarnaev is responsible for the death of a victim, Martin  
20 Richard, who was particularly vulnerable due to age. The  
21 government alleges this factor in connection with Counts 1, 4,  
22 5, 6, 9, 10, 14 and 15 only.

23 The word "youth" should be given its ordinary,  
24 everyday meaning. "Youth" refers to a period when one is young  
25 and has not yet reached adulthood. A juvenile is a youth.

1           To find that the government has satisfied its burden  
2 of proving beyond a reasonable doubt that Mr. Tsarnaev  
3 committed the offenses on a victim who was particularly  
4 vulnerable due to youth, you must unanimously agree that the  
5 victim was vulnerable due to his youth and that there was a  
6 connection between the victim's vulnerability and the offense  
7 committed upon him. A connection does not necessarily mean  
8 that the defendant targeted the victim because of the  
9 vulnerability; it means that once targeted, the victim was more  
10 susceptible to death because of the vulnerability.

11           Again, your finding as to this statutory aggravating  
12 factor must be indicated in the appropriate place on -- in  
13 Section III of the verdict form.

14           Finally, let me reiterate that if, with respect to any  
15 capital count, you do not unanimously find the government has  
16 proven beyond a reasonable doubt at least one of the several  
17 statutory aggravating factors, your deliberations as to that  
18 count are concluded.

19           Let me turn now to non-statutory aggravating factors.  
20 If you have unanimously found that the government has proven  
21 beyond a reasonable doubt that the defendant was 18 years of  
22 age or older at the time of the particular offense, has proved  
23 the existence of a particular -- as to that particular count of  
24 at least one gateway or threshold intent factor, and at least  
25 one statutory aggravating factor alleged by the government, you



1 must then consider whether the government has proven the  
2 existence of any alleged non-statutory aggravating factors with  
3 regard to that same count.

4           You must agree unanimously and separately as to each  
5 count that the government has proved beyond a reasonable doubt  
6 the existence of any of the alleged non-statutory aggravating  
7 factors before you may consider that statutory -- that  
8 non-statutory aggravating factor in your deliberations. Again,  
9 any such finding must be based on Mr. Tsarnaev's actions and  
10 intent.

11           The law permits you to consider and discuss only the  
12 six non-statutory aggravating factors specifically claimed by  
13 the government and listed below. You're not free to consider  
14 any other facts in aggravation that you may think of on your  
15 own.

16           The non-statutory aggravating factors alleged by the  
17 government with regard to the capital counts are as follows:  
18 First, in conjunction with committing acts of violence and  
19 terrorism, Mr. Tsarnaev made statements suggesting that others  
20 would be justified in committing additional acts of violence  
21 and terrorism against the United States. The government  
22 alleges this factor in connection with all of the capital  
23 counts.

24           Second, the government alleges that Mr. Tsarnaev  
25 caused injury, harm and loss to Krystle Marie Campbell and her

1 family and friends in Counts 1, 2, 3, 6, 7, 8, 12 and 13; to  
2 Martin Richard and his family and friends, Counts 1, 4, 5, 6,  
3 9, 10, 14, and 15; to Lingzi Lu and her family and friends,  
4 Counts 1, 4, 5, 6, 9, 10, 14 and 15; and to Officer Sean  
5 Collier and his family and friends, Counts 1, 6, 16, 17 and 18.

6 The third non-statutory aggravating factor alleged is  
7 that Mr. Tsarnaev targeted the Boston Marathon, an iconic event  
8 that draws large crowds of men, women and children to its final  
9 stretch, making it especially susceptible to the act and  
10 effects of terrorism. The government alleges this factor in  
11 connection with Counts 1 through 10 and Counts 12 through 15  
12 only.

13 The government alleges that Mr. Tsarnaev demonstrated  
14 a lack of remorse. The government alleges this factor in  
15 connection with all of the capital counts.

16 The government alleges that Mr. Tsarnaev murdered  
17 Officer Sean Collier, a law enforcement officer who was engaged  
18 in the performance of his official duties at the time of his  
19 death. The government alleges this factor in connection with  
20 Counts 1, 6, 16, 17 and 18 only.

21 Finally, the government alleges that Mr. Tsarnaev  
22 participated in additional uncharged crimes of violence,  
23 including assault with a dangerous weapon, assault with intent  
24 to maim, mayhem and attempted murder on April 15 in 2013 in  
25 Boston, Massachusetts -- that's for Counts 1 through 10 and 12

1 through 15 -- and on or about April 19, 2013, in Watertown,  
2 Massachusetts. That relates to Counts 1 through 10 and 12  
3 through 18. That is all the capital counts.

4 These non-statutory aggravating factors are set forth  
5 in the verdict slip, and they are generally self-explanatory  
6 and do not require further amplification or instruction. I do  
7 want to provide further instructions, however, regarding two of  
8 the non-statutory aggravating factors.

9 The first non-statutory aggravating factor I would  
10 like to address is the government's allegation that  
11 Mr. Tsarnaev has, quote, demonstrated a lack of remorse. In  
12 determining whether the government has proven this fact beyond  
13 a reasonable doubt, you may not consider the fact that the  
14 defendant has not testified or made any statement here in  
15 court. I remind you the defendant has a constitutional right  
16 not to testify or speak both at the first phase of the trial  
17 and at his sentencing hearing.

18 Again, there may be many valid reasons why a defendant  
19 would exercise his constitutional right not to testify. You  
20 must, therefore, not draw any conclusion against him as to any  
21 issue from his failure to testify at this stage of the trial.

22 The second non-statutory factor on which I need to  
23 provide some additional information is the allegation that  
24 Mr. Tsarnaev participated in uncharged crimes of violence,  
25 either directly or as an aider and abetter, as I've previously

1 defined that term. To find the defendant committed -- and  
2 you'll recall that I listed the ones that -- and you'll see it  
3 in the verdict form, lists the other uncharged crimes the  
4 government claims.

5 So to find the defendant committed an assault with a  
6 dangerous weapon, the government would be required to prove  
7 that the defendant forcibly assaulted another -- a person with  
8 a deadly or dangerous weapon; and, secondly, the assault was  
9 done voluntarily and intentionally.

10 To find the defendant the committed an assault with  
11 the intent to maim, you would be required to unanimously and  
12 beyond a reasonable doubt find that the defendant had forcibly  
13 assaulted a person; that the assault was done voluntarily and  
14 intentionally; and, third, that the defendant intended to cause  
15 a permanent disability.

16 An assault is any intentional and voluntary attempt or  
17 threat to do injury to the person of another. When coupled  
18 with the apparent present ability to do so sufficient to put  
19 the person against whom the attempt is made in fear of  
20 immediate bodily harm.

21 "Forcibly" means by the use of force. Physical force  
22 is sufficient, and actual physical contact is not required.

23 You may also find that a person who, in fact, has the  
24 present ability to inflict bodily harm upon another and who  
25 threatens or intends to inflict bodily harm upon such person

1 acts forcibly. In such a case, the threat must be a present  
2 one.

3 A deadly and dangerous weapon is an object used in a  
4 manner likely to endanger life or inflict serious bodily harm.  
5 A weapon intended to cause death or danger but fails to do so  
6 because of a defective component is, nevertheless, a deadly or  
7 dangerous weapon.

8 To find the defendant committed the uncharged crime of  
9 mayhem, you must find beyond a reasonable doubt and unanimously  
10 the defendant maliciously disabled or disfigured someone  
11 permanently or deprived someone else of a limb, organ or part  
12 of his or her body; second, that when the defendant acted, he  
13 intended to permanently disable or disfigure the other person  
14 or deprive the person of a limb, organ or part of his or her  
15 body.

16 To act maliciously means to act with the intent or  
17 with the willful -- to do that, or with willful disregard of  
18 the likelihood that damage or injury would result.

19 To find the defendant committed the uncharged crime of  
20 attempted murder, you must find unanimously and beyond a  
21 reasonable doubt that the defendant intend to commit the crime  
22 of murder; and, second, that the defendant engaged in a  
23 purposeful act that, under the circumstances as he believed  
24 them to be, amounted to a substantial step toward the  
25 commission of that crime and strongly corroborated his criminal

1 intent.

2 "A substantial step" is an act in furtherance of the  
3 criminal scheme. It must be something more than mere  
4 preparation but less than the last act necessary before the  
5 substantive crime is completed. The substantial step may  
6 itself prove the intent to commit the crime but only if it  
7 unequivocally demonstrates such an intent.

8 "Murder" is defined as the unlawful killing of a human  
9 being with malice aforethought.

10 "Malice aforethought" means an intent at the time of  
11 the killing willfully to take the life of a human being or an  
12 intent willfully to act in a callous and wanton disregard of  
13 the consequences of human life. But malice aforethought does  
14 not necessarily imply any ill will, spite or hatred towards the  
15 individual killed.

16 In determining whether a victim was unlawfully killed  
17 with malice aforethought, you should consider all the evidence  
18 considering the facts and circumstances preceding, surrounding  
19 and following the killing which tend to shed light upon the  
20 question of intent.

21 Again, your findings regarding these non-statutory  
22 aggravating factors must be separate as to each count and  
23 unanimous. You must also unanimously agree beyond a reasonable  
24 doubt that the non-statutory aggravating factor alleged by the  
25 government is, in fact, aggravating. As I mentioned at the

1 beginning, an aggravating factor is a fact or circumstance that  
2 would tend to support the imposition of the death penalty.

3 In the event that you unanimously find beyond a  
4 reasonable doubt that a particular alleged non-statutory  
5 aggravating factor applies to all of the relevant capital  
6 counts for which you have found the defendant 18 years or older  
7 and at least one gateway factor and at least one statutory  
8 aggravating factor, then you are to indicate that finding on  
9 the appropriate line in Section IV of the verdict form. And  
10 you'll see that again; that is presented as the first option.

11 In the event that you unanimously find a particular  
12 non-statutory aggravating factor applies to some but not all of  
13 the relevant counts, you're to indicate that finding on the  
14 appropriate line in Section IV and also to identify on the line  
15 provided by count number the particular counts to which you  
16 find the non-statutory aggravating factor applies.

17 If you do not unanimously find that a non-statutory  
18 aggravating factor has been proven beyond a reasonable doubt  
19 with regard to any of the relevant capital crimes, you should  
20 indicate that in Section IV of the form.

21 Now, unlike the rules relating to the gateway factors  
22 or the statutory aggravating factors, you're not required to  
23 find a non-statutory aggravating factor with regard to a  
24 particular count before you may consider the death penalty as a  
25 possible sentence for that count. The law requires only that

1 before you may consider an alleged non-statutory aggravating  
2 factor as to any particular capital count, you must first  
3 unanimously agree that the government has proven beyond a  
4 reasonable doubt the existence of that factor as to that count.

5 After you've completed your findings regarding the  
6 existence or non-existence of non-statutory aggravating  
7 factors, you should proceed to Section V of the verdict form to  
8 consider whether any mitigating factors exist. Again, remember  
9 unless you're unanimous that the existence of a particular  
10 statutory or non-statutory factor has been proven by the  
11 government beyond a reasonable doubt, you may not give that  
12 factor any consideration beyond -- in your deliberations. That  
13 is, as to any statutory or non-statutory factor you do not find  
14 to be proved, you may not consider that in your deliberations.

15 Let me turn now to mitigating factors. Before you may  
16 consider the appropriate punishment for any one of the capital  
17 counts for which you have unanimously found that Mr. Tsarnaev  
18 was 18 years old or older and the existence of at least one  
19 gateway factor and at least one statutory aggravating factor,  
20 you must also consider whether Mr. Tsarnaev has proved the  
21 existence of any mitigating factors pertinent to the question  
22 of punishment for that particular count.

23 A mitigating factor is not offered to justify or  
24 excuse Mr. Tsarnaev's conduct; instead, a mitigating factor is  
25 a fact about Mr. Tsarnaev's life or character or about the



1 circumstances surrounding the particular capital offense or  
2 anything else relevant that would suggest in fairness that life  
3 in prison without possibility of release is a more appropriate  
4 punishment than a sentence of death.

5 Unlike aggravating factors, which you must unanimously  
6 find proved beyond a reasonable doubt in order for you to even  
7 consider them in your deliberations, the law does not require  
8 unanimity with respect to mitigating factors. Any one juror  
9 who's persuaded of the existence of a mitigating factor must  
10 consider it in his or her sentencing decision.

11 Furthermore, as I've said, it is Mr. Tsarnaev's burden  
12 to establish a mitigating factor only by a preponderance of the  
13 evidence. I've previously instructed you about that standard  
14 of proof.

15 So Mr. Tsarnaev alleges or urges as mitigating factors  
16 the following: first, that he was 19 years old at the time of  
17 the offenses; second, that he has had no prior history of  
18 violent behavior; third, that he acted under the influence of  
19 his older brother; fourth, whether because of Tamerlan's age,  
20 size, aggressiveness, domineering personality, privileged  
21 status in the family, traditional authority as the eldest  
22 brother or other reasons, Dzhokhar Tsarnaev was particularly  
23 susceptible to his older brother's influence; fifth, Dzhokhar  
24 Tsarnaev's brother, Tamerlan, planned, led and directed the  
25 marathon bombing; sixth, Dzhokhar Tsarnaev's brother, Tamerlan,

1 was the person who shot and killed Officer Sean Collier;  
2 seventh, Dzhokhar Tsarnaev would not have committed the crimes  
3 but for his older brother, Tamerlan;

4 Eighth, Dzhokhar Tsarnaev's teachers in elementary  
5 school, middle school and high school knew him to be hard  
6 working, respectful, kind and considerate; ninth, Dzhokhar  
7 Tsarnaev's friends in high school and college knew him to be  
8 thoughtful, caring and respectful of the rights and feelings of  
9 others; tenth, Dzhokhar Tsarnaev's teachers and friends still  
10 care for him; 11, Dzhokhar Tsarnaev's aunts and cousins love  
11 and care for him;

12 12, mental illness and brain damage disabled Dzhokhar  
13 Tsarnaev's father; 13, Dzhokhar Tsarnaev was deprived of needed  
14 stability and guidance during his adolescence by his father's  
15 mental illness and brain damage; 14, Dzhokhar Tsarnaev's  
16 father's illness and disability made Tamerlan the dominant male  
17 figure in Dzhokhar's life; 15, Dzhokhar Tsarnaev was deprived  
18 of the stability and guidance he needed during his adolescence  
19 due to his mother's emotional volatility and religious  
20 extremism; 16, Dzhokhar Tsarnaev's mother facilitated his  
21 brother, Tamerlan's radicalization;

22 17, Tamerlan Tsarnaev became radicalized first and  
23 then encouraged his younger brother to follow him; 18, Dzhokhar  
24 Tsarnaev's parents' return to Russia in 2012 made Tamerlan the  
25 dominant adult male -- the adult in Dzhokhar's life; 19,

1 Dzhokhar Tsarnaev is likely -- is highly unlikely to commit,  
2 incite or facilitate any acts of violence in the future while  
3 serving a life-without-release sentence in federal custody; 20,  
4 the government has the power to severely restrict Dzhokhar  
5 Tsarnaev's communications with the outside world; 21, Dzhokhar  
6 Tsarnaev has expressed sorrow and remorse for what he did and  
7 for the suffering he caused.

8 In Section V of the verdict form you will be -- after  
9 each of the proposed mitigating factors, you are to indicate  
10 the total number of jurors who individually find that that  
11 particular mitigating factor has been established by the  
12 defendant by a preponderance of the evidence. As I say, that  
13 can be any number because any number of jurors could make the  
14 decision. So it could be anywhere from zero to 12.

15 In addition to the mitigating factors specifically  
16 raised by Mr. Tsarnaev, the law also permits each of you to  
17 consider anything about the offense, the circumstances of the  
18 offense or anything about Mr. Tsarnaev's background, record or  
19 character or anything else relevant that you individually  
20 believe should mitigate in favor of the imposition of life  
21 imprisonment without the possibility of release instead of the  
22 death penalty.

23 In other words, the law does not limit your  
24 consideration of mitigating factors to those that have been  
25 proposed or articulated by the defendant. Accordingly, if

1 there are any mitigating factors not argued by the attorneys  
2 for Mr. Tsarnaev by which any juror, on his or her own or with  
3 others, finds to be established by a preponderance of the  
4 evidence, the juror's free to consider such factor or factors  
5 in his own determination as to the appropriate sentence. And  
6 you will see in Section V of the verdict form you're able to  
7 identify any such additional mitigating factors that one or  
8 more of you independently find to exist by a preponderance of  
9 the evidence.

10 Please note the existence of a mitigating factor is a  
11 distinct consideration from what weight, if any, should  
12 ultimately be given to that factor in your deliberations. For  
13 example, any number of jurors might first find that a  
14 particular mitigating factor exists, but those jurors as  
15 individuals might later choose to give that same mitigating  
16 factor differing levels of significance in the weighing  
17 process. With this distinction in mind, Section V of the  
18 verdict form only asks you to report the total number of jurors  
19 who individually find the existence of a particular mitigating  
20 factor to be established by a preponderance of the evidence.

21 In addition, you should understand that the law does  
22 not require that there be a connection between the mitigating  
23 evidence and the crime committed, though you may conclude that  
24 there is. It is not necessary, for example, for the defense to  
25 prove that adverse circumstances in the defendant's childhood

1 or family background caused him to commit the crime -- the  
2 offense. Whether any mitigating factor has a direct connection  
3 to the crime does not affect its status as a -- mitigating  
4 circumstances that you're required to consider in the weighing  
5 process.

6 After you've completed your findings with respect to  
7 the existence or nonexistence of mitigating factors, you should  
8 then proceed to Section VI of the verdict form to weigh the  
9 aggravating factors and the mitigating factors with regard to  
10 each of the counts for which you have unanimously found that  
11 the defendant was 18 years old at the time of the offense and  
12 you found the existence of at least one gateway factor and at  
13 least one statutory aggravating factor.

14 If you unanimously find beyond a reasonable doubt that  
15 the government has proven that the defendant was 18 years or  
16 older at the time of the offense and the existence of at least  
17 one gateway or threshold intent factor and at least one  
18 statutory aggravating factor with regard to any capital count;  
19 and after you determine whether the government has proven  
20 beyond a reasonable doubt the existence of any non-statutory  
21 aggravating factors with regard to that count; and, further,  
22 after you consider whether Mr. Tsarnaev has proven, by a  
23 preponderance of the evidence, the existence of any mitigating  
24 factors, then you must engage in a weighing process with regard  
25 to that count.

1           You must consider whether you are unanimously  
2 persuaded that the aggravating factors sufficiently outweigh  
3 any mitigating factors or, in the absence of any mitigating  
4 factors, that the aggravating factors are themselves sufficient  
5 to call for a sentence of death on that particular count that  
6 you are considering.

7           You are to conduct this weighing process separately  
8 with respect to each of the capital counts for which you have  
9 found the defendant was 18 years of age or older and you have  
10 found at least one gateway or threshold intent factor and at  
11 least one statutory aggravating factor.

12           Each juror must individually decide whether the facts  
13 and circumstances in this case as to each count call for death  
14 as the appropriate sentence. In determining the appropriate  
15 sentence for any particular capital count you're considering,  
16 each of you must independently weigh the aggravating factor or  
17 factors that you unanimously found to exist with regard to that  
18 count, whether those aggravating factors are statutory or  
19 non-statutory; and each of you must weigh any mitigating  
20 factors that you individually or with others have found to  
21 exist.

22           You're not to weigh, in the process, any of the  
23 gateway or threshold intent factors. In the weighing process  
24 you must avoid any influence of passion, prejudice or any of  
25 the arbitrary considerations. Your deliberations must be based

1 on your reasoned evaluation of the evidence as you have seen it  
2 and heard it and on the law which I am instructing you in.

3 Now, you've heard evidence about the impact of the  
4 deaths of the deceased victims' -- deaths on the deceased  
5 victims' families -- family members and friends. You may not  
6 consider that evidence in deciding whether any of the gateway  
7 or statutory aggravating factors have been proved.

8 If you have found with respect to any particular count  
9 that Mr. Tsarnaev was 18 years old or older at the time of the  
10 offense and have found the existence of a gateway factor and at  
11 least one statutory aggravating factor, then you may consider  
12 the victim impact evidence in deciding what the appropriate  
13 punishment should be.

14 Again, I remind you that you are not to be influenced  
15 by speculation concerning what sentence you think anyone else,  
16 including victims' families, might wish to see imposed on the  
17 defendant. You have been selected to decide this case because  
18 you committed to be fair and impartial in all respects, and you  
19 made your oath or affirmation to that effect. It is for you  
20 alone, the fair-minded jurors, to decide the appropriate  
21 punishment in this case based on your careful evaluation of the  
22 evidence that you have heard and seen.

23 I also want to caution you again, as I did during the  
24 trial, that you are not to consider any possible financial  
25 costs to the government that may be involved in carrying out

1 either the death penalty or life imprisonment without the  
2 possibility of release. This is so for two reasons: First,  
3 whether one sentence may be more expensive than another is  
4 simply not a proper basis upon which to decide a matter as  
5 grave as this; and, second, even it were proper to impose  
6 either the death penalty or life imprisonment to save money,  
7 there's no evidence before you as to which sentence, if either,  
8 is actually more expensive to carry out. For both of these  
9 reasons, it would be improper for you to base any part of your  
10 decision on the notion that the government could save money by  
11 imposing one sentence rather than another. And that is, again,  
12 a subject that should not even be discussed by you in the jury  
13 room.

14           Again, whether or not the circumstances in this case  
15 call for the sentence of death is a decision that the law  
16 leaves entirely to you. All 12 jurors must agree that death  
17 is, in fact, the appropriate sentence in order for it to be  
18 imposed. And no juror is ever required to impose a sentence of  
19 death. The decision is yours, as individuals, to make.

20           The process of weighing aggravating and mitigating  
21 factors against each other or weighing the aggravating factors  
22 alone, if you find no mitigating factors, in order to determine  
23 the proper punishment is by no means a mathematical or  
24 mechanical process. In other words, you should not simply  
25 count the total number of aggravating and mitigating factors



1 and reach a decision based on which number is greater. Rather,  
2 you should consider the weight and significance of each factor.  
3 As I've said, in carefully weighing these factors, you are  
4 called upon to make a unique, individual judgment about the  
5 sentence Mr. Tsarnaev should receive.

6 The law contemplates that different factors may be  
7 given different weights or values by different jurors. Thus,  
8 you may find that one mitigating factor outweighs all  
9 aggravating factors combined or that aggravating factors proved  
10 do not, standing alone, justify the imposition of a sentence of  
11 death. Similarly, you may instead find that a single  
12 aggravating factor sufficiently outweighs all mitigating  
13 factors combined so as to justify a sentence of death.

14 Any one of you is free to decide that a death sentence  
15 should not be imposed so long as, based on the evidence and  
16 your sense of justice, you conclude that the proven aggravating  
17 factors do not sufficiently outweigh the mitigating factors  
18 such that the death penalty should be imposed. Each juror is  
19 to individually decide what weight or value is to be given to  
20 any particular aggravating or mitigating factor in the  
21 decision-making process.

22 Bear in mind, of course, that in order to find that a  
23 sentence of death is appropriate for a particular count, the  
24 jurors must be unanimous in their conclusion that the  
25 aggravating factor or factors proven as to that count

1 sufficiently outweigh any mitigating factors found or, in the  
2 absence of any mitigating factors, that the aggravating factors  
3 alone are sufficient to call for a sentence of death.

4 In the event that you unanimously find as to all the  
5 capital counts that the aggravating factor or factors found to  
6 exist sufficiently outweigh the mitigating factor or factors  
7 found to exist or, in the absence of any mitigating factors,  
8 that the aggravating factor or factors alone are sufficient to  
9 justify a sentence of death, then you will indicate that in  
10 Section VI of the verdict form.

11 In the event you -- that you unanimously find that a  
12 sentence of life in prison without the possibility of release  
13 is the appropriate sentence for Mr. Tsarnaev for all of the  
14 capital counts, then you would indicate that in Section VI,  
15 which is the second option.

16 In the event that you unanimously find that some of  
17 the capital counts -- for some of the capital counts that the  
18 aggravating factor or factors found to exist sufficiently  
19 outweigh the mitigating factor or factors found to exist or, in  
20 the absence of mitigating factors, the aggravating factor or  
21 factors are alone sufficient to justify death, with respect to  
22 those counts, please indicate also in Section VI and then  
23 identify those counts by number.

24 In the event that the jury is unable to reach a  
25 unanimous verdict in favor of a death sentence or in favor of a

1 life sentence for any of the capital counts, please so indicate  
2 in Section VI of the verdict form. Before you reach any  
3 conclusion based on a lack of unanimity on any count, you  
4 should continue your discussions until you are fully satisfied  
5 that no further discussion will lead to a unanimous decision.

6 After you have completed your sentence determination  
7 in Section VI, regardless of what the decision determination  
8 was, continue on to Section VII and complete the certificate  
9 regarding the determination of sentence.

10 As I instructed you at the beginning of the penalty  
11 phase, in your consideration whether the death sentence is  
12 appropriate you must not consider the race, color, religious  
13 beliefs, national origin or sex of either Mr. Tsarnaev or of  
14 the victims. You are not to return a sentence of death unless  
15 you would return a sentence of death for the crime in question  
16 without regard to the race, color, religious beliefs, national  
17 origin or sex of either Mr. Tsarnaev or any victim.

18 To emphasize the importance of this consideration,  
19 Section VIII of the verdict form contains a certification  
20 statement. Each juror should carefully read -- when you've  
21 completed your deliberations, each juror should carefully read  
22 the statement and sign your name in the appropriate place if  
23 the statement accurately reflects the manner in which each of  
24 you reached your individual decision.

25 So that is the conclusion of my instructions at this

1 stage. We'll have some further -- few thing to say later. We  
2 will now turn to the closing statements by counsel. And when  
3 they have finished, I will have some final issues to discuss  
4 with you.

5 As we did before, the order of the closing arguments  
6 is the government will proceed first, followed by the  
7 defendant, followed by a brief rebuttal by the government.  
8 Again, at least we should -- I think perhaps we should actually  
9 take a short break. Very short.

10 THE CLERK: All rise for the Court and the jury. The  
11 Court will take a very short recess.

12 (The Court and jury exit the courtroom and there is a  
13 recess in the proceedings at 11:05 a.m.)

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

15 (The Court and jury enter the courtroom at 11:26 a.m.)

16 THE COURT: All right.

17 THE CLERK: Be seated.

18 THE COURT: All right. We're ready for the  
19 government's main closing argument.

20 Mr. Mellin?

21 MR. MELLIN: Thank you, your Honor. Your Honor, may I  
22 ask that the feed be shifted to the government so...

23 THE COURT: Yes. Tell me when you're ready.

24 MR. MELLIN: Thank you.

25 THE COURT: Go ahead. I'm just waiting for you to get

1 away from your home screen. That's all. All right.

2 MR. MELLIN: Thank you, your Honor.

3 Good morning.

4 THE JURORS: Good morning.

5 MR. MELLIN: There's a certain clarity that comes to  
6 you when you are close to death. Remember the testimony of  
7 Jeff Bauman and Sydney Corcoran. Even as they lay bleeding on  
8 that sidewalk on Boylston Street, they made peace with death.

9 As the defendant lay bleeding in that boat, he too  
10 made peace with death. In his moment of clarity, he wrote what  
11 he thought would be his lasting testament. He wrote, "Now, I  
12 don't like killing innocent people, but in this case it is  
13 allowed because Americans need to be punished." No remorse, no  
14 apology. Those are the words of a terrorist convinced that he  
15 has done the right thing. He felt justified in killing and  
16 maiming and seriously injuring innocent men, women and  
17 children.

18 I want to start back on Boylston Street, back where  
19 the carnage began. Picture the scene on Boylston just before  
20 the first blast. It's a beautiful, sunny Patriots' Day. It's  
21 2:45 p.m. And the defendant walks up. He walks up past the  
22 Forum restaurant, sees how crowded it is, and decides that's  
23 the place to put his bomb. He placed it there because his goal  
24 was to murder and mutilate. He wanted to murder as many people  
25 as possible.

1           When he looked up, what did he see? He saw that he  
2 had placed that bomb approximately four feet behind a row of  
3 children. Six-year-old Jane Richard, eight-year-old Martin  
4 Richard, 11-year-old Aaron Hern, 12-year-old Henry Richard. He  
5 was right here. The children were right there (indicating).

6           But seeing them didn't deter him. He didn't pick up  
7 that backpack, and he didn't move it. He didn't care if he  
8 killed them along with everyone else because he had already  
9 decided that killing innocents was justified. In fact, killing  
10 innocents was the whole point. It's the way you terrorize an  
11 entire population. The more vulnerable and unsuspecting the  
12 victim, the more terrifying the murder. The defendant picked  
13 the Boston Marathon. He picked the Forum restaurant. And he  
14 chose to remain there right by that tree because it was the  
15 best way he could punish his perceived enemies.

16           The defendant put the backpack down behind those  
17 children, and he waited.

18           (Pause.)

19           MR. MELLIN: That was 20 seconds. He waited almost 12  
20 times that long before giving his brother the go-ahead and then  
21 detonating his own bomb. Remember what Alan Hern said, the  
22 father of 11-year-old Aaron Hern. He said he was helpless  
23 trying to save Aaron. Remember what Steve Woolfenden said. He  
24 was terrified and helpless as little Leo was carried away,  
25 little Leo screaming for mommy and daddy, being handed off to

1 strangers. Steve Woolfenden didn't know if he would live or  
2 die, and he didn't know if he would live to ever see Leo again.  
3 These fathers were helpless. They were helpless in saving the  
4 lives of their own children because of that defendant.

5 This is what terrorism looks like. It's Martin  
6 Richard bleeding on the ground in agony while his mother bends  
7 over him, injured in one eye, and begs him to stay alive,  
8 saying, "Please, Martin. Please, Martin."

9 It's Lingzi Lu screaming in pain as she dies on that  
10 street while her friend Danling tries to hold her abdominal  
11 organs inside.

12 It's Krystle Campbell, burned all over her body,  
13 filled with shrapnel, with smoke coming out of her mouth.

14 And it's Sean Collier, a loving son and dedicated  
15 public servant, sitting in his cruiser with three bullet holes  
16 in his head, dying as his own blood pools in that car seat.

17 And it's nearly 20 other people staring in shock at  
18 their mangled and ruined limbs when just moments before they  
19 were fine.

20 It's not just the dead and the wounded who were  
21 injured by the defendant's crimes. Others suffered unspeakable  
22 pain and will do so for the rest of their lives. Bill Richard  
23 told you that he had to choose between saving Jane, who was  
24 near certain death, or going back and seeing Martin in his last  
25 moments of life. Do you think that memory ever goes away? that

1 pain ever goes away?

2 The defense will ask you to value the defendant's  
3 life, but he did not value the lives of his victims, not even  
4 the lives of children. He killed indiscriminately to make a  
5 political statement, and he placed no value on the lives and  
6 didn't care for a second what impact his actions and his  
7 killings would have on so many other innocent family members  
8 and friends. His actions have earned him a sentence of death.

9 There is so much death and loss and devastation in  
10 this case, it's hard to know where to begin. The defendant  
11 planted a bomb that led to painful eulogies and terrifying  
12 memories. Surviving family members were left to attend to  
13 funerals and live lives with bittersweet memories of those lost  
14 forever and painful reminders of what could have been.

15 You heard how Krystle Campbell was her dad's princess.  
16 She was the light in his life. He told you that she would call  
17 him every day. Now that light is out, and no phone call will  
18 ever come.

19 Krystle's brother told you how the family got word  
20 that Krystle was still alive and at the hospital. Finally,  
21 some good news on that awful day. Only it turned out it was  
22 Karen McWatters who was alive. Krystle was dead. You heard  
23 that Krystle's dad fainted when he heard that news. Two years  
24 later, Bill still feels the loss, the loss of his sister, and  
25 his son feels the loss of an amazing aunt.



1           Sean Collier was the moral compass in the family. Now  
2 he is gone forever. His brother told you that Sean loved  
3 helping people, and as Andrew said, there will always be a  
4 cloud over family events, forever. Or a cloud over the family  
5 tailgates at the Patriots' games. Joe Rogers will never be  
6 able to go to another game with Sean.

7           This is Sean's graduation. Mr. Rogers told you the  
8 happiest day of Sean's life. He was murdered while performing  
9 that job.

10           Even to this date, the pain and suffering and loss is  
11 too much to bear for that family. Sean Collier's murder caused  
12 his family a new world of pain. Joe Rogers told you how his  
13 wife can no longer go to work after seeing Sean murdered. She  
14 suffers from PTSD and could not even get out of bed for two  
15 months after Sean's murder.

16           Sean's mother cried the entire weekend of the second  
17 anniversary of his death, and Easter will never be the same for  
18 that family. If you remember, that was the last time the  
19 family got together before April 18th, 2013.

20           Chief DiFava told you that one word described Sean  
21 Collier: character. Now that character is gone. And two  
22 years later, the grief still remains.

23           Lingzi Lu's aunt, Aunt Helen, told you that her  
24 parents were too devastated to come to the United States  
25 initially when they got the news. Lingzi was their only child,

1 their future. That future ended on April 15th, 2013. She was  
2 her father's jolly elf. She was the beautiful nerd.

3           Lingzi's father read a poem at her memorial service.  
4 You heard it here in court: "There will be no bombs or  
5 terrorist attacks in its path. In tears, we hear you say, the  
6 forever young, 'Dear Mom and Dad, don't cry. I love you. If  
7 there is an afterlife, I will be your daughter again.'" Her  
8 dad.

9           Her father said, "She's gone. How can our living go  
10 on?" So unbelievably sad, and yet so true. Their pain will  
11 never go away.

12           Bill Richard knew immediately that there was no chance  
13 for Martin. He saw his little boy's severely damaged body. He  
14 embraced his son Henry for a moment and then told Henry, "You  
15 have to help me find Jane." After finding Jane, Bill Richard  
16 made sure she got the help she needed. Denise Richard was left  
17 with Martin for the final moments of his life. Martin's body  
18 was ultimately covered by a tablecloth on Boylston Street.  
19 Those are the lasting images Denise Richard has for the rest of  
20 her life.

21           And think back to what Bill Richard said about telling  
22 Jane about her brother's death. Jane was still in surgery,  
23 coming in and out of consciousness, and each time she was awake  
24 she would ask, "How is Martin?" And each time they had to tell  
25 her Martin was dead. That's another lasting memory for that

1 family.

2 Bill Richard did tell you that he can "still hear the  
3 beautiful voices of my family." Unfortunately, because of this  
4 defendant, he will never hear Martin's voice again. So much  
5 loss and suffering for one family to bear. It's too much.

6 Martin will never get to play high school sports or  
7 attend college or form lifelong friendships. Life for the  
8 Richard parents and their children will never be the same.  
9 Every race is an awful reminder that Martin is not running and  
10 Martin is not there.

11 The defendant took all of that away from four lovely,  
12 loving, caring, positive people. This defendant blinded the  
13 mother, maimed their six-year-old daughter, ripping off her  
14 leg, and blew apart eight-year-old Martin right in front of  
15 their son and the father. There is no just punishment just for  
16 that other than death.

17 All of this loss is overwhelming in scope and impact,  
18 yet after causing all of this pain and suffering, this  
19 defendant bought a half gallon of milk without shedding a tear  
20 or expressing a care for the lives of the people that were  
21 forever altered or destroyed. He acted like it was any other  
22 day. He was stress free and remorse free.

23 He didn't care because the death and misery was what  
24 he sought that day. His actions destroyed so many families.  
25 And he, and he alone, is responsible for his actions in causing

1 so much sadness, death and fear.

2 I want to turn briefly to the verdict form. We just  
3 went over it in detail. Your decision in this case will be  
4 assisted by kind of a record-keeping process. As Judge O'Toole  
5 has instructed you, the United States has to prove three  
6 elements before you reach the larger task, which is an  
7 assessment of a just punishment in this case. It's a lengthy  
8 form, but it will guide you through all of the steps.

9 And once you go through this form and this process and  
10 the weighing of the factors, you will see how the aggravating  
11 factors so clearly point to only one result: a sentence of  
12 death.

13 First, the government must prove the defendant was at  
14 least 18 in April of 2013. You know from his school records  
15 and from his naturalization documents that he was born on July  
16 22nd, 1993. He was almost 20 years old in April 2013.

17 Second, we must prove at least one of the intent  
18 factors. As to the intent factors, the same evidence that  
19 supported your finding of intent in the guilt phase is the same  
20 evidence that will assist you in finding the intent in this  
21 phase.

22 Remember also a passage from the *Inspire* magazine,  
23 2010. Page 33, it educates the defendant, right at the bottom,  
24 "In one or two days, the bomb could be ready to kill at least  
25 ten people. In a month, you may make a bigger and more lethal

1 bomb that could kill tens of people."

2           The defendant knew what kind of hell was going to  
3 happen and be unleashed, and he intended to kill people. How  
4 many did he think would die? You have heard throughout this  
5 case so much evidence of his intent, but just be mindful that  
6 there are four intent factors in this phase. You need only  
7 find one applies, but you should consider all four. And if you  
8 find all four factors apply, you should indicate that.

9           Now, why do these murders deserve the death penalty  
10 when other murders do not? The aggravating factors are  
11 circumstances that by law -- that the law says makes some  
12 murders worse than others. You need only find one statutory  
13 aggravating factor to justify a sentence of death, but in this  
14 case we have six.

15           First, the defendant didn't simply kill people; he  
16 killed them using a weapon of mass destruction. It's obvious  
17 why the law considers murders committed in that way to be worse  
18 than other murders. A weapon of mass destruction is a tool of  
19 terrorists. Its purpose is not to kill a particular victim;  
20 its purpose is to kill indiscriminately. And not just kill,  
21 but destroy.

22           Remember the massive fireball, the deafening  
23 explosion, the acrid smoke, the searing heat, the broken glass  
24 of the windows, the chaos and the noise, and the river of blood  
25 running down that sidewalk? All those things make weapons of

1 mass destruction terrifying and make the deaths that they cause  
2 worse than others.

3 Second, the defendant killed multiple people in a  
4 single criminal episode. The number of deaths is seen by the  
5 law, understandably, as a reason to distinguish between murder  
6 cases. A case involving multiple killings should carry a  
7 greater punishment than a case involving a single killing.  
8 It's clear the defendant killed more than one person by using a  
9 weapon of mass destruction in this case.

10 Third, the defendant engaged in substantial planning  
11 and premeditation. The law punishes more harshly those like  
12 the defendant who take considerable time to deliberate, plan  
13 and carry out their murderous attacks. Between the time this  
14 whole conspiracy started and the time he finished carrying it  
15 out, the defendant had plenty of time to reflect, to reconsider  
16 and think better of this plan.

17 He didn't set out to commit acts of terrorism on an  
18 impulse. The whole plan was well thought out and a long time  
19 in the making. It began for him with reading terrorist  
20 writings and listening to terrorist lectures, adopting the  
21 beliefs that would enable him to kill without remorse. He read  
22 the *Inspire* article, "Make a bomb in the kitchen of your mom."  
23 It's a recipe book for the bombs that were used in this case.  
24 Little Christmas lights, pipe bombs like the ones used in this  
25 case, and the pressure cookers.

1           The defendant acquired the 9-millimeter semiautomatic  
2 weapon. Remember the 9-millimeter gun? That's an essential  
3 ingredient in this plan as well. He got that from Stephen  
4 Silva in January or February 2013. He bought ammunition and  
5 practiced shooting the 9-millimeter at that firing range in  
6 Manchester. That was March 20th. On the very same day, he  
7 tweeted, "Evil triumphs when good men do nothing." "Evil  
8 triumphs."

9           On April 7th, the defendant tweeted, "If you have the  
10 knowledge and the inspiration, all that's left is to take  
11 action." April 7th. Within eight days they took action.

12           On April 14th, the day before, he purchased that SIM  
13 card, the SIM card he used to call his brother to give him the  
14 go-ahead to detonate the bomb. And he waited to commit these  
15 murders and these attacks on Patriots' Day, a school holiday  
16 and the day of the marathon. He did that so the bombings would  
17 be as terrifying and devastating as possible. And all of this  
18 is proof of substantial planning and premeditation.

19           Also consider how the defendant and his brother killed  
20 Officer Sean Collier. That was not impulsive or reflexive; it  
21 was an ambush. You saw how they deliberately walked together  
22 across the campus, and they went straight to the door of his  
23 car. They knew he was parked there. And once they got there,  
24 they did not hesitate because they knew exactly what they were  
25 going to do. They needed another gun, and they were going to

1 murder him and take his service weapon.

2 At any point along this long journey to committing  
3 terrorism, the defendant could have reflected, reconsidered,  
4 and stood down. The fact that he marched resolutely on towards  
5 his goal makes him more culpable and his crimes worse.

6 The fourth aggravating factor is that the defendant  
7 knowingly created a grave risk of death to additional persons  
8 other than the dead victims. Judge O'Toole instructed you that  
9 "a grave risk of death" means significant and considerable  
10 possibility that another person might be killed. In other  
11 words, putting others at risk in addition to those who died.

12 The defendant killed and helped kill four people. How  
13 many others did he nearly kill? Jim Hooley, the head of Boston  
14 EMS, he told you that he and other EMS workers sorted the  
15 wounded into three categories. Thirty of the wounded were  
16 given red tags -- 30 -- meaning that if they did not get to the  
17 hospital within 60 minutes, there was a high likelihood that  
18 they would die. But 60 minutes would have been an eternity to  
19 some who were wounded.

20 Sydney Corcoran told you that she felt her whole body  
21 go cold as blood flowed from her severed femoral artery on that  
22 sidewalk. Celeste Corcoran told you she remembered every  
23 detail of the blast. She suffered excruciating pain as both of  
24 her legs were destroyed. She said she just wanted to die  
25 because the pain was too much. When she finally had enough



1 breath to breathe, she said she screamed in agony. She was  
2 left to try to recover in the same hospital room as her  
3 daughter Sydney, another family blown apart by this defendant  
4 and his brother.

5 Exhibit 20. Look at all of the mayhem. In the middle  
6 sits Jeff Bauman. Jeff Bauman described for you how he could  
7 see his bone, and all he could say was, "This is really messed  
8 up." He told you to this day he doesn't know how he stayed  
9 conscious throughout. All he said -- or as he said, "I knew my  
10 legs were gone. I knew it instantly."

11 You saw video of Marc Fucarile lying on the street on  
12 fire with a severed leg gushing blood. There's Marc Fucarile  
13 in the middle (indicating). Marc Fucarile had to endure more  
14 than 60 operations in the months after the bombings. Over 60.  
15 As Dr. King told you, every surgery is dangerous and can itself  
16 be life threatening.

17 And after all of those surgeries, Marc Fucarile still  
18 isn't out of the woods. His body is still filled with  
19 shrapnel. It's too dangerous to remove. And one of those  
20 pieces of shrapnel is lodged in his heart. At any time that  
21 could travel to his lungs, and he might die.

22 It's a miracle that Marc Fucarile, Jeff Bauman, Sydney  
23 Corcoran, Celeste Corcoran or so many others survived.

24 And none of this was by accident. Just the opposite.  
25 Remember what *Inspire* magazine says? Page 40 of the same

1 volume. It recommends using a pressure cooker and placing it  
2 in a crowded area. In fact, what it says is, "With that said,  
3 here are some important steps to take for an effective  
4 explosive device: One, place the device in a crowded area;  
5 two, camouflage the device with something that would not hinder  
6 the shrapnel, such as cardboard."

7 You place it in a crowded area because that pressure  
8 cooker will be more effective in that crowded area. The grave  
9 risk of death to others is part of the reason why a pressure  
10 cooker bomb is so effective.

11 The fifth statutory aggravating factor is the cruel,  
12 heinous and depraved manner of committing the offense in that  
13 it involved serious physical abuse to the victims. Judge  
14 O'Toole just instructed you that "serious physical abuse" means  
15 a considerable amount of injury and damage to the body.  
16 "Cruel" means the defendant intended to inflict the high degree  
17 of pain by physical abuse to the victim in addition to just  
18 killing them.

19 The evidence that the defendant caused injury and  
20 damage to the victims' bodies could not be clearer. You saw  
21 the autopsy photos of Martin Richard, Krystle Campbell and  
22 Lingzi Lu. The bombs burned their skin, shattered their bones  
23 and ripped their flesh. It disfigured their bodies, twisted  
24 their limbs and punched gaping holes into their legs and  
25 torsos.

1           And none of that was accidental. It's what the  
2 defendant intended to do to them. That's the entire reason for  
3 filling the bombs with little nails and BBs and other tiny  
4 pieces of shrapnel, because merely killing a person isn't  
5 nearly as terrifying as shredding them apart.

6           Remember what was said in the *Inspire* magazine, again  
7 on page 40: "However, in order to fill, for example, a  
8 pressure cooker with a substance from matches, it may take a  
9 lot of matches to do so, and therefore you may want to use  
10 gunpowder or the powder from fireworks." Sound familiar?

11           It goes on to say, "You need to also include shrapnel.  
12 The best shrapnel are the spherical-shaped ones. As you can  
13 see in the figures below, you need to glue them to the surface  
14 of your canister. (If steel pellets are not available, you may  
15 use nails instead.)"

16           That's exactly what the defendant did. You recall the  
17 testimony of those victims outside the Forum? They were full  
18 of nails and BBs.

19           The defendant wasn't out just to kill innocents in  
20 order to punish America. He wanted to torment them to make a  
21 political statement. He knew these bombs would make people  
22 suffer because murders are more terrifying and they make a  
23 better political statement this way. It's a better political  
24 statement if you force the victims to suffer, suffer  
25 excruciating pain in front of their parents and their friends.

1 That's what the defendant did to Martin Richard.

2 Dr. King told you that Martin did not die right away  
3 and that the shattering of his arm and the twisting of his  
4 internal organs were excruciatingly painful.

5 Dr. Jennifer Hammers told you the same thing about  
6 Krystle's broken leg. You know that Krystle lived to  
7 experience that excruciating pain because you can see her here  
8 screaming on the sidewalk before she dies. And this, this is  
9 how Karen McWatters, her best friend, will have to remember  
10 her.

11 The same, of course, is true for Lingzi Lu. You saw  
12 the photos of her screaming as she lay dying, and you heard  
13 Danling tell you how it pained her that she couldn't help her,  
14 that she was of no use to her friend at that time.

15 The sixth statutory aggravating factor is the  
16 vulnerability of Martin Richard due to his youth. No one  
17 deserves to be killed by a terrorist bomb, but some people are  
18 more vulnerable, more vulnerable to the harm done. Can there  
19 be anyone more vulnerable than a little boy next to a weapon of  
20 mass destruction? In this case, an eight-year-old boy named  
21 Martin Richard. There isn't a part of his body that was not  
22 affected.

23 Both the chief medical examiner and Dr. King explained  
24 to you that Martin was more vulnerable because he was a little  
25 boy and his abdomen and key organs were closer to the ground.

1 The defendant placed that bomb on the ground, so the smaller  
2 the victims were, the more exposed they were to the shrapnel.  
3 Martin, he was 53 inches, just over four feet tall, and he  
4 weighed 69 pounds.

5 Where the shrapnel from that bomb ripped apart the top  
6 of Lingzi Lu's legs, that same shrapnel headed right for the  
7 middle of Martin's midsection. Also because of Martin's youth,  
8 his body would not be able to sustain those injuries as long as  
9 an adult. The evidence shows you that there can be no doubt  
10 that Martin Richard was a vulnerable victim.

11 There are five other aggravating factors in this case.  
12 One is the impact of these crimes on the victims and their  
13 surviving family members. I already talked a little bit about  
14 the impact of the crimes on the families, and I won't say more  
15 at this point because I suspect you remember quite well what  
16 those family members had to say.

17 Another aggravating factor is the selection of the  
18 Boston Marathon as a targeted site for terrorism. Committing  
19 murder during an act of terrorism is enough by itself to make  
20 that murder worse than others, but choosing the Boston Marathon  
21 as the site for the terrorist attack makes it even worse.

22 That's in part because the Boston Marathon is a family  
23 event. It takes place on a school holiday. As Stephen Silva  
24 had told you, the defendant had gone to the marathon the year  
25 before, 2012. He knew that the marathon attracted families and

1 that people go there with their friends, so he knew that his  
2 bomb was likely to kill and mutilate parents in front of their  
3 children or children in front of their parents or both.

4 He also knew that the last stretch down Boylston  
5 Street, all the way to the finish line, drew huge crowds. He  
6 knew that by placing his bomb there, he had a good chance of  
7 killing and injuring hundreds of people, which is exactly what  
8 happened.

9 He knew that the marathon draws an international crowd  
10 so that the news of his bombing would be of interest in every  
11 corner of the world. And he knew that the marathon is  
12 televised. His bombing would be played and replayed over and  
13 over again, allowing him to terrorize people not just in  
14 Boston, but all over the country and all over the world.

15 And of course the marathon takes place on Patriots'  
16 Day, a day when we celebrate an important milestone in the  
17 birth of American independence. It's hard to think of a better  
18 place to murder people than the Boston Marathon if you want to  
19 make a political statement, if you want to make Americans -- or  
20 if you believe Americans are in need of punishment.

21 Another aggravating factor is that the defendant and  
22 his brother chose to murder Sean Collier precisely because he  
23 was a police officer, a police officer with a gun. Police  
24 officers carry guns because it is their job to protect us, and  
25 they put their lives at risk doing so. To kill a police

1 officer makes all of us more vulnerable.

2 Sean Collier was a compassionate soul, a dedicated  
3 young man who had devoted himself to protecting everyone on  
4 that MIT campus, from the students to the homeless men who  
5 wandered onto campus. He was everything a police officer  
6 should be. The fact that the defendant and his brother  
7 targeted him because he was a police officer is another  
8 aggravating factor for you to consider.

9 Another factor is the defendant's participation in  
10 additional uncharged crimes of violence, like Judge O'Toole  
11 just talked about, like assault with a deadly weapon, or  
12 attempted murder on others. You heard plenty of evidence about  
13 how the defendant attempted to murder as many people as  
14 possible on Boylston Street and how close he came to murdering  
15 dozens.

16 I want to talk for just a minute about how hard he  
17 tried to kill other police officers, the officers in Watertown.  
18 Officer Reynolds told you that after he learned the police were  
19 looking for the Mercedes SUV, he saw it. He saw the defendant  
20 and his brother driving down in his direction. The defendant  
21 was in front.

22 When he passed them and made a U-turn to follow, the  
23 defendant turned down Laurel Street and his brother followed.  
24 And the defendant stopped in the middle of Laurel Street and  
25 his brother stopped behind him. Both got out.

1           What was the defendant planning when he stopped his  
2 car in the middle of Laurel Street and got out? You know what  
3 he was planning because you know what he did next. While his  
4 brother provided cover and shot at the officers, the defendant  
5 lit bombs, the pipe bombs, and a pressure cooker bomb, and  
6 hurdled them at the officers. His goal was to kill them.

7           His brother was also trying to kill them, and the  
8 defendant shared in that goal. You know that was exactly what  
9 he was trying to do because when his brother was on the ground  
10 and the officers were trying to arrest him, the defendant made  
11 one last attempt to kill police officers. He got back into  
12 that Mercedes, and instead of driving away from the officers  
13 where he had a clear route of escape, he turned around that SUV  
14 and drove it at top speed right at them. He didn't care that  
15 his brother was on the ground. He saw an opportunity to  
16 inflict even more pain, even more punishment on America, and he  
17 wasn't going to pass it up. Once again, he nearly succeeded.

18           Sergeant Pugliese rolled out of the way just in time,  
19 or he, like Tamerlan Tsarnaev, would likely have been run over  
20 and killed.

21           The last aggravator I want to discuss is the  
22 defendant's demonstrated and disturbing lack of remorse, his  
23 lack of remorse during the commission of the crime and on the  
24 date of the arraignment.

25           20 minutes -- 20 minutes -- after exploding his bomb,



1 while his victims lay dead and dying and bleeding -- 20  
2 minutes -- that's a lot less than 60 minutes that some of them  
3 had -- 20 minutes later, there's the defendant. He strolled  
4 into Whole Foods like it was an ordinary day and shopped for  
5 milk.

6 That same evening, at 8 p.m., he got on the Internet  
7 and tweeted to his friends, "Ain't no love in the heart of the  
8 city." "Ain't no love in the heart of the city."

9 Hours after he fled the carnage that he had unleashed  
10 in Boston, he had the gall to tweet, "Ain't no love in the  
11 heart of the city." As to that, he couldn't have been more  
12 wrong. As the defendant sat at home drinking his milk and  
13 tweeting his glib commentary, the heartbreaking love of a  
14 mother comforting her dying child played out in the heart of  
15 Boston. Also on display were the bravery, the strength, the  
16 efforts of strangers trying to help those who had been injured,  
17 injured by the bomb planted by this defendant. He failed  
18 miserably in trying to blow apart the fabric of society. Make  
19 no mistake: Love prevailed in the heart of Boston on April  
20 15th. But his true character was on display that night. It  
21 was on display in his words, in his callousness in that tweet.

22 The next day, April 16th, while victims awoke in cold,  
23 antiseptic hospitals to the new reality that they were  
24 amputees, the defendant went to the gym and worked out. An  
25 hour later, he tweeted this: "I'm a stress-free kind of guy."

1 He's stress free, April 16th.

2 Then on April 18th, while Dun Meng, terrified, sits in  
3 the SUV with Tamerlan Tsarnaev, the defendant walks into that  
4 ATM and coolly withdraws money from Meng's account like it's  
5 any other day. Later at the gas station, he slowly takes his  
6 time buying snacks for that trip to New York where he wants to  
7 unleash even more havoc.

8 And then finally, on July 10th, 2013, three months  
9 after the bombings, the defendant comes into court to be  
10 formally charged with murdering a little boy, murdering two  
11 women and a police officer. He has had months to reflect on  
12 the pain and suffering that he has caused. But when he's put  
13 in that holding cell, you cannot see a trace of remorse on his  
14 face. He paces, he fluffs his hair, and he makes obscene  
15 gestures at the marshals watching over him and watching over  
16 the surveillance cameras.

17 Who is capable of being so stress free after  
18 committing the crimes he committed? Who is capable of showing  
19 so little remorse? Only a terrorist, someone who had no reason  
20 for remorse because he believed that he had done something  
21 brave and something good. Someone who had set out to make a  
22 political statement, to commit a political crime and then  
23 firmly believed in the righteousness of what he had done.

24 Alone, and certainly together, these aggravating  
25 factors sufficiently outweigh any mitigating factors to justify

1 your imposition of a sentence of death. Frankly, it's not even  
2 close. The magnitude and the gravity of the aggravating  
3 factors overwhelmingly tilt the scales of justice in only one  
4 direction.

5 The defense has proposed a number of mitigating  
6 factors. A number of them are unsurprisingly focused on the  
7 defendant's family life and his age. I want to discuss a few  
8 of those factors very briefly right now, and Mr. Weinreb will  
9 discuss them in greater detail during the government's  
10 rebuttal.

11 Many of these mitigating factors concern issues we all  
12 deal with in our daily lives every single day. These factors  
13 are deserving of little weight in your analysis. None of the  
14 factors about the defendant's age or childhood meaningfully  
15 mitigate the terrorist attacks in this case.

16 His age: The defendant was almost 20 years old when  
17 he committed these crimes, old enough to know right from wrong.  
18 At 18, young men and women leave home. They join the military,  
19 start families, and they can vote. The law states that a  
20 defendant must be at least 18 before a sentence of death may be  
21 imposed. Because when you are 18 or older, you are responsible  
22 for your actions. Dr. Giedd's observations regarding the  
23 development of the brain are in line with the law, and the law  
24 was informed by these understandings.

25 Now, you heard an enormous amount of evidence in this

1 case about Tamerlan Tsarnaev, but Tamerlan Tsarnaev was not the  
2 defendant's master. They were partners in crime and brothers  
3 in arms. Each had a role to play, and each played it. Both  
4 came to believe in the teachings of Anwar al-Awlaki and the  
5 other terrorists. Both decided that they wanted to punish  
6 America in a way that would win them glory and win them a place  
7 in paradise.

8 The defendant would like to focus all of your  
9 attention on something you can never know, namely, what  
10 influence, if any, did Tamerlan Tsarnaev have on the  
11 defendant's decision to commit these crimes? You can't know it  
12 because there's no evidence of it in this case. What you do  
13 know from the evidence is what things the defendant actually  
14 did and what he wrote. Those are the things that really matter  
15 in deciding what his punishment should be.

16 The defendant independently got the gun used to murder  
17 Officer Sean Collier. He independently chose the Forum  
18 restaurant as a bombing site, and he stayed there in spite of  
19 the children. He called his brother to initiate the attack.  
20 And because of his actions and role in this conspiracy, he  
21 maimed Jeff Bauman, Erika Brannock, Celeste Corcoran, Mery  
22 Daniel, Rebekah Gregory, Patrick Downes, Jessica Kensky, Karen  
23 McWatters, William White, Heather Abbott, Roseann Sdoia, Marc  
24 Fucarile, Paul Norden, JP Norden, Adrienne Haslet-Davis, Steve  
25 Woolfenden, and little Jane Richard, whose leg looked like it

1 went through a meat grinder, as Matt Patterson described it.

2 The defendant murdered Krystle Campbell, Martin  
3 Richard and Lingzi Lu. He returned to UMass Dartmouth in  
4 secret triumph and posted tweets that reflected his  
5 satisfaction with his own work. Not once in those tweets does  
6 he say, "Tamerlan made me do it."

7 He independently returned to Cambridge when he saw his  
8 face on the news to rejoin his brother for their final acts of  
9 terror. He murdered Sean Collier. He tried to steal his gun.  
10 He robbed Dun Meng. He loaded bombs in the Mercedes. He went  
11 to buy the Red Bull and snacks for the trip to New York. And  
12 when the police caught up with him, he led the way to the site  
13 of the last stand. He tried to kill the officers, first with  
14 bombs and then with an SUV, without any help from his brother  
15 or anyone else. He wrote a manifesto that explained their  
16 actions and took credit for what they had done.

17 As the defendant so clearly wrote, "I can't stand to  
18 see such evil go unpunished." That's what he wrote. "I can't  
19 stand." "I," not "we." Not "my brother." Nowhere in that  
20 manifesto does he write, "My brother made me do it."

21 What deserves more weight: the things the defendant  
22 did in his written confession of guilt or the speculation about  
23 what Tamerlan might have said? You heard that the defendant  
24 learned the value of love and caring and support from his  
25 family and friends, yet he made a conscious decision to destroy

1 loving and caring families without any regard for the  
2 consequences. In total, the mitigating factors are essentially  
3 weightless when compared to the gravity of the terror,  
4 devastation and murder perpetrated by the defendant.

5 Now, some of you expressed the opinion during voir  
6 dire that a life sentence may be worse than death. You now  
7 know, after hearing from Warden John Oliver, the warden at ADX,  
8 his life will not be worse than death. He won't be put in a  
9 dungeon. He won't be in a black hole. He'll have his own cell  
10 with a window. He'll take separate showers. He'll have a  
11 toilet and a sink. He can view prison programming in his cell.  
12 He can take courses and get a college degree. He can write a  
13 book. He can exercise inside and outside of his cell. He'll  
14 be able to talk to other inmates and to the staff. And he  
15 won't need to deal with the fear of others hurting him because  
16 the staff will be there.

17 He will be able to visit with family and approved  
18 contacts. He gets to see them in person, speak with them on  
19 the phone and exchange an unlimited number of letters.  
20 Unlimited. He can ultimately step down and have more  
21 privileges.

22 He is a young man in good health. As you've heard,  
23 SAMs restrictions are not permanent. They must be renewed  
24 yearly. And they can only be renewed if they meet the  
25 requirements. If those restrictions are lifted, he will be

1 allowed more privileges and more contacts. Times change. No  
2 one can predict the future. But his life will not be worse  
3 than death, especially if he steps down during that process.

4 This defendant does not want to die. You know that  
5 because he had many opportunities to die on the streets of  
6 Boston and Watertown. But unlike his brother, he made a  
7 different choice. In the manifesto he wrote in the boat, he  
8 praises his brother for dying a martyr, but he did everything  
9 in his power to avoid becoming one himself. He didn't take on  
10 the officers after he ran out of pipe bombs. The defendant  
11 managed to escape. He escaped in Dun Meng's SUV down Laurel  
12 Street, and then he hid -- he ran, and then he hid in the boat.

13 A death sentence is not giving him what he wants. It  
14 is giving him what he deserves.

15 This is a solemn day. Nothing is ever going to bring  
16 back Krystle Campbell, Lingzi Lu, Martin Richard or Officer  
17 Sean Collier. No one will ever be able to put the amputees  
18 back in the position they were to run on their own two legs  
19 again. We understand this is a weighty decision, and we  
20 appreciate the need to be circumspect and thoughtful in making  
21 that decision, but you all said in the right case, if the  
22 government proved it was an extreme case, a heinous case, that  
23 you could vote to impose a sentence of death. This is that  
24 case.

25 Don't be swayed by the many cute photos you saw of the

1 defendant as a child. All murderers start out as cute  
2 children, but sometimes cute children grow up to be bad people.  
3 When the defendant became an adult, he changed into someone  
4 else. He found terrorist writings, he found terrorist  
5 lectures, and read and listened to them. He found them  
6 compelling and convincing, so much so that he became one of the  
7 extremely few people in the world who acted on those. He acted  
8 on the beliefs and the writings and the lectures, and he acted  
9 on it to carry out a terrorist attack.

10 He was an adult. He made an adult decision and the  
11 damage will last forever. Now he has to face the consequences.  
12 He struck at what citizens hold dear to cause the greatest  
13 amount of pain, fear and panic. He went after the core values  
14 of society: children, family, neighborhoods, public safety.

15 After all of the carnage and fear and terror that he  
16 has caused, the right decision is clear. It is your job to  
17 determine a just sentence. The only sentence that will do  
18 justice in this case is a sentence of death.

19 Thank you.

20 THE COURT: I think, because of the time, we'll take  
21 the lunch recess at this point and have the -- but I propose to  
22 make it a little shorter than an hour. We'll come back at  
23 1:15. All right, jurors? I'm told that lunch is available for  
24 you.

25 Please, no discussion of any of this -- these issues,



1 until we've concluded all our process.

2 MS. CONRAD: Your Honor, we would like to be heard at  
3 sidebar before the break, after the jurors are excused.

4 THE COURT: After the jurors are excused. All right.  
5 Okay.

6 Let's excuse the jury.

7 THE CLERK: All rise for the jury.

8 (The jury exits the courtroom at 12:27 p.m.)

9 (Discussion at sidebar and out of the hearing of the  
10 jury:)

11 THE CLERK: Marcia is over there so you have to speak  
12 directly into here so she can hear you.

13 MS. CONRAD: I don't know that we couldn't do it in  
14 open court.

15 THE COURT: You said "sidebar."

16 MS. CONRAD: Well, I know that.

17 MR. BRUCK: Should we go back to --

18 THE COURT: What's the issue?

19 MS. CONRAD: Well, I've got several objections to  
20 Mr. Mellin's closing. I think Mr. Bruck has some as well.

21 THE COURT: That's typically done at sidebar.

22 MS. CONRAD: Okay. So, first of all, when Mr. Mellin  
23 said --

24 THE COURT: You have to talk into the mic. Seriously.

25 MS. CONRAD: Sorry. This is awkward.

1           When Mr. Mellin said that there was no evidence that  
2 Tamerlan influenced Mr. Tsarnaev in his -- in the crime, that  
3 it's a direct comment on the defendant's failure to testify,  
4 and the First Circuit has repeatedly held that when a  
5 prosecutor comments that there's no evidence of something that  
6 only the defendant could provide evidence of, that is a comment  
7 on the failure to testify. There certainly was plenty of  
8 evidence in this case about Tamerlan's influence overall, but  
9 when Mr. Mellin points specifically to this offense, it's a  
10 comment on the failure to testify.

11           His discussion, although he didn't name the case of  
12 *Roper v. Simmons*, and the reason why the law requires that one  
13 must be over 18 in order to have the death penalty imposed was  
14 inaccurate and misleading, and I would ask for the opportunity  
15 to submit a curative instruction.

16           *Roper* does not just say that someone over  
17 18 -- someone must be over 18 to get the death penalty because  
18 they are responsible. It also talks about the capacity for  
19 change of younger people. And it also talks about the fact  
20 that 18 is a bright line that they must set. And for  
21 Mr. Mellin to mislead the jury about what the law -- why the  
22 law requires someone be over 18 I think is a serious error that  
23 the Court should correct.

24           Third, Mr. Mellin, despite the Court's very clear  
25 position yesterday, again stepped over the line with respect to

1 conditions at ADX by saying that he can, quote, view prison  
2 programming. Again, trying to highlight his improper  
3 cross-examination -- rather, his improper examination in which  
4 he said, despite the Court's clear ruling, that the defendant  
5 could watch prison programming. I think Mr. Bruck --

6 MR. BRUCK: We also object to the representation that  
7 the rebuttal of mitigating factors will be held back, the  
8 government -- for the government's reply. The government has  
9 notice of the case of mitigation. They've had, generally  
10 speaking, notice for months, and they've had the mitigating  
11 factors for several days. And it just isn't fair to say,  
12 "Well, Mr. Weinreb is going to handle most of the response to  
13 that after -- as the last word."

14 If Ms. Clarke says something that wasn't anticipated  
15 and he wants to respond to that, that's what reply argument is  
16 for. It is not an opportunity to have an unrebutted crack at  
17 the defendant's case. And so we think that that is improper.

18 MS. CONRAD: I think Mr. Fick may have a couple more.

19 THE COURT: Is there a line?

20 MS. CONRAD: Yes.

21 MR. FICK: A few additional objections to the  
22 argument.

23 One, that there was a characterization of the verdict  
24 form as being sort of a mere record-keeping process which sort  
25 of denigrates the process -- or the importance of the process

1 involved in filling out the form.

2 And there were several comments that sort of -- I  
3 would suggest cross the line in terms of denigrating of the  
4 consideration of mitigating factors. For example, near the  
5 beginning, with regard to the Richard family suffering, there  
6 was a comment that there is no just punishment for that other  
7 than death, which invites the jury to ignore mitigating  
8 factors.

9 There were other comments that sort of crossed the  
10 line of counsel commenting on evidence, like "it's not even  
11 close," with regard to the weight of mitigating factors, and  
12 the comment that none of the mitigating factors meaningfully  
13 mitigate. That is injecting the opinions of counsel rather  
14 than an actual argument about the evidence.

15 MR. WEINREB: Your Honor, if I may, we don't plan on  
16 responding to any of those except I just want to make a  
17 representation, which is that the statement he will have the  
18 opportunity to view programming in his cell was my -- I take  
19 responsibility for that. It was my understanding that that was  
20 what the Court had authorized, that the objection was to  
21 "watch" and that the Court said that "view" was not  
22 objectionable because "view" embraced written materials as well  
23 as other things and didn't carry the necessary implication that  
24 there would be television or something else like that.

25 So I just want to make sure that Mr. Mellin isn't

1 charged with anything like that.

2 THE COURT: Have you checked the transcript with  
3 respect to that or is this your memory?

4 MR. WEINREB: This is the conversation we just had, as  
5 I recall, the other day, that --

6 THE COURT: Yeah. I just didn't know whether you  
7 had -- it was yesterday, right?

8 MR. WEINREB: I believe it was yesterday.

9 THE COURT: I just didn't know whether you had looked  
10 at the transcript of that, to see whether the word was "view"  
11 or not.

12 MR. WEINREB: No. No, no, no. In other words, he  
13 said "watch" the first time, and you had said that "view" would  
14 have been okay but "watch" not. And this time he said --

15 THE COURT: Right. I'm not sure that's exactly what I  
16 said. But I don't think it's as offensive as "watch" was.  
17 So I don't -- the objections are noted. I don't propose to  
18 take any action.

19 (In open court:)

20 THE COURT: We'll be in recess until 1:15.

21 THE CLERK: All rise for the Court.

22 (The Court exits the courtroom at 12:34 p.m.)

23 THE CLERK: Court will resume at 1:15.

24 (There is a recess in the proceedings at 12:34 p.m.)

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

1 (The Court and jury enter the courtroom at 1:27 p.m.)

2 THE CLERK: Be seated.

3 MS. CONRAD: Your Honor, may we just approach for one  
4 brief moment, please?

5 THE COURT: I'm sorry?

6 MS. CONRAD: May we approach for a moment, please?

7 (Discussion at sidebar and out of the hearing of the  
8 jury:)

9 MS. CONRAD: So I just -- with respect to the  
10 objections previously raised to Mr. Mellin's closing argument,  
11 we just would be, first of all, asking for a mistrial; and,  
12 second of all, if that is not allowed, we would ask that the  
13 jury be told that the argument regarding viewing prison  
14 programming was improper argument, as was the argument that  
15 there is no evidence regarding Tamerlan's influence.

16 THE COURT: All right. I thought that was the prior  
17 request.

18 MS. CONRAD: I just wanted to make sure that --

19 MR. BRUCK: There was a request for relief.

20 THE COURT: Yeah. The first point was not made, and  
21 that motion is denied.

22 MR. BRUCK: And to the extent -- subject to that, we  
23 would ask for a curative instruction as to each of the issues  
24 raised.

25 THE COURT: Fine.

1 MR. BRUCK: The last thing -- thank you.

2 The last thing is that to the extent that  
3 Mr. Weinreb's response on mitigation exceeds what the proper  
4 role would apply, that is, if it turns out as we fear, as  
5 Mr. Mellin forecasts, that the government has reserved its  
6 response to our cases in mitigation to its reply, we'll request  
7 surreply argument in order to respond in a way that Ms. Clarke  
8 should have had the opportunity to do.

9 THE COURT: Can we see what the conditions on the  
10 ground are at that point?

11 MR. BRUCK: Yes.

12 MS. CONRAD: I had a note with respect to that that  
13 yesterday in the lobby conference Mr. Weinreb stated that the  
14 rebuttal would be very brief, and it sounds like that's not  
15 going to be the case.

16 MR. WEINREB: Actually, what I said was it would be  
17 general in reply. We received the full list of mitigating  
18 factors less than 48 hours ago, and I still haven't heard what  
19 Ms. Clarke is going to say about them. I think that responding  
20 to the mitigating factors is a reply.

21 THE COURT: All right.

22 (In open court:)

23 THE COURT: All right. We're now ready for the  
24 defense closing.

25 Ms. Clarke?

1 MS. CLARKE: Thank you, your Honor.

2 May we have the screen?

3 Hello.

4 THE JURORS: Hello.

5 MS. CLARKE: Ten weeks ago, you took your oath as  
6 jurors in this trial, *United States versus Dzhokhar Tsarnaev*,  
7 and now the time's come for you to decide what to do with  
8 Dzhokhar.

9 It's -- I'm sure it was clear from the beginning of  
10 the case that the prosecution would come to you and ask you to  
11 impose a sentence of death. That came as no surprise. And I'm  
12 sure it's no surprise to you that I come before you on behalf  
13 of all of his attorneys and ask you to choose life.

14 And now you have the unenviable task, each of you --  
15 each of you individually have the unenviable task of  
16 considering everything you've heard in court, considering all  
17 of the instructions from Judge O'Toole, considering your life  
18 experiences, considering your wisdom, and considering your  
19 moral sense in deciding the answer to that question.

20 Miriam, David, Tim, Bill and I have stood with  
21 Dzhokhar Tsarnaev for many months. We've tried to bring you  
22 information to help you do your job. We've told you when we  
23 agreed with the evidence of the prosecution, and we've told you  
24 when we've disagreed about their theories and about why.

25 We brought witnesses to tell you about Dzhokhar's



1 background, his life, his life experience as a child, as a  
2 teenager, and now. And I need to talk with you about Dzhokhar.

3 But before I do, I want to make one thing very, very,  
4 very clear. The story of the Boston Marathon bombing is not  
5 about Tamerlan and Dzhokhar Tsarnaev. The story of the Boston  
6 Marathon bombing is one of tragedy of their making, but it is  
7 more than that. Family members of those who lost their loved  
8 ones came into this courtroom, either in the first phase or  
9 this phase, and testified from the depth of their grief and  
10 with great dignity and spoke to you about their heartbreaking  
11 loss. Those who were hurt beyond imagination came into this  
12 courtroom and testified about their pain and anguish. But  
13 every person -- in each person, you saw a will and a  
14 determination to survive and thrive.

15 First responders told us about their -- what can only  
16 be described as brave and heroic acts. They came in here and  
17 told us about their efforts to comfort the injured, to save the  
18 seriously injured and to protect others. The story of the  
19 Boston Marathon bombing is about resilience and the strength of  
20 the spirit of those so deeply affected by these senseless and  
21 catastrophic acts.

22 But I'm going to spend some time talking with you  
23 about Dzhokhar and his life because he's the person you've got  
24 to sentence. He's the person you've got to make your  
25 individual decisions about. You're not just making a decision

1 about the horrific nature of the crimes. You did that in  
2 returning your verdict of guilty on every count in this  
3 indictment. You did that. You've done that. You're now to  
4 make a decision about who he is, who he was and who he might  
5 become.

6 I'm not asking you to excuse him. There are no  
7 excuses. I'm not asking you for sympathy. Our sympathies lie  
8 with those who were harmed and killed and their families.

9 What I am asking you to do when I talk with you about  
10 Dzhokhar is to listen. And I'm asking you to hold open your  
11 minds, as you promised that you would do, and I'm asking you to  
12 try to understand -- it's a mighty big task for all of us to  
13 do -- try to understand how the unimaginable occurred.

14 You heard from the witness stand a little bit about  
15 Dzhokhar's parents, very -- sort of very young and very rocky  
16 beginning. Neither thought they should marry. One was a  
17 Chechen, one was an Avar, and they shouldn't marry.

18 You heard a little bit about Zubeidat. You heard the  
19 name pronounced a couple of times, Zubeidat or Zubeida,  
20 Dzhokhar's mom, and you heard about how she was fashionable and  
21 flashy and loud, and Anzor was a hard-working, quiet man. They  
22 moved a lot, often thousands of miles.

23 And from Kyrgyzstan -- I think we've got a map. I  
24 think you saw this chalk during the testimony. And you heard  
25 about how they moved from Kyrgyzstan to Kazakhstan to Chechnya

1 to Dagestan, often thousands of miles, and required the help of  
2 Zubeidat's sisters and their children to help the family make  
3 it. Zubeidat and Anzor had four kids in seven years. They  
4 often landed with relatives thousands of miles from where they  
5 had been living, uprooting the kids.

6 Now, the prosecution tried to make it sound like they  
7 were summering on the Caspian Sea. We know that's not true.  
8 We heard from the women that came here from Russia that that  
9 wasn't true. There was a two-bedroom apartment where they  
10 crammed in with several other relatives and stayed for months.  
11 Even the women that came here to talk with you from Russia told  
12 you how unsettling all of those moves were for that family.

13 The women who came here, two sisters of Zubeidat, and  
14 the cousins of Dzhokhar didn't even know until coming here  
15 where Tamerlan had been born. They didn't know that Dzhokhar's  
16 birth certificate showed that he was born in Kyrgyzstan and  
17 were somewhat surprised to learn that because some of them were  
18 there when he was born in Dagestan, 2,000 miles away.

19 While most folks described Anzor as a quiet,  
20 hard-working dad, there were mixed reviews on Dzhokhar's mom.  
21 She ranged from fashionable and flashy and loud. Her family  
22 was stunned, shocked when she began covering in dark. Her  
23 somewhat skeptical son-in-law, who we -- former son-in-law who  
24 we saw coming to Boston by way of video from Kazakhstan, talked  
25 of her -- about her as controlling and didn't believe the

1 reasons for her covering up.

2 You heard her described as intense and intimidating  
3 and attending a baby shower and acting like the queen bee. A  
4 wide range of descriptions for Zubeida. The one thing we  
5 really got out of that is she was a force in the family.

6 So when -- in 2002, when Dzhokhar -- eight-year-old  
7 Dzhokhar came with his mom and dad to the United States, they  
8 came over here with one child, leaving 15- or 16-year-old  
9 Tamerlan in Kazakhstan with his two sisters, with family, and  
10 they tried to make their way in the United States. A year  
11 later, the whole family joined up in Cambridge and set on hopes  
12 and dreams and unrealistic expectations for Tamerlan.

13 Tamerlan would go on to do great things. Tamerlan  
14 would be a famous musician. Tamerlan would be an Olympic  
15 boxer. Tamerlan would be the savior of the family. Where was  
16 Dzhokhar in this entire time and this entire discussion? He  
17 was the quiet kid who kept his head down and did his homework.  
18 He was the shy, quiet, respectful, hard-working kid that the  
19 teachers and friends came in here and told you about.

20 Katie Charner-Laird, the third-grade teacher -- she  
21 came in and said, "Look, he came in speaking Russian. He  
22 learned English. He learned it well. He worked hard. He  
23 wanted to do everything right."

24 Tracey Gordon told you about the fifth-grader who  
25 enjoyed the farm club. He was hard-working. She recalled his

1 enthusiasm when he went to the farm school. We saw several  
2 pictures of that. She recalls him dancing in the classroom.  
3 She met his parents, and his parents wanted him to skip a grade  
4 and go ahead. And that happened.

5           Becki Norris taught Dzhokhar in middle school. You  
6 may remember Ms. Norris when she came in. She loved that kid.  
7 She spoke Russian. She became his advisor. She got to know  
8 him very well. Her husband got to know him. They saw great  
9 promise in this kid. Her husband was a soccer coach. They  
10 cared deeply for Dzhokhar then, and they care deeply for him  
11 now.

12           Becki Norris remembered Dzhokhar coming to school one  
13 day in the wrong color pants. Do you remember that testimony?  
14 And he got sent back home. And when he came back, he said his  
15 mother was pulling him out of school, and Becki Norris was  
16 devastated. She even remembers that feeling today. She was  
17 devastated by that and said, "I'll call your mom."

18           What did Dzhokhar say? "Don't. It won't do any  
19 good."

20           You heard Dzhokhar followed his big brother around the  
21 boxing gym, followed Tamerlan around the boxing gym like a  
22 puppy. So Dzhokhar was at the boxing gym, but unlike with  
23 Tamerlan -- and I don't want to miss the picture that made  
24 Becki Norris almost tear up on us. She was pregnant the year  
25 she taught Dzhokhar, and one of the children that she was able

1 to let hold her infant was Dzhokhar. She still holds that  
2 memory.

3 But where was Dzhokhar's dad when he's taking pictures  
4 with Tamerlan? Where are the pictures of Dzhokhar? He was the  
5 invisible kid. But, you know, Dzhokhar tried. He still tried  
6 hard.

7 Eric Traub, remember him? He lives in Washington,  
8 D.C., now. He taught Dzhokhar in the ninth and the twelfth  
9 grade. And he remembers him very, very well and wrote a letter  
10 of recommendation in December 2010.

11 And I asked him to look at it, and he read it out loud  
12 to you, and I said to him, "Did you believe it then?"

13 "Yes.

14 "Do you believe it now?

15 "Yes."

16 "Dzhokhar is a good student. He quickly absorbs new  
17 ideas. He's amiable with peers and adults. His good nature  
18 and positive spirit have made Dzhokhar a pleasure to know over  
19 the last four years. He's polite and respectful and enters  
20 class with a warm greeting."

21 This was a man that fondly remembers Dzhokhar and  
22 remembers stepping into a photo -- I think he called it a photo  
23 bomb. He stepped into the photo with Dzhokhar and another  
24 student.

25 Dzhokhar did the Model U.N. club. He did Best

1 Buddies. He was good with disabled kids. He seemed to do high  
2 school on his own, though. Even his wrestling coach, Roy  
3 Howard -- remember the man who came in, and he was the  
4 volunteer wrestling coach. And he -- because he had another  
5 job. And he came in and he said, "Yeah. I always liked to  
6 talk to the parents about the nutrition and all of the demands  
7 of wrestling. Wrestling has some of the most demanding, you  
8 know, practices to it and -- you know, because the weight has  
9 to be managed and all of that. And I like to talk to the  
10 parents about the demands on the kids, and I like to talk to  
11 them about nutrition."

12 Did he ever meet Dzhokhar's parents? No. They didn't  
13 show up for senior day, the big day for the wrestlers when the  
14 wrestlers get their rose.

15 We now know that something was going on at home.  
16 Dzhokhar's dad was becoming more disabled. His mother and  
17 older brother began to listen to an Armenian man named Misha  
18 who brought his own special version of Islam into the home and  
19 began to teach them about it. We know that Tamerlan began to  
20 have ideas and obsessions about conspiracy theories and about  
21 religious extremism.

22 We know that by 2010 Zubeidat, Dzhokhar's mom, had  
23 changed in many ways. Zubeida, who had been a flashy dresser,  
24 described by many people that way, and who enjoyed a good  
25 party, and whose parenting skills were probably learned in the

1 chaotic shuttling that she went through as a young child in the  
2 villages of Dagestan -- we know that she had changed to  
3 conservative dress and conservative religious views and was not  
4 a safe harbor for Dzhokhar.

5           You heard from Zubeida's own family, her sisters and  
6 her nieces. What a shock it was, how scary it was to them to  
7 see her covered in dark. What did they say to you? "That is  
8 not how our family was raised."

9           And you know from the government's own intelligence  
10 committee report that Zubeida was radicalizing. Two years  
11 before the Boston Marathon bombings, Tamerlan and Zubeida came  
12 to the attention of the FBI based on information received from  
13 the Russian Federal Security Service. In March 2011, the FBI  
14 received information from the FSB alleging that Tamerlan and  
15 Zubeidat were adherents of radical Islam and that Tamerlan was  
16 preparing to travel to Russia to join unspecified underground  
17 groups in Dagestan and Chechnya.

18           So that's what was happening to Dzhokhar's mom and  
19 Dzhokhar's older brother. And what was going on with his dad?  
20 Anzor was becoming more and more disabled. And you heard from  
21 Dr. Niss that when Anzor came to the United States, he came  
22 with a series of mental health problems. He began getting  
23 treatment when Dr. Niss was here in 2003, 2004 and 2005. And  
24 they only increased in intensity over time, and then he  
25 suffered that remarkably damaging head injury.



1           You heard about the medical records. And we read some  
2 of the records to you. They're in evidence. You can see the  
3 entirety of the records. In 2007, "Patient complains of  
4 attacks with flashbacks and out-of-body visions, of having some  
5 auditory hallucinations and his name being called, difficulty  
6 falling and staying asleep. And will go on for days without  
7 being asleep."

8           "Patient reports having auditory hallucinations" --  
9 later in 2009 -- "voices screaming his name or whispering and  
10 some visual hallucinations, little lizard-like creatures, for  
11 the past three to four weeks."

12           "Anzor reports severe frontal and left side headaches  
13 with decreased sensation on left side of face. Patient reports  
14 unsteady gait, visual changes, tremor, auditory hallucinations,  
15 multiple voices screaming his name." This was Dzhokhar's dad.

16           2011, "Anzor reports feeling quite overwhelmed,  
17 appears depressed, tearful, having difficulty functioning,  
18 upset with minor things. 'If I'm not getting better, my wife  
19 would divorce me.'"

20           2014, shortly before he leaves the United States and  
21 returns to Russia for good, "To whom it may concern: Patient  
22 suffering from mental illness. Not able to work. Needs  
23 constant supervision and support."

24           Sam Lipson came before you. He's known the family for  
25 a long time. His mom was the landlady. Sam Lipson came and

1 told you about the changes in Anzor and changes in his friend.  
2 He viewed Anzor as his friend. He saw him losing weight. He  
3 saw him feeling burdened and unhappy. We know there were  
4 serious problems in the home.

5 But Dzhokhar still had friends. They didn't know much  
6 about his family. They hadn't been to his house. But they  
7 cared for him. You could see that when they came before you.  
8 He was loyal. He was laid back. He was funny. He was quiet.  
9 He was shy.

10 Rosa Booth, a young woman, came in and described him  
11 as sweet, shy and goofy. And she had a crush on him, but she  
12 was so shy she wouldn't accept his invitation to go to the  
13 prom.

14 Bett Zamparelli knew him in Best Buddies. He made her  
15 laugh and feel good. He was respectful to the other girls. He  
16 treated them with respect. And when Bett saw the pictures of  
17 the Boston Marathon bombers, one looked like Dzhokhar, but she  
18 very quickly set that thought aside.

19 Dzhokhar had a bond with his wrestling buddies.  
20 Remember Henry Alvarez came in. He was kind of funny about  
21 comparing the various sports. He said that Dzhokhar was kind  
22 and funny and would dance to a song to break the tension in a  
23 room. He asked Dzhokhar to come to his senior night and to be  
24 there when he got his rose. He couldn't imagine that Dzhokhar  
25 could do something like he did.

1 Coach Howard, who chose Dzhokhar to be co-captain of  
2 the wrestling team, described him as a quiet, hard worker and  
3 dedicated. He was a good wrestler.

4 One thing that was consistent in all of the family  
5 chaos and craziness was Dzhokhar remained the invisible child.  
6 His parents weren't there for his wrestling match. His parents  
7 never met his teachers in high school.

8 In the fall of 2011, Dzhokhar went off to UMass  
9 Dartmouth. On the surface, his college years started out sort  
10 of ordinary. He did okay in school. He had friends. He  
11 drank, although he was too young. He smoked and sold some pot.  
12 He was with his friends the first year. Remember Tiarrah  
13 Dottin describing the bro nights that they had, and she  
14 recalled that very fondly. She even recalled very fondly the  
15 selfie when they clearly are -- having been done something that  
16 they shouldn't have been doing, but she remembered it, and she  
17 teared up over the memory of her good friend, Dzhokhar.

18 Alexa Guevara came before you and she described  
19 Dzhokhar as approachable, kind and accepting. He was more  
20 respectful than the others. Remember when she said, We played  
21 Ruzzle together, the Internet Scrabble game. Dzhokhar  
22 encouraged her to go to art school. She cried when she told  
23 you she misses the guy she knew.

24 Even with his friends, 2012 was a fairly unsettling --  
25 "fairly" is a light word -- a remarkably unsettling year for

1 Dzhokhar. His dad left the United States for Russia and never  
2 returned. His brother Tamerlan, who had changed dramatically,  
3 becoming very radical, left for Russia on a trip we now know  
4 was to wage jihad, to take up the fight in the mountains -- or  
5 to take up the fight.

6           When Tamerlan returned from his unsuccessful join-up  
7 with the jihadi movement, he was frustrated and determined to  
8 find a new war to express his rage. Dzhokhar's mom left and  
9 went to Russia for good. She wasn't available, even with her  
10 limited parenting skills, to help this kid, to be there to  
11 provide any guidance or support that a parent does. Many of us  
12 have seen kids go off to college. They graduate from high  
13 school, and they go off to college. They're not done. They  
14 need a tremendous amount of support from their parents. They  
15 still need guidance from their parents. And what little  
16 parental guidance and support Dzhokhar had by September of 2012  
17 was gone.

18           And perhaps more significant than that was who he was  
19 left with. His sole source of family, of support, of strength  
20 by the fall of 2012 was his older brother, Tamerlan. Tamerlan  
21 had charisma. Tamerlan was bigger than him. Tamerlan was  
22 older than him. It's not uncommon, in any of our experiences,  
23 whether you're Chechen or Avar or -- or us -- it's not uncommon  
24 in any experience that a younger brother will revere and adore  
25 an older brother and not really understand the logic of why.

1           But it's particularly significant in the culture of  
2 the Chechens and on both sides of Dzhokhar's family tree. You  
3 heard about the Avar -- the women that came in from Russia:  
4 "Yes, it's very important. Our fathers and our older brothers  
5 make decisions for us." In the Chechen culture, it goes back  
6 thousands of years.

7           But what Elmirza, who came in from Kazakhstan by  
8 video -- I point over there because that's where I saw him.  
9 What did Elmirza tell us? He had a very interesting little  
10 quote that he said. And remember, Elmirza is in the picture as  
11 the Chechenian. But Elmirza came in and he said, "We have a  
12 funny quote in our culture. It's better to be a dog than the  
13 youngest of seven brothers." And he explained that because you  
14 owe allegiance to so many people above you.

15           So we need to talk about Tamerlan. The government,  
16 from the attorney box to the witness stand, continue to try to  
17 minimize any interest in Tamerlan and has complained that we  
18 have focused on Tamerlan. Today for the first time we hear,  
19 "Well, Tamerlan didn't influence Dzhokhar." At least they're  
20 recognizing that Tamerlan was there.

21           Tamerlan did influence Dzhokhar, and we need to talk  
22 about Tamerlan. Somebody needs to talk about Tamerlan. The  
23 story of Dzhokhar cannot be told without knowing the story of  
24 Tamerlan. The horrific events of the Boston Marathon bombing  
25 cannot be told or understood in any degree of reality without

1 talking about Tamerlan.

2 We know that Dzhokhar respected and loved his older  
3 brother. We know that his older brother was a major influence  
4 in his life. We can see it in the pictures from very young  
5 what these kids meant to each other. We can see it in the size  
6 difference, in the age difference and just how they interacted.  
7 We can see it in this photo with the older brother and the much  
8 smaller younger brother.

9 He seemed deferential to his older brother. One  
10 witness came in and said he followed Tamerlan around like a  
11 puppy. Vishkan Vakhabov, who did not come before you but whose  
12 FBI 302 was read to you, talked about Dzhokhar being like a  
13 little boy. We know from a lot of evidence and witnesses that  
14 Tamerlan was charming. He was charismatic. He was a flashy  
15 dresser.

16 He thought of himself as the professor. Again,  
17 Elmirza made this -- Elmirza, the Chechenian, Tamerlan, the  
18 professor. He was a skilled boxer. The boxers came in, and  
19 they said he was a skilled boxer, but he would listen to no  
20 one.

21 And something happened to Tamerlan. He tried, and he  
22 failed. He couldn't stay in school. He couldn't get a job.  
23 He couldn't stick with boxing. He couldn't go to the Olympics.  
24 Something happened.

25 And Misha turned up at the house, and Tamerlan began

1 to learn more about Islam, an unusual form of Islam,  
2 discussions of demons. And he got obsessions, and he got into  
3 conspiracy theories, and he got into politics, and he changed.

4 Elmirza saw the change in his friend and  
5 brother-in-law. Robbie Barnes, who came in and testified, saw  
6 the change in his dress and how he interacted with people.  
7 Roger Franca, who used to smoke pot and drink and party and  
8 club with Tamerlan, saw the dramatic change in him, the man  
9 dressed in white and wearing the beard.

10 You may recall the chance meeting that Roger Franca  
11 said he had with Tamerlan walking down the street. I think  
12 Boylston Street. And Katherine stepped back behind as they  
13 greeted each other and would only nod and shake her head in  
14 greeting.

15 You recall the testimony of Mr. Assaf, the imam at the  
16 mosque where Tamerlan attended, where Tamerlan disrupted the  
17 mosque twice, the sermon. It's unheard of. It's  
18 inappropriate. It violates the prayer. It's not done. And  
19 Tamerlan did that twice. He told his friend, Vishkan Vakhobov,  
20 who, again, you heard from the 302, that extremist violent  
21 jihad was the proper path.

22 Tamerlan's power over those who he encountered is seen  
23 no better than in his relationship with Katherine. Katherine  
24 Russell, a beautiful, young college student, falls in love with  
25 Tamerlan. She was an attractive young woman. She enjoyed fun

1 with her friends. And she changed dramatically under  
2 Tamerlan's influence.

3 Judith Russell, her mom, you saw her. She came in.  
4 It's a difficult thing for her to do, to come in and talk to  
5 you. And she told you about her concerns with Tamerlan. She  
6 told you how she tried to work with her daughter about it. And  
7 she told you how she tried to be gentle so that she could keep  
8 her daughter and her granddaughter in her life. But her  
9 daughter changed.

10 Gina Crawford, Katherine's best friend from fifth  
11 grade on, saw the changes in her best friend and chose to be  
12 non-judgmental about it so that she could keep the friendship.  
13 Amanda Ranson, the former roommate of Katherine, came in and  
14 told you that she feared for Katherine, she feared Tamerlan,  
15 and she was so afraid from a fight that they had that she moved  
16 out.

17 Yes, this strong-willed, independent, young college  
18 student, daughter of a doctor and a nurse from Rhode Island,  
19 fell to Tamerlan's sway. Judith Russell showed you the  
20 picture. He left her and he left her young daughter with her  
21 when he went to Russia in 2012. And this isn't just our  
22 guesswork about why he went. You heard about it from the  
23 Homeland Security report. It's in evidence. And you heard  
24 about it from the Intelligence Committee report.

25 And you heard about it through the -- again, through



1 the 302 of a guy named Magomed Kartashov, who was a relative of  
2 Zubeida, and living in Dagestan in jail. And what he said to  
3 the FBI was: Tamerlan was under the impression there was jihad  
4 in the streets. Tamerlan's expectations of how it was going to  
5 be when he got to Dagestan came from Internet sites like Kavkaz  
6 Center. Tamerlan came to Russia with the intent to fight jihad  
7 in the forest. Kartashov told him to stop talking like that or  
8 he wouldn't make it to the next tree. Tamerlan told Kartashov,  
9 "I came here to get involved in jihad." Eventually Tamerlan  
10 told Kartashov, "You have convinced my head but my heart still  
11 wants to do something."

12 Tamerlan's decision to pursue jihad was not a decision  
13 he made yesterday. Tamerlan was on the radar. He was on the  
14 terrorist watch list. You saw pictures of him there. You  
15 heard about recordings on his computer where he is talking to  
16 other people involved in the movement, and he talked about the  
17 rage he had and his call to action.

18 To say that Tamerlan did not influence Dzhokhar defies  
19 the reality of the series of email exchanges with Tamerlan and  
20 Dzhokhar when Tamerlan was over in Russia. Tamerlan was  
21 consistently sending materials, jihadi kinds of materials,  
22 radical extremism materials, to Dzhokhar.

23 And in a telling exchange of emails while Dzhokhar was  
24 over there [*sic*] -- well, this slide sort of popped up on me.  
25 But do you know what happened? Before he went, you can see

1 part of the purpose of his departure -- Katherine was worried  
2 about it. These are searches on Katherine Russell's computer:  
3 "If your husband becomes a shahid, what are the rewards for  
4 you?" "Can women become shahid?" "Wife of the mujahidin.  
5 Rewards for the wife." Katherine was worried about what  
6 Tamerlan was doing.

7           You know from Tamerlan's computer that he gave the  
8 radical materials to Dzhokhar. We looked at this in the first  
9 phase, and I'll go through it quickly in this phase. But this  
10 was the complete *Inspire*. Remember the missing Patriot thumb  
11 drive? The missing Patriot thumb drive attaches on the day  
12 that Tamerlan leaves for Russia, attaches into the Samsung,  
13 Tamerlan's computer, and then the file is created, the complete  
14 *Inspire* file is created, and then it is attached into the Sony,  
15 Dzhokhar's computer.

16           The other *Inspire* magazines follow a similar path.  
17 The vast majority of the materials that you heard about all  
18 throughout this trial that landed on -- and that Mr. Mellin  
19 talked about in closing, that landed on Dzhokhar's computer,  
20 landed there from Tamerlan. Tamerlan spent a lot of his time  
21 focused on radical websites and radical ideas. And his  
22 desktop, you know, the background on his computer, the screen  
23 that you stare at when you don't have a document up, here it  
24 is. This is what Tamerlan looked at every day when he looked  
25 at his computer.

1           And the sticky notes -- here's one of the  
2 translations. There's another translation for the other note  
3 in evidence -- is jihad.

4           "If Allah had so willed, he would have taken revenge  
5 himself, but he wanted to test some of you by means of others."

6           "And if they turn him away, it's enough for me to have  
7 Allah. There's no god. I trust in him. He is the lord of the  
8 great throne."

9           "Truth has arrived and falsehood perished, for  
10 falsehood is bound to perish."

11           "Allah says in the Qur'an fighting may be imposed on  
12 you, even though you dislike it. You may dislike something  
13 which is good for you, and you may like something which is bad  
14 for you. Allah knows what you do not know."

15           This is what Tamerlan looked at every day. This is  
16 what he wrote. This is the sticky note on his computer.

17           Other notes were found in the Norfolk Street  
18 apartment. You may remember there were these composition  
19 notebooks, and his fingerprints were all over them. We brought  
20 you the translations of the notes. It's a similar kind of  
21 writing. He was consumed with radical extreme ideas, and he  
22 pushed and pushed. Remember the little video of his daughter,  
23 Zahara, at the park, and she's climbing on the contraption  
24 there, and he's saying, "Al Akhbar, Al Akhbar." And she starts  
25 to repeat it back to him: "Al Akhbar." I mean, here's a

1 toddler playing in the park.

2 Naida, his cousin from Russia, was so undone by his  
3 radical change and radical extremism when she saw him in Russia  
4 in 2012 that she did not want her son to spend any time with  
5 him.

6 So that's Tamerlan.

7 What was going on with Dzhokhar while Tamerlan was in  
8 Russia? While he was in Russia, Dzhokhar was going to bro  
9 nights. He was posting on Instagram. He was posting on  
10 Facebook. He was hanging out with his friends. He was doing a  
11 little underaged drinking. He was spoking pot with his  
12 friends. He was missing some classes. He was flunking out of  
13 school. He was not engaged in radical jihad.

14 In a very telling set of emails, though, when Tamerlan  
15 kept sending stuff to Dzhokhar, Dzhokhar writes back,  
16 "Tamerlan, I miss you. I hope everything's all right. I can't  
17 get through to you, no matter how many times I try to call.  
18 Thanks for the video. Take care of yourself. I'll call today.  
19 Inshallah."

20 The only other response while Tamerlan was in Russia  
21 from Dzhokhar, when Tamerlan is sending him materials, is to  
22 send back to Tamerlan what Professor Reynolds told you about  
23 was a -- sort of an anti-jihad site. It was a  
24 government-sponsored site with a text from a 13th century  
25 mystic. But the jihadis reject it. So this wasn't Dzhokhar

1 weighing in and supporting and liking or encouraging Tamerlan.

2 Dzhokhar's other -- and they're in evidence. His  
3 other emails to Tamerlan were about cars. That's who that kid  
4 was. Tamerlan left the United States wanting to wage war. He  
5 was rejected as a warrior. He left the United States for  
6 Russia as a jihadi wannabe. He couldn't make it. He came back  
7 to the United States as a jihadi wannabe. He couldn't fit into  
8 any movement. So he created his own.

9 It was not Dzhokhar at this point in his sophomore  
10 year in college that was like that. You know it; I know it; we  
11 all know it. And to say that Dzhokhar was a jihadi in  
12 his -- the beginning of his sophomore year in college is just  
13 wrong.

14 After he came back to the United States, Tamerlan went  
15 on his search through the Internet. He found these extremist  
16 articles. He looked at violent YouTube sites. You saw some of  
17 the clips from YouTube sites, and you saw that chart that  
18 showed how much time you spent on YouTube. And Professor  
19 Reynolds told you he went in and looked at the kinds of  
20 YouTubes that Tamerlan was looking at, and they were either  
21 preaching about religious extremism or teaching or somehow  
22 encouraging that movement.

23 He also looked for a P95 Ruger. He looked for  
24 bomb-making parts. He ordered the materials that he built the  
25 bombs with. And as we talked about and showed you in the first

1 phase of this case, his fingerprints were all over the  
2 materials; not Dzhokhar's.

3 We've told you that Dzhokhar followed his brother down  
4 Boylston because that is the tragic truth. But if not for  
5 Tamerlan, this wouldn't have happened. Dzhokhar would never  
6 have done this but for Tamerlan. The tragedy would never have  
7 occurred but for Tamerlan. None of it.

8 Dzhokhar became convinced of the fallacy of the cause  
9 of his brother's passion and became a participant. He carried  
10 a backpack, and he put it down in a crowd of people, believing  
11 that it would be detonated and people would be hurt and killed.

12 To replay for you today, after you've made your  
13 decisions in the first phase, the picture of Dzhokhar standing  
14 by the tree and to replay with the mockup of the grill, is  
15 misleading. We do not deny, and we have never denied, and we  
16 came to you at the very beginning of this case and acknowledged  
17 that Dzhokhar put that backpack down. But you saw the films,  
18 and we don't need to see them again, the Forum video films with  
19 the crowds going back and forth. And to take a clip and to  
20 show Dzhokhar standing behind the tree and to argue that there  
21 was nothing between him and the children makes more of  
22 something that was already horrible enough. Let's not make it  
23 worse.

24 He was foolish enough to get a gun for his brother.  
25 He was foolish enough to go with his brother. Do you really

1 think that he used that gun? Do you really think he got it for  
2 anybody other than his brother? The evidence would really tell  
3 us that that's who he got it for.

4 Tamerlan -- at Watertown, who had the gun? Who was  
5 shooting at the police? Who shot Collier with the gun? Whose  
6 fingerprints are on the magazine inside that gun? Tamerlan's.  
7 Who had the BB gun and the fingerprints on the BB gun?  
8 Dzhokhar.

9 Tamerlan was determined to die in a blaze of gunfire,  
10 and Tamerlan -- and Dzhokhar panicked and got into the car and  
11 escaped. Hundreds of bullets went into that Mercedes and  
12 didn't kill this young man. He ran -- how it didn't kill him,  
13 I don't know. He ran, and he hid in a boat, and he wrote. And  
14 you know what he wrote, words that had been introduced to him  
15 by his brother; words that he had listened to, that were sent  
16 to him by his brother; words that he had read that were sent to  
17 him by his brother until at least -- he could at least recite  
18 them. But we're not sure with how much certainty he could  
19 recite them.

20 Remember he also wrote, "I am jealous of my brother  
21 who has gone to paradise"? What's the first thing he asked the  
22 EMTs when he was being taken to the hospital? "Where's my  
23 brother?"

24 The differences in Dzhokhar and Tamerlan can be seen  
25 in other ways, from how they reacted when they knew the police

1 had them. Tamerlan shoots straight at them, walks into the  
2 blaze of gunfire and throws the gun at them and resists, fights  
3 and yells and screams when the EMTs are trying to give him aid.

4           When Dzhokhar was spotted in the boat with no weapon  
5 and ordered out, he came out of the boat. You saw the boat.  
6 We all went out and saw the boat. You saw the hundreds of  
7 bullet holes in the boat. He wasn't, again, killed, but he was  
8 shot. He was hit in the head and the face, the hand. You see  
9 him coming out of the boat. And what did he do? He followed  
10 the directions of the EMTs. He answered their questions, he  
11 accepted treatment, and he asked about his brother.

12           So how does all of this happen? How does this good  
13 kid, this youngster, this young man who was described as gentle  
14 by friends and family and teachers -- how does he do it? How  
15 did this happen? If there were an easy -- if only there were  
16 an easy and succinct answer to that question, that will haunt  
17 many of us for years to come, I would give it to you.

18           Sometimes star-crossed lovers whose families don't  
19 want them to marry, marry anyway, and their marriages work out.  
20 Sometimes people who have serious mental illnesses and get help  
21 can function. That didn't happen for Dzhokhar's parents.

22           Sometimes refugee families can come from difficult  
23 circumstances in war-torn countries and come to the United  
24 States and embody the American dream, despite their past. That  
25 didn't happen for the Tsarnaev family.



1           Sometimes children who are forgotten or neglected or  
2 raised in chaos and craziness are able to recognize that they  
3 don't have to protect their families and they can ask for help  
4 and get it and their hollowness does not get filled up by the  
5 darkness of the most dominant person in their lives, who they  
6 happen to love beyond their understanding. Not so with  
7 Dzhokhar.

8           If you're looking to me for a simple and clean answer  
9 as to why this young man, who had never been arrested, who had  
10 never sassed a teacher, who spent his free time in school  
11 working with disabled kids -- if you ask me -- if you expect me  
12 to have an answer, a simple, clean answer as to how this could  
13 happen, I don't have it. I don't have it.

14           I can tell you this, and we've shown you, that  
15 Dzhokhar Tsarnaev is not the worst of the worst. And that's  
16 what the death penalty is reserved for, is the worst of the  
17 worst.

18           The prosecutors want you to believe that Dzhokhar is a  
19 bad seed, and they had everyone fooled, every teacher, every  
20 friend, every person who came before you and risked public  
21 exposure coming to you to testify -- every one of those people  
22 were fooled. He committed a heinous crime and must be  
23 executed. That is the prosecution's theory.

24           The crime is heinous; that much is true. But you  
25 promised us when you took your oath as jurors that when the

1 time came for sentencing, you would look beyond -- you would  
2 look beyond the crime, you would look at the person, and you  
3 would look at all of the reasons that the law allows you to  
4 consider life without the possibility of release could be the  
5 appropriate sentence.

6 And when you deliberate -- when you get the case, when  
7 you deliberate, you'll have the aggravating and mitigating  
8 factors that the judge has gone through and the prosecutor has  
9 gone through and hear the aggravating -- and you'll get to  
10 consider them and hear the aggravating factors are primarily  
11 focused on the crime. There are no aggravating factors that  
12 the government alleges that focus on Dzhokhar being a danger,  
13 Dzhokhar leading a life of crime and violence, or that he will  
14 continue to be some lawless, violent person, unable to be  
15 housed in prison. The aggravating factors in this case you  
16 pretty much have already decided by your verdict in the first  
17 phase.

18 The mitigating factors are going to ask you to look to  
19 Dzhokhar's past as well as who he is now and his future. They  
20 look to his background. They look to the circumstances of the  
21 crime, his role in the crime, and his future. Is his a life  
22 worth saving? Is there hope for him? Is there hope for  
23 redemption?

24 The law recognizes that all people convicted of the  
25 same crime don't get the same sentence. Whether it's murder or

1 murder by weapon of mass destruction, you've got to the look at  
2 the person. So in a minute I'm going to talk to you about a  
3 couple of things in the verdict form that I want you to sort of  
4 untangle or figure out, but first let me talk a little bit  
5 about the categories of mitigation that you'll see. You've  
6 seen the list. The judge read you the list. You saw the list  
7 come down on your screens.

8           There will be factors that you consider about his  
9 family, about Dzhokhar's background, about the lack of parental  
10 support that he had. There are mitigating factors having to do  
11 with his role in the crimes. We brought you evidence that  
12 although both Tsarnaev brothers are responsible, they had very  
13 different roles. Those are things you need to consider.

14           What was Dzhokhar like in the life that he led before  
15 these crimes? Something to be considered. You know from his  
16 teachers, from his friends that he was a kind and gentle boy,  
17 that he cared for people and he sought to help others.

18           You know that in high school, just two years before  
19 the bombing, he took pride in his schoolwork and in his  
20 athletic ability, and he was motivated to help other disabled  
21 schoolmates. He was in the Model U.N. He was in Best Buddies.  
22 He was a wrestler. He was well liked and well loved.

23           You've also heard that he's young. He was 19 at the  
24 time. Dr. Giedd came before you, Jay Giedd. You may remember  
25 his testimony. And Dr. Giedd has spent some decades studying

1 brain development, and he's been studying primarily the  
2 adolescent brain development.

3           And his bottom line of his testimony was something  
4 that we all know, if you've ever been a teenager, had a  
5 teenager, known a teenager. We all know it's not a finished  
6 product. And Dr. Giedd was able to show you from brain studies  
7 the reason why teenagers are the -- the way they are, why that  
8 time in life is so topsy-turvy, why you can make some good  
9 decisions and make some bad decision. It's what's going on.

10           There's a biological reason that we have teenagers,  
11 and he's spent his life studying it. Sure, there are averages.  
12 Sure, you don't know from any brain scan how mature any  
13 individual was. Could you imagine that, as a parent? You'd  
14 like to have that.

15           There are categories of mitigation that look at who  
16 Dzhokhar was in the past. There are categories of mitigation  
17 that look at who he is now and who he's likely to be. There's  
18 nothing in the evidence, nothing at all, to suggest that  
19 Dzhokhar is likely to be difficult to supervise or manage or  
20 house in a prison. He's never tried to influence anybody about  
21 his beliefs. He's never tried to break the rules or disobey  
22 the law. And he's been incarcerated for two years.

23           And what does the government bring to you after over  
24 two years of incarceration? A video -- not even a video, a  
25 picture, an instant, the one second of Dzhokhar shooting the

1 finger at the camera. Now, most -- that's probably a first. I  
2 doubt anybody has ever been written up for shooting a finger at  
3 the camera. It's the kind of scrutiny this kid is under. And  
4 if there were more, believe me, you would have been hearing  
5 about it.

6           What surprises me the most about the government's  
7 attempt to persuade you based on that evidence is that they  
8 took the instant clip and took it entirely out of context.  
9 Didn't show you the sort of childish, silliness about it,  
10 stupidity about it. And what's more important is what they  
11 didn't tell you when he was called on it. What did he say?  
12 "I'm sorry." He apologized.

13           Finally, we think that we have shown you that it's not  
14 only possible but probable that Dzhokhar has potential for  
15 redemption. Sister Helen Prejean testified and told you about  
16 her visits with Dzhokhar. She's spent five visits with him.  
17 She shared her insight into him and his potential for  
18 redemption. As you know, she's a nun, and she runs a -- part  
19 of her ministry is to work with prisoners who have committed  
20 horrible crimes.

21           She met Dzhokhar. They discussed religious beliefs.  
22 This young Muslim guy and this older Catholic nun discussed  
23 their religious beliefs. He was open. He was respectful. And  
24 what was the first thing she noticed about him? So young. And  
25 then what did she tell you? He's genuinely sorry for what he's

1 done. "When I asked him about the crimes, he lowered his head,  
2 he lowered his voice, and he said, 'No one deserves to suffer  
3 like they did.'"

4 That just does not sound like the same boy who wrote  
5 in the boat, "I don't like killing innocents unless it's  
6 necessary." "It's necessary." That is growth. That is  
7 maturity. Most of us hope that we have a chance to mature more  
8 from age 19 to age 21. And what Sister Helen gave you the  
9 opportunity to see is that this kid is on that path of growth  
10 and remorse.

11 The young man that Sister Helen sat with is not the  
12 angry, vengeful, uncaring, unrepentant, unchanged, untouched  
13 young man that the prosecution has described to you. What  
14 unrepentant, unchanged, untouched jihadi is going to meet with  
15 a Catholic nun, connect with her, talk with her and have her  
16 enjoy the conversation with him? What unrepentant, uncaring,  
17 untouched young jihadi is going to reveal his regret for the  
18 suffering that he caused?

19 I suppose the government's going to argue that this  
20 young man pulled the wool over Sister Helen's eyes. That is  
21 simply not going to happen. She's been at this work since  
22 1957.

23 THE COURT: Be careful of experience.

24 MS. CLARKE: She works -- she is experienced. She may  
25 be against the death penalty, and that was the

1 cross-examination. Many religious figures are against the  
2 death penalty. She's against the death penalty, but she's not  
3 going to come in here and lie to you about her observations of  
4 this young man. And what unrepentant, hate-filled jihadi would  
5 even bother to try to get her to be fooled?

6 We ask you to reflect on her testimony. It was short.  
7 It was direct. It was to the point. And it shows the  
8 potential -- the great potential for redemption.

9 The verdict form. The judge went through it. It's 23  
10 or 24 pages long. It begins with the threshold intent factors.  
11 Those are factors that you have to find -- you've already found  
12 them in the first phase of this case. Those are factors that  
13 you have to find to make the case eligible for the death  
14 penalty. It is eligible for the death penalty. You can check  
15 them off.

16 The statutory aggravating factors are a similar  
17 narrowing so that you can have the decision about whether to  
18 impose death or life. You can check them off. You have found  
19 them in the first phase of this case. You have already  
20 discussed the facts that give rise to those statutory  
21 aggravating factors.

22 There are non-statutory aggravating factors that the  
23 prosecutor went over with you. You can check them off.

24 There are two, though, I would like for you to look at  
25 and think about because they just may not apply. "Dzhokhar

1 Tsarnaev demonstrated a lack of remorse." Now, the prosecution  
2 has come to you and said what that means is what he wrote in  
3 the boat and the fact that he was not remorseful during the  
4 time of the crime.

5 Well, that calls on a little bit much. The crime  
6 charged is conspiracy that lasted up through the 19th of April.  
7 And you don't know many people who are remorseful during the  
8 commission of the crime. It's okay if you make that finding.  
9 The critical thing is that Dzhokhar is remorseful today. He's  
10 grown in the last two years. He is sorry, and he is  
11 remorseful.

12 The other one that raised some concern is the -- and  
13 that is on page 14. It's Number 4. The next one is the  
14 allegation that Dzhokhar murdered Officer Collier. Now, we  
15 know that you have found him legally responsible. He was  
16 charged as an aider and abetter. You found him legally  
17 responsible for the death of Officer Collier.

18 He didn't pull the trigger. He may be responsible for  
19 the death of Officer Collier, but in a sense of weighing that  
20 for punishment, consider who killed Officer Collier, who pulled  
21 the trigger. We talked long and hard during the guilt phase  
22 about that -- that evidence. It didn't matter because of the  
23 legal responsibility that the aiding and abetting charge  
24 carries.

25 The verdict form also contains the list of mitigating



1 factors that the judge went over, and it includes blanks if  
2 those aren't all of the factors. The only thing I want to  
3 caution you about the mitigating factors, and the judge's  
4 instruction covers it, that if you find by a preponderance of  
5 the evidence, by 51 percent of the evidence, that the factor  
6 was proven, then you note that.

7 So if you find that Dzhokhar was 19 years old at the  
8 time of the offenses, which he was, you write in 12. If you  
9 find that Dzhokhar had no prior history of violent behavior,  
10 which is true, you write in 12.

11 Now, the 12 doesn't necessarily tell you what kind of  
12 weight you're going to give to that factor, but this is the  
13 factual finding that you write in.

14 Tamerlan -- Dzhokhar acted under the influence of his  
15 brother, which is true. 12. And I believe you can go down the  
16 line of all the mitigating factors --

17 MR. WEINREB: Your Honor, I think this is --

18 THE COURT: No. Go ahead.

19 MS. CLARKE: -- and make your finding.

20 And in the end, there are several blanks for other  
21 mitigating factors that any of you might find appropriate. In  
22 other words, it's not a finite list. If there are other  
23 reasons that you believe weigh in favor of a life sentence, you  
24 can write them in.

25 Then the last section, Section VI, is really where

1 your work is. Because I think you can check off these  
2 threshold factors, check off these statutory aggravating  
3 factors, check off most of the non-statutory aggravating  
4 factors, discuss and check off the mitigating factors. But  
5 where your work comes in is in the determination of the  
6 sentence.

7 The law that Judge O'Toole has given you and will  
8 finish up with tells you to make findings about aggravating and  
9 mitigating factors. You make the finding that they exist. And  
10 then it's not a numbers game. It isn't, "There are six factors  
11 here and 17 factors there." It isn't a numbers game. It isn't  
12 list and list and then the longest list wins. You don't make a  
13 list and look at the columns. You can find that one mitigating  
14 factor outweighs all the aggravating factors. You can find  
15 that there are no mitigating factors and that the aggravating  
16 factors do not justify the sentence of death.

17 Whether a sentence of death is justified is your own  
18 individual decision. The judge's instructions tell you that.  
19 And I know during voir dire we talked a lot about, you know,  
20 "Well, I'll follow the law, and I can follow the law and do  
21 what the law requires me to do." Well, the law requires you to  
22 make these findings. The law requires you to make findings as  
23 to aggravation, findings as to mitigation, to weigh them, and  
24 then the law leaves it entirely up to you.

25 There is no law that ever requires that a sentence of

1 death be imposed. That is an individual decision for each of  
2 you to make. It is an individual reasoned judgment that you  
3 make. You have a duty to deliberate with each other. You have  
4 an obligation to discuss with each other. You have an  
5 obligation to hear each other's views. But the law values  
6 life, and you have no obligation to vote for death.

7 Each one of you individually, each one of you, is a  
8 safeguard against the death penalty. Each individual.

9 You've been through a lot together. We've all been  
10 through a lot together. But you've been through a lot together  
11 sitting here for the last ten weeks, and I'm sure you want to  
12 support each other. But that is not your job in this phase.  
13 You have a job to deliberate, listen, discuss and respect.  
14 Everyone respects everyone else's views. No one of you ever,  
15 ever has to vote for the death penalty.

16 A sentence of death is only imposed if it is  
17 unanimous. The questions on Section IV guide you through this.

18 "We, the jury, unanimously find all of the capital  
19 counts and that aggravation significantly outweighs  
20 mitigation." If you make that unanimous finding, it is death.

21 "We, the jury, unanimously find that a sentence of  
22 life in prison without the possibility of release for all of  
23 the counts." If you make that decision, it is life.

24 "We, the jury, unanimously find for some of the  
25 capital counts." If you make a finding as to any of the

1 capital counts that -- unanimously that death is appropriate,  
2 that is the sentence. It will override any life sentence.

3 The judge, in the instructions -- and it's really  
4 important to listen to this. You should understand that if you  
5 impose the death penalty as to any count or counts, the death  
6 sentence will control, regardless of any life sentences that  
7 may be imposed on other counts. A single count with a death  
8 sentence is death.

9 The judge also cautions you in the instructions, "The  
10 government was entitled to bring multiple charges with respect  
11 to each homicide, but the number of counts does not by itself  
12 mean that the defendant's conduct is more blameworthy or he is  
13 worthy of greater punishment."

14 A death sentence will not be imposed unless each one  
15 of you decides that it should be.

16 A sentence of life in prison without the possibility  
17 of release sends Dzhokhar Tsarnaev to ADX. Now, we use those  
18 initials rather freely, like we know what it is.  
19 Administrative maximum prison in Florence, Colorado. We flung  
20 those initials around, but that's what ADX -- it's the  
21 administration maximum prison in Florence, Colorado. There was  
22 no dispute about that, that that's where he's going. And he  
23 will be under the SAM. He's under -- "the SAM," special  
24 administrative measures -- he will be under them. He's under  
25 them now.

1           Warden Bezy and the prosecutor sort of scuffled over  
2 how long Dzhokhar may stay under the SAM and whether he'll get  
3 to write or receive letters. And the prosecution spent a long  
4 time telling you that it doesn't snow that much in Colorado and  
5 that there will be heat control in the rooms.

6           There's a concrete bed with a mattress on it and heat  
7 control and a pillow. And for some reason, there was great  
8 discussion about this being at the foothills of the Rocky  
9 Mountains. It doesn't much matter because Dzhokhar Tsarnaev's  
10 not going to see the Rocky Mountains. He won't have a room  
11 with a view, and they know it.

12           Let's get real. This isn't a club. This isn't a  
13 resort. This is the most rigid, punitive prison in America.  
14 It's a place where 29 men -- you heard the testimony about  
15 it -- 29 men vie for the privilege of cleaning the showers, and  
16 two get the job.

17           The same government that asked you to sentence  
18 Dzhokhar Tsarnaev to death has the power to cut him off from  
19 the world. The FBI and the U.S. Attorney in Boston will never  
20 be out of that loop. He is under the SAM. What is clear is  
21 that the FBI and the U.S. Attorney in Boston, the offices of  
22 the people sitting at this table, will decide how long he'll  
23 stay under SAM. I'm baffled by their argument.

24           Are they telling you that they -- you shouldn't trust  
25 them to provide protection and security, but you should trust

1     them when they say that the justice that is required in this  
2     case is a sentence of death and execution?

3             No one's going to give you 100 percent guarantee that  
4     Dzhokhar will remain in the H unit at ADX forever. What is  
5     guaranteed is that the decision-makers, the offices of the  
6     folks sitting at this table, will be involved, and they are  
7     hardly softies on convicted terrorists. They know what they  
8     need to do. They know what's necessary to do. And they're in  
9     a position to know what's necessary to do.

10            And if, for some reason, Dzhokhar Tsarnaev gets off of  
11     H unit, the SAM unit, he's still going to be in isolation for  
12     the rest of his life. His mail, his phones, any visits that he  
13     may have will be strictly controlled and monitored. There will  
14     be no book. There will be no coded messages. There will be  
15     nothing.

16            There's no disputing that both punishment options in  
17     this that are before you are harsh and severe. With either of  
18     the options Dzhokhar Tsarnaev dies in prison. The question is  
19     when and how. We're asking you to choose life. Yes, even for  
20     the Boston Marathon bomber.

21            You might say, how can I do that? How can I ask you  
22     to choose life after all of the pain that he's caused? If this  
23     crime doesn't require the death penalty, what crime does? The  
24     question could be, why should he have the opportunity to live  
25     when he didn't give it to others? Why shouldn't he suffer as

1 his victims did. Mercy? He didn't offer any mercy to his  
2 victims and to the people whose lives were ripped apart.

3 And all of those thoughts and those questions that I  
4 just ran through are completely understandable. They're driven  
5 by anger, emotion, disgust, fear, pain. Some of them might  
6 sound like they are based in vengeance. But really what  
7 they're based in is the search for fairness and justice.

8 There's nothing wrong with having those questions and  
9 searching in that way, but there is something wrong with  
10 thinking that the answer will be found in imposing the sentence  
11 of death. There's no punishment -- there's no punishment, not  
12 even a death sentence -- that could balance the scales.  
13 There's no punishment, even a death sentence, that could equal  
14 the impact on these families. And as David Bruck said to you  
15 in the opening of our part of the penalty phase, there's no  
16 even-ing of the scales. It can't be done.

17 A sentence of life in prison without the possibility  
18 of release is not a lesser sentences than death; it is an other  
19 sentence than death. It ensures that Dzhokhar Tsarnaev will be  
20 locked away in a bleak environment, in bleak conditions. He  
21 will have no fame, no notoriety. He will have no media  
22 attention. And if there are those that wish to make him so,  
23 he'll have no glory and stature that martyrdom could bring.  
24 His name will fade from the headlines. It will fade from the  
25 front page. It will fade from the inside page. It will fade

1 from the news altogether. And those who so desperately no  
2 longer want to be reminded of him won't be.

3 A sentence of life in prison doesn't dishonor the  
4 victims in this case. It does not in any way minimize what  
5 happened and what was caused by his crimes.

6 In closing argument in the first phase of this case,  
7 the prosecutor stood in front of Dzhokhar and pointed at him  
8 and said, and asserted to you, "What motivated his actions was  
9 an eye for an eye. You kill us; we kill you."

10 Even if you believe that that's who Dzhokhar was, even  
11 if you believe that that's who Dzhokhar is, that is not who we  
12 are. We can think and reason and decide what is best for all  
13 involved, not just what fulfills the need for vengeance and  
14 retribution.

15 Finally, a sentence of life in prison without the  
16 possibility of release allows for hope. It allows for the  
17 possibility of redemption and a greater opportunity for healing  
18 for everyone involved. It's a sentence that reflects justice  
19 and mercy. Mercy's never earned; it's bestowed. And the law  
20 allows you to choose justice and mercy.

21 I ask you to make a decision of strength, a choice  
22 that demonstrates the resilience of this community. We ask you  
23 to choose life and impose a sentence of life in prison without  
24 the possibility of release.

25 Thank you.



1           THE COURT: Jurors, why don't we take another break.  
2 Everybody, if you want, stand and stretch and relax for a  
3 minute.

4           (Discussion off the record.)

5           THE COURT: Why don't we just take a five-minute break  
6 so everyone can use the restroom.

7           THE CLERK: The Court will take a five-minute recess.

8           (The Court and jury exit the courtroom and there is a  
9 recess in the proceedings at 2:48 p.m.)

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

11          (The Court and jury enter the courtroom at 2:56 p.m.)

12          THE CLERK: Be seated.

13          THE COURT: The government has an opportunity for a  
14 rebuttal argument.

15          Mr. Weinreb?

16          MR. WEINREB: Good afternoon.

17          THE JURORS: Good afternoon.

18          MR. WEINREB: As you can see from the list of  
19 mitigating factors in this case, the bulk of the mitigation  
20 case comes down to a single proposition: "His brother made him  
21 do it."

22                 There are other mitigating factors, of course, related  
23 to his family and his upbringing. But as Ms. Clarke's argument  
24 just made clear to you, they are there largely to explain to  
25 you how his brother made him do it. The defense may phrase it

1 in different ways, but that's the basic idea, and that's the  
2 idea they've been trying to sell you on since day one in this  
3 case. That was the defense in the guilt phase, and now it's  
4 the heart of the mitigation case.

5 No matter how many times they say that the defendant  
6 takes responsibilities for his actions, they actually keep  
7 trying to pin the blame on his older brother. Our response is  
8 just as easily stated: It's not true. His brother did not  
9 make him do it. And in any event, it doesn't matter what his  
10 brother did. He's the one on trial, not his brother. You need  
11 to sentence him for his actions.

12 When you consider the mitigation case, keep in mind  
13 that the defense bears the burden of proof. They have to  
14 convince you that these things are true. An argument isn't  
15 evidence. Things aren't true just because Ms. Clarke says they  
16 are. There has to be evidence that proves them to be true.  
17 It's up to you to decide whether that evidence exists and, if  
18 it does, whether it's enough to convince you.

19 Also keep in mind that even if a mitigating factor is  
20 proved, that doesn't mean you have to give it any weight. It's  
21 easy to phrase mitigating factors in a way that can be proved.  
22 Take the very first one on their list. The defendant was 19  
23 years old when he committed these offenses. That's pretty easy  
24 to prove. But it's entirely up to you to decide if it makes a  
25 difference in this case. Some 19-year-olds act like they're

1 14. Some 14-year-olds can be more mature than adults. Their  
2 own expert told you that. It's entirely up to you to decide  
3 whether the defendant deserves credit for his age or for any  
4 other mitigating factor.

5 Now, I agree with Ms. Clarke that the weighing of  
6 aggravating and mitigating factors is not a numbers game. You  
7 can't just total them both up and compare. You have to decide  
8 how weighty each one is.

9 For example, you might decide that a particular  
10 aggravating factor, say that Martin Richard was especially  
11 vulnerable to the effects of a shrapnel bomb because he was a  
12 little boy, is more important than a mitigating factor, say  
13 that the defendant's teachers had a high opinion of him when he  
14 was in elementary school.

15 You may even decide that a few aggravating factors,  
16 say that the defendant committed multiple murders in a heinous,  
17 cruel and depraved manner during an act of terrorism, outweigh  
18 all of the mitigating factors combined. That's entirely up to  
19 you.

20 You heard an awful lot about Tamerlan Tsarnaev during  
21 the mitigation case, and you heard Ms. Clarke refer to Tamerlan  
22 Tsarnaev or to the older brother well over 100 times just now.  
23 You also heard a lot about Chechnya. What did all that really  
24 tell you? At times it might have seemed to you as if Tamerlan  
25 Tsarnaev were the one on trial or the Chechens.

1           But since it's the defendant who's on trial, consider  
2 for a minute what all that evidence told you about the  
3 defendant. He was born in central Asia, not the mountains of  
4 Chechnya. He was born in the same area where his father and  
5 all of his paternal aunts and uncles had been born. He spent  
6 his early years in the bosom of a warm, extended family that  
7 included his parents, grandparents, aunts, uncles, a brother  
8 and two sisters. They loved him, supported him and doted on  
9 him.

10           He lived either in central Asia with -- in Dagestan  
11 with his mother's family or with his cousins in a house near  
12 the Caspian Sea. He has never --

13           MR. BRUCK: Objection, your Honor.

14           THE COURT: No. Overruled.

15           MR. WEINREB: He has never set foot in Chechnya in his  
16 life.

17           When he was eight, he moved with his parents from one  
18 of the poorest parts of the world to the wealthiest. They were  
19 looking for a better life, and they found it. They got an  
20 apartment in Cambridge that was walking distance to Harvard  
21 Square. Anyone who knows Cambridge knows how a desirable place  
22 it is to live. The apartment was snug, but it was adequate.  
23 It had a bedroom for the parents, a separate bedroom for the  
24 girls, another bedroom for the boys, a kitchen and a living  
25 room with a TV.

1           Anzor and Zubeida were not well off, but they provided  
2 what kids need to thrive. The defendant and his siblings had  
3 food, clothing, school supplies and a warm home to share, and  
4 they also had a lot of the extras American kids have come to  
5 take for granted in their lives: cars, television, computers,  
6 iPods, cell phones. The children had medical care and a free  
7 public education at excellent schools. They may not have been  
8 well off, but they were rich in many things that a lot of kids  
9 lack.

10           MS. CONRAD: Objection, your Honor. This is not  
11 rebuttal.

12           THE COURT: Overruled.

13           MR. WEINREB: Let's talk a minute about school because  
14 quite a number of the defense witnesses were people who knew  
15 the defendant through school. What did you learn from those  
16 witnesses?

17           One thing you learned is that the defendant was  
18 extremely lucky when it came to school. He had devoted  
19 teachers who got to know him, appreciated him and helped him  
20 succeed. He had dedicated coaches and mentors who promoted  
21 him. He was well liked. In short, everything you heard tells  
22 you that the defendant had everything he needed to grow into a  
23 strong, independent, mature, resilient adult.

24           And the evidence shows that is just what happened.  
25 Several of his teachers, coaches and mentors noted that he was

1 unusually mature. He was the only boy in elementary school who  
2 held the baby. He learned English so quickly, he skipped  
3 fourth grade. His high school friends made him captain of the  
4 wrestling team. His friend Tiarrah Dottin told you that he was  
5 not easily pushed around. He liked to say yes, but he knew how  
6 to say no. He was not a follower. He was able to make up his  
7 own mind. He knew his own mind. He understood the difference  
8 between right and wrong.

9 Tamerlan, you heard, grew up in the same large family  
10 as the defendant. He was also loved, supported and doted on.  
11 He had the same advantages the defendant had when he came to  
12 the United States to live in Cambridge, and he also had a lot  
13 of strengths and successes. He wasn't as good in school as the  
14 defendant, but he was a skilled boxer. Elmirza, the  
15 defendant's brother-in-law, who testified via video link, told  
16 you that Tamerlan was handsome and could be charming, albeit it  
17 in a goofy kind of way.

18 Of course Tamerlan and the defendant had very  
19 different personalities. Tamerlan was loud, flashy, in your  
20 face. The defendant was quiet, polite and laid back. Tamerlan  
21 couldn't stop talking about his beliefs. The defendant kept  
22 his beliefs to himself. Tamerlan sometimes lost his temper.  
23 The defendant knew how to keep his cool.

24 But despite their differences, they were from the same  
25 stock, they grew up in the same family, in the same household,

1 and in many ways, they were very much alike. They were both  
2 physically strong, one a boxer, one a wrestler, capable of  
3 defeating much larger opponents. They were both emotionally  
4 strong. They took care of themselves and didn't need anyone's  
5 shoulder to cry on. And they were both men of action. When it  
6 was time to make a bomb, Tamerlan shopped for pressure cookers  
7 and got on the Internet and ordered the parts he needed. When  
8 the defendant decided that he needed a gun, he got one from his  
9 friend Stephen Silva by telling him he planned to rob some drug  
10 dealers in Providence. Stephen Silva was surprised by that.  
11 He didn't bat an eye.

12           Despite what Ms. Clarke just told you, there's no  
13 evidence that Tamerlan told the defendant to get a gun. None.  
14 That's just something the defense wants you to believe.  
15 Tamerlan didn't search for "P95 Ruger" on the Internet until  
16 well after the defendant got the gun. Don't be misled by that  
17 argument.

18           Of course you know the defendant's strength of will,  
19 his presence of mind in many other ways. You know that even  
20 after his brother had been captured by police, he had the grit  
21 to get back into that SUV, make a three-point turn and try to  
22 run over three police officers, even if it meant driving  
23 through a hail of bullets and running over his own brother.  
24 How many people do you know who could pull off something like  
25 that?

1 (There is an interruption in the proceedings.)

2 MR. WEINREB: And after ditching the Mercedes, while  
3 whole police forces were searching for the defendant, he  
4 managed to pick his way through Watertown, blood dripping from  
5 his gunshot wounds, find a hiding place, smash his cell phones  
6 and pen a very coherent and powerful message on the inside of a  
7 boat while nearly evading capture altogether. That's the kind  
8 of person he is: strong and strong-willed, just like his  
9 brother, Tamerlan.

10 When you think back over all the evidence you heard  
11 during the mitigation case, ask yourself this: Did you hear  
12 any evidence that convinces you that Tamerlan Tsarnaev actually  
13 made Dzhokhar Tsarnaev commit these crimes? Not "made him" in  
14 the sense of put a gun to his head. Even the defense doesn't  
15 claim that. But "made him" in the sense that the defendant was  
16 coerced or controlled. "Made him" in the sense that he was so  
17 vulnerable to Tamerlan's influence and so influenced by  
18 Tamerlan that he should be excused from bearing moral  
19 responsibility for what he did.

20 Let's look at some of the evidence. One of the main  
21 arguments the defense makes is that when the defendant's  
22 parents returned to Russia in the fall of 2012, they left him  
23 in Tamerlan's hands; that the defendant was already 19 years  
24 old in the fall of 2012. He hadn't lived at home for over a  
25 year. He lived at UMass Dartmouth, and he spent his days down



1 there hanging out with his friends, smoking pot and playing  
2 video games. He wasn't financially dependent on Tamerlan, and  
3 he wasn't -- he was making ample pocket money selling drugs.  
4 And he wasn't emotionally dependent on him. He had plenty of  
5 his own friends.

6 Tamerlan, meanwhile, had become a scold. He condemned  
7 drinking, smoking, doing drugs. It wasn't much fun to be  
8 around him, so the defendant simply stayed away. He spent his  
9 weekends at UMass Dartmouth instead of bringing friends home to  
10 the house at 410 Norfolk. He visited Tamerlan only now and  
11 then on the occasional weekend or holiday. They seldom saw  
12 each other or even spoke. That's what the phone records show.

13 What about the period before the parents left for  
14 Russia in the fall of 2012? Well, for the entire first part of  
15 that year, from January of 2012 to August 2012, Tamerlan  
16 himself was in Russia. For those six months, the defendant  
17 never saw Tamerlan at all. Tamerlan emailed the defendant only  
18 six times during those entire six months. That's what the  
19 evidence shows. When he did, he sent him some jihadi videos.

20 But what was the defendant's response? "Thanks.  
21 That's interesting." That's it. Where is the evidence of  
22 brainwashing, of mind control? Where is the evidence that the  
23 defendant was under his brother's spell? You haven't heard it  
24 from the mouth of any witness in this case. You've only heard  
25 it from the mouths of defense attorneys.

1           What about the year before Tamerlan went to Russia?  
2           The defendant spent half that year finishing high school and  
3           half that year in college. Again, you've heard no evidence  
4           that Tamerlan exercised dominion or control over the defendant  
5           during that year.

6           You heard evidence that Tamerlan may have given the  
7           defendant jihadi materials to look at before he went to Russia,  
8           but then Tamerlan went off to Russia, looking for an  
9           opportunity to do jihad on his own. He didn't try and take the  
10          defendant with him. On the contrary, he left his little  
11          brother behind, quite possibly intending never to return. And  
12          as I just mentioned, he barely wrote to him while he was away.

13          You did hear testimony that Tamerlan was bossy. He  
14          had become abstinent himself, and he didn't want the defendant  
15          to smoke, drink or do drugs. He wanted him to pray and go to  
16          the mosque more often. But that's the way a lot of older  
17          siblings are with their younger siblings, isn't it? They  
18          admonish them to stay on the straight and narrow. And a lot of  
19          younger siblings, like the defendant, pretend to take that  
20          advice, even though they go back to doing whatever they want  
21          once they're out of their older sibling's sight. That is a far  
22          cry from coercion or control.

23          The defense argues that even before the defendant's  
24          parents left in the fall of 2012 to go back to Russia, they  
25          were effectively absent anyway because Anzor's illnesses and

1 Zubeida's religious conversion left them unable to parent him.  
2 Is that what it looked like to you? Of course Anzor and  
3 Zubeida had their issues. All parents do. But parents can go  
4 through a lot and still have a lot left over for their  
5 children.

6 You saw the photos of the defendant in drum class,  
7 dance class and at farm camp. As he gets older, you see him  
8 with soccer trophies, winning wrestling matches, playing pool  
9 with his friends. Those aren't the photos of a child who was  
10 neglected or overlooked with parents too crippled with problems  
11 to parent him. On the contrary, the evidence is that both his  
12 parents were devoted to him.

13 And despite their problems, they stayed together and  
14 maintained a family home until all of their children had grown  
15 up, become adults and left home to begin leading independent  
16 lives. Only then, once all their kids had become adults and  
17 left the nest, did they return to their families of origin from  
18 whom they had been away for so long.

19 Moreover, we're not just raised by our parents. Our  
20 lives are shaped by uncles, aunts, teachers, friends,  
21 neighbors, coaches, mentors. You heard evidence that the  
22 defendant was surrounded, supported and guided by some of the  
23 best. If his parents were ever unable to support him or guide  
24 him, others were there to step in: his teachers; his wrestling  
25 coach; his Model U.N. advisor; his kindly neighbor and

1 landlady, Joanna Herlihy; his uncle Ruslan, who lived only a  
2 bus ride away. That is considerably more support and guidance  
3 than a lot of adolescents have.

4 The last thing the defense falls back on to prove that  
5 there must have been coercion and control is the defendant's  
6 Chechen heritage. It's a tradition in Chechnya going back  
7 thousands of years that elders control the family. But  
8 traditions can change as times change. Even Professor  
9 Reynolds, the defense expert on Chechnya, told you that. It  
10 happened in Chechnya itself in the 1990s right around the time  
11 the defendant was born.

12 Can I have the screen, your Honor?

13 THE COURT: I don't see an image. I don't have a  
14 feed. There it is. Okay.

15 MR. BRUCK: We have to renew the objection. This is  
16 far beyond any rebuttal. We already --

17 THE COURT: Overruled.

18 MR. WEINREB: Here's what Professor Reynolds wrote  
19 back in May 2013.

20 MS. CONRAD: Objection, your Honor. That's not in  
21 evidence. It was not shown to the jury. It should not be on  
22 the screen.

23 MR. WEINREB: It's a chalk, your Honor.

24 MS. CONRAD: It's not a chalk.

25 THE COURT: I think it was shown during the trial.

1 MS. CONRAD: No, it was not.

2 MR. WEINREB: It was handed to the witness, and I  
3 reviewed it with the --

4 MS. CONRAD: It was not shown.

5 May we be heard, your Honor?

6 THE COURT: Put it up again.

7 MR. WEINREB: That's all right. I don't need to keep  
8 it there.

9 THE COURT: Okay.

10 MR. WEINREB: But the next one is just a clip.

11 THE COURT: All right. You may use that as a chalk.

12 MR. WEINREB: I can't see it. There we go. Okay.

13 MS. CONRAD: This was not shown to the jury, your  
14 Honor. I would like to be heard at sidebar.

15 THE COURT: This is used as a chalk.

16 Go ahead.

17 MR. WEINREB: Your Honor, I cleared this with  
18 Mr. Bruck before --

19 THE COURT: All right. Go ahead.

20 MS. CONRAD: Your Honor, this was impeachment.

21 THE COURT: Overruled.

22 MR. WEINREB: This is what Professor Reynolds wrote  
23 back in May of 2013 before the defense hired him and explained  
24 to him what they were trying to prove in the mitigation phase.  
25 He wrote, "The experience of Chechnya in the 1990s profoundly

1 affected Chechen cultural norms. For example, the cult of the  
2 elders by which Chechens, like most North Caucasians, would  
3 routinely accept the opinions of the older males as law,  
4 declined precipitously." Went down. "The masculine ideal of  
5 the Chechen as an irrepressible warrior remained, but much of  
6 the culture that had nourished that ideal and bounded it with  
7 obligation to others, that part had withered away."

8 And, in fact, you know that the defendant's family  
9 isn't actually from Chechnya. His father and his father's  
10 siblings were born in Kazakhstan, and his mother and all her  
11 siblings were born in Dagestan. And the defendant and his  
12 siblings certainly weren't born or raised in Chechnya.

13 Again, this is what Professor Reynolds wrote back in  
14 May 2013 before he became a defense expert. He wrote,  
15 "Tamerlan and Dzhokhar Tsarnaev were hardly typical of  
16 Chechens, and one might justifiably question whether they could  
17 even be properly described as Chechen. Their mother, Zubeida,  
18 was an ethnic Avar. Both brothers were born outside of  
19 Chechnya. Both brothers grew up outside of Chechnya. And both  
20 brothers --

21 MS. CONRAD: Your Honor, I renew my objection.

22 THE COURT: Over- --

23 MS. CONRAD: This is being confused. This is a prior  
24 inconsistent statement.

25 THE COURT: No, the witness was examined on it at the

1 time.

2 MS. CONRAD: And we don't have an opportunity to  
3 respond to --

4 THE COURT: The objection is overruled.

5 MR. WEINREB: And both brothers spent little or no  
6 time in Chechnya.

7 No matter what things might be like for actual Chechen  
8 families that actually live in Chechnya, you know from the  
9 evidence in this case that there was no tradition of obeying  
10 elders in the defendant's family. Anzor Tsarnaev defied his  
11 own father by marrying Zubeidat, an Avar, and an immodest  
12 dresser. Tamerlan, in turn, defied Anzor by marrying Katherine  
13 Russell, a Christian. Ruslan Tsarnaev, the defendant's uncle,  
14 defied tradition by assuming leadership of the whole extended  
15 family, even though he was the youngest of Anzor's two  
16 brothers.

17 And the defendant's sister, who was married to  
18 Ruslan's nephew, Elmirza, defied both Ruslan and her husband by  
19 calling the police on Elmirza and divorcing him. In fact,  
20 Elmirza -- remember, he's the -- he's Ruslan's son-in-law, the  
21 defendant's ex-brother-in-law. He's the one who testified over  
22 the video link. He told you something very telling. He said  
23 that Ruslan, the youngest brother, became the leader of the  
24 family because he was the smartest and the most successful,  
25 even though he was the youngest. That's a typical American

1 story. Who was the smartest and most successful in the  
2 defendant's immediate family? It wasn't Tamerlan Tsarnaev.

3 What was modeled for the defendant his entire life  
4 were family members making up their own minds and making their  
5 own independent life choices, regardless of what their elders  
6 wanted them to do.

7 If the defense wanted to prove to you that Tamerlan  
8 Tsarnaev played a dominant role in the defendant's household  
9 and that his younger sibling was under his sway, they had a  
10 funny way of going about it. You didn't hear testimony from  
11 his patients, his sisters or his uncles. You didn't hear  
12 testimony from any of Tamerlan's best friends or from any of  
13 the defendant's best friends.

14 For the most part, the only witnesses the defense  
15 subpoenaed to talk about Tamerlan were people who happened to  
16 be present on an occasion when he lost his temper or acted  
17 inappropriately. What about the people who spent time with him  
18 every day?

19 As for the defendant, you heard mainly from Russian  
20 aunts and uncles who haven't seen him for over a decade,  
21 schoolteachers and coaches from years past. But none of those  
22 people can tell you what things were like in the Tsarnaev  
23 household. Isn't that what really matters?

24 You also heard from a number of young women who were  
25 sweet on the defendant. They took the witness stand and got



1 teary seeing him in court. But none of them had even been to  
2 his house. They hadn't even met his brother or anyone else in  
3 his family. One last saw him at a barbecue in the summer of  
4 2012. One was only friends with him during his freshman year  
5 in college. And one had just met him in college and only hung  
6 out with him for a few months. How well did they actually know  
7 him? Obviously not very well since none of them had any idea  
8 that he was reading *Inspire* magazine, listening to Anwar  
9 al-Awlaki lectures, or listening to jihadi nasheeds on his iPod  
10 or in his car. And he didn't care enough about them to warn  
11 them away from Boylston Street on the day of the marathon.

12           The defense wants you to believe that Tamerlan  
13 coerced, dominated and controlled the defendant; that he had  
14 such a great influence over the defendant that it lessened his  
15 moral culpability for these crimes. That is the centerpiece of  
16 their mitigation case. They have the burden of proving it.  
17 Did they meet that burden?

18           Why did they spend days calling witnesses with so  
19 little connection to Tamerlan and his brother? Why didn't they  
20 call anyone with actual insight into their relationship with  
21 one another? Ask yourselves those questions when you go back  
22 to deliberate and when you decide whether they have met their  
23 burden of proof.

24           What the whole claim of influence, dominance and  
25 coercive control really boils down to in the end is the

1 proposition that Tamerlan supplied the defendant with most of  
2 the jihadi files on his computer and sent him a handful of  
3 jihadi links from Russia. Now, the computer evidence, as you  
4 heard at very great length during the trial, is open to  
5 interpretation, and I don't intend to rehash all of that here.

6           Instead, I urge you to ask yourself this question: So  
7 what? Even if it's true, so what? Does it matter whether you  
8 get your jihadi files from your brother, a distant cousin, a  
9 quick search of the Internet or Anwar al-Awlaki himself?

10           Tamerlan didn't turn the defendant into a murderer by  
11 giving him some magazines and lectures and then disappearing to  
12 Russia for six months. The defendant had to become a believer,  
13 and that is something he did entirely by himself.

14           He became so much of a believer that he began to tweet  
15 what he had learned to others. He became so much of a believer  
16 that he could summarize the teachings on the inside wall of a  
17 boat when he didn't have any books or lectures to crib from.

18           As Professor Levitt told you during the guilt phase, a  
19 million people look at those materials. Only a handful of  
20 people find the materials convincing. And of that handful,  
21 only a tiny fraction consider them so convincing that they're  
22 willing to shred people alive in front of their family members  
23 and friends in order to advance a political agenda. The  
24 defendant is one of that tiny fraction. His actions are the  
25 best guide to the depths of his beliefs.

1           If you want to know why the defendant committed these  
2 crimes, that's the question Ms. Clarke just told you is  
3 unanswerable. If you want to know -- if you want an  
4 explanation of how he became this person, of what made him do  
5 it? What better place to look for the answer than in his own  
6 handwritten explanation of his actions.

7           He wrote in the boat, "I'm jealous of my brother who  
8 has received the reward of martyrdom, but God has a plan for  
9 each person. Mine was to hide in this boat and shed some light  
10 on our actions." "God has a plan for each person." That's who  
11 he believed he was doing this for. His god, not Tamerlan  
12 Tsarnaev.

13           He wrote, "He who Allah guides, no one can misguide."  
14 Again, that's who he believed was guiding him, Allah, not his  
15 brother.

16           He wrote, "The U.S. government is killing our  
17 civilians. As a Muslim, I can't stand to see such evil go  
18 unpunished." He's talking about himself. He doesn't even  
19 mention his brother.

20           He also wrote, "Now, I don't like killing innocent  
21 people. It is forbidden in Islam, but in this case it is  
22 allowed." Again, "I don't like killing innocent people." He's  
23 talking about himself.

24           His tweets are the same. They give the reasons --  
25 they give his reasons for believing in violent jihad. Those

1 tweets never even mentioned his brother.

2 In the end, the best evidence you have of the nature  
3 of the defendant's relationship with his brother, Tamerlan, is  
4 the evidence of how they actually committed these crimes. They  
5 committed them together as partners. Each one had an essential  
6 role to play.

7 Tamerlan was ready to commit violent jihad as early as  
8 January 2012 when he left for Russia, but the defendant wasn't  
9 ready yet. He was reading terrorist writings and listening to  
10 terrorist lectures, but he wasn't yet convinced. So Tamerlan  
11 left for Russia, hoping to find a partner there. He came back  
12 when he didn't succeed.

13 But by then, the defendant had steeped himself in the  
14 writings of *Inspire* and Anwar al-Awlaki, and he had become  
15 inspired himself. He decided he was ready to partner up. It  
16 was only then, when the defendant made the decision to become a  
17 terrorist, that Tamerlan was able to go into action. The  
18 defendant obtained a gun and ammunition, a crucial ingredient  
19 in their plans. He arranged for them to go to the range in  
20 Manchester to practice firing it.

21 When Marathon Monday arrived, he let Tamerlan go on  
22 ahead to the finish line, and then he chose on his own where to  
23 place his bomb for maximum effect. Then he called Tamerlan to  
24 give him the go-ahead.

25 Again, contrary to what Ms. Clarke just told you,

1 later, on April 18th, both of them executed Sean Collier.  
2 There's no evidence of who pulled the trigger. You know that  
3 Sean Collier's blood was found on the defendant's keychain and  
4 on the gloves that were on the floor of the car by his feet,  
5 but the video doesn't show who pulled the trigger. Don't  
6 mistake argument for fact.

7 It was a full-on partnership, a partnership of equals.  
8 They did not do the exact same things, but they were both  
9 terrorists engaged in a joint effort. They bear the same moral  
10 culpability for what they did together.

11 The very first mitigating factor on the defense list  
12 is that the defendant was 19 years old when he committed these  
13 crimes. In fact, he was just shy of 20. What about that fact?  
14 And what about the fact that some of the time he still acted  
15 like a teenager doing teenage things? Is that a mitigating  
16 factor that deserves any weight?

17 It might deserve some weight if these were youthful  
18 crimes. For example, if the defendant and his brother had  
19 robbed a liquor store and shot the clerk in a moment of panic.  
20 But these weren't youthful crimes. There was nothing immature  
21 or impulsive about them.

22 These were political crimes, designed to harm the  
23 United States, to punish Americans for our military actions  
24 overseas by killing and mutilating innocent civilians on U.S.  
25 soil. They were acts of terrorism planned over a period of

1 months and carried out over days. They were acts of terrorism  
2 so successful that they not only killed four people and maimed  
3 17 others, but stopped the Boston Marathon, closed Logan  
4 Airport and shut down the entire city of Boston for nearly a  
5 day.

6           The murders on Boylston Street were not a youthful  
7 indiscretion. The cold-blooded execution of Sean Collier, a  
8 police officer, was not a rash or impulsive act. The defendant  
9 was old enough to understand right from wrong. He wrote in the  
10 boat, "I don't like killing innocent people, but in this case  
11 it is allowed." He decided that the cause of his people, the  
12 ummah, justified the murders of a small child, two young women  
13 and a police officer. Does being nearly 20 years old mitigate  
14 any of that?

15           Ms. Clarke said at the beginning of her closing that  
16 these crimes were senseless and unimaginable, but they made  
17 perfect sense to the defendant, and he was perfectly able to  
18 imagine the harm his actions would cause. He was certainly old  
19 enough for that.

20           Mr. Mellin already talked at length about ADX and the  
21 SAMs. I'm not going to repeat what he said. I just want to  
22 emphasize one point that every witness who testified agreed  
23 upon: There is no guarantee that the defendant will spend the  
24 rest of his life in H unit or even in ADX. In fact, the  
25 opposite is true. BOP tries to step down inmates whenever

1 possible. And BOP's desires are taken into consideration  
2 whenever SAMs are up for renewal.

3 Even if everyone in the government wanted the  
4 defendant to stay on SAMs, there are legal requirements for  
5 keeping them in place. If those requirements are not met, the  
6 SAMs can't be renewed. There has been litigation over SAMs.  
7 Will the defendant spend the rest of his life on H unit or even  
8 in ADX? He has not proved that to you because he can't.

9 Let's talk for a minute about Sister Helen. Why did  
10 the defense choose her over all other clergy who could have  
11 been invited to spend time with the defendant and then testify  
12 about it in court? Why not call an imam from the mosque here  
13 in Cambridge, like Loay Assaf, who testified here in court?  
14 Why bring in someone from Louisiana? Do you think it has  
15 anything to do with the fact that Sister Helen is one of the  
16 leading death penalty opponents in the United States?

17 Did Sister Helen's testimony really give you much  
18 insight into what the defendant truly thinks and believes? Put  
19 aside for a moment that, as a nun, she undoubtedly tries to see  
20 the good in everyone. And put aside that, as a committed  
21 opponent of the death penalty, she undoubtedly wants to help  
22 the defendant avoid it. Focus instead on what she told you the  
23 defendant actually said to her. What do those words really  
24 mean in the end? They're open to a lot of interpretation. And  
25 because of that, they really don't tell you anything at all.

1 In the end, can you be confident that you really know more  
2 about the defendant now than before Sister Helen testified?

3 According to Sister Helen, the defendant said, "No one  
4 should have to suffer like that."

5 MR. BRUCK: Objection.

6 MS. CONRAD: Objection.

7 MR. BRUCK: Under the circumstances, we object. Given  
8 the limitations on her testimony, this is not fair.

9 MS. CONRAD: And also that misstates the evidence.  
10 That's not what she said.

11 THE COURT: Go ahead. The objections are overruled.

12 MR. WEINREB: But he expressed pretty much the same  
13 sentiment in the manifesto he wrote in the boat. He wrote, "I  
14 don't like having to kill people," but he went on to say that  
15 sometimes it is necessary to kill people to advance the cause  
16 of the Muslim people. That's a core terrorist belief. The  
17 fact that now, while he's on trial for his life, the defendant  
18 is willing to go so far as to say that no one should have to  
19 suffer like that doesn't tell you much about his core beliefs.  
20 When you stack that up against his actions in this case, does  
21 it really make a difference to your decision?

22 Sister Helen said that the defendant seemed young to  
23 her, and Ms. Clarke tries to spin that into a guarantee that  
24 the defendant will become remorseful over time, but there's no  
25 evidence of that, no reason for you --



1 MS. CONRAD: Your Honor, same objection.

2 MR. WEINREB: -- to believe that it's true.

3 MS. CONRAD: We were not allowed to elicit that  
4 testimony.

5 THE COURT: Overruled.

6 MR. WEINREB: Sister Helen is 76, and the defendant is  
7 21. Of course he seems young to her.

8 What did their brain development expert, Dr. Giedd,  
9 tell you? He testified that in determining a person's level of  
10 maturity, the single most important thing to look at is his  
11 behavior. He told you that some people are more mature at age  
12 19 or even age 14 than some adults will ever be. And he told  
13 you that there is absolutely no guarantee that a 19-year-old  
14 will get any more mature or reflective just because his brain  
15 will continue to grow over time.

16 Ms. Clarke criticizes the government for showing you  
17 the image of the defendant in the holding cell giving the  
18 camera the finger rather than showing you the whole video, but  
19 the whole video is even worse. It shows just how remorseless  
20 the defendant was when he came into court to answer for his  
21 crimes three months after committing them.

22 Mr. Bruck said in his opening that if you sentence the  
23 defendant to life, he'll spend the rest of his life thinking  
24 about his crimes. But that's not true just because the defense  
25 says it is. Where's the evidence of that?

1           If the defendant goes to prison for life, he won't be  
2 free to come and go, but he will be safe, well fed and have  
3 excellent medical care. Will he spend his days thinking about  
4 the victims, or will he spend the rest of his life thinking  
5 about himself, his family, his friends, his pen pals, his next  
6 workout, his next visit, his next phone call, his next meal?

7           Will he stare at the wall all day thinking about the  
8 pain and suffering he has caused, or will he do many of the  
9 very same things that people do every day to enjoy life: read  
10 books and magazines; talk on the telephone to his parents, his  
11 sisters and his friends; eat; pray; sleep; exercise? Maybe  
12 he'll even write a book.

13           You saw from the evidence what kind of a person he is.  
14 Maybe he'll leave behind his memories of Martin Richard,  
15 Krystle and Lingzi Lu in the same way he left them dying on the  
16 street when he went shopping at Whole Foods. Maybe he'll leave  
17 behind his memories of Sean Collier, the same way he left him  
18 bleeding to death in his patrol car as he drove into Boston to  
19 look for another gun.

20           The callousness and indifference that allows you to  
21 destroy people's lives, to ignore their pain, to shrug off  
22 their heartbreak, that doesn't go away just because you're  
23 locked up in a prison cell. It's what enables you to be a  
24 terrorist, and it's what insulates you from feelings of  
25 remorse.

1           In the end, did you hear any testimony from any  
2 witness that speaks louder about the appropriate punishment in  
3 this case than the defendant's own actions on Boylston Street  
4 or at Whole Foods or at MIT or on Laurel Street? The defendant  
5 deserves the death penalty, not because he's inhuman, but  
6 because he's inhumane. Because of his willingness to destroy  
7 other people's lives for an idea.

8           Most people can't even imagine standing for four  
9 minutes behind a row of children, sometimes only feet away from  
10 them, and leaving behind a bomb that you know will cause them  
11 excruciating pain and a lingering death on the sidewalk. But  
12 that's what it is to be a terrorist.

13           If you want to know who the defendant was, you have  
14 the testimony of his relatives, his teachers and his friends.  
15 But if you want to know who he turned into, look at his  
16 actions. They tell you all you need to know about the kind of  
17 person he became. His actions on Boylston Street, afterwards  
18 at Whole Foods, at MIT and in Watertown and in this courthouse  
19 on the day of his arraignment, they are the best evidence you  
20 have about who the defendant became.

21           Ms. Clarke urged you to just go through the intent  
22 factors and the aggravating factors in the verdict form and  
23 just check them off. I urge you to take your time with each  
24 one and give it the consideration it deserves.

25           As for the mitigators, she urged you to go through

1     them one by one and just fill in 12. But you only write in 12  
2     if all 12 of you find a mitigator to be proved.

3             One final thought before I sit down: If you sentence  
4     the defendant to life imprisonment, you will be giving him the  
5     minimum punishment authorized by law for these crimes.  
6     Contrary to what Ms. Clarke said, it is a lesser punishment  
7     than death. Does he deserve the minimum punishment or do these  
8     crimes, these four deaths, demand something more? Please ask  
9     yourself that question when you go back to deliberate.

10            Thank you.

11            THE COURT: I'll see you at the side.

12            (Discussion at sidebar and out of the hearing of the  
13     jury:)

14            MS. CONRAD: Your Honor, first of all, as we had  
15     previously objected, that this -- that the government should be  
16     limited to rebuttal, that was 45 minutes of pre-prepared,  
17     typewritten rebuttal. I watched Mr. Weinreb during  
18     Ms. Clarke's closing. He made three -- he wrote down three  
19     words or three sentences on a piece of paper. He didn't refer  
20     to those at all. He had a canned presentation that was not  
21     proper rebuttal.

22            We did -- the reference to Professor Reynolds'  
23     statements, those statements were impeachment as prior  
24     inconsistent statements that are not to be considered for the  
25     truth of the matter. Mr. Weinreb argued them as if they were

1 being offered -- essentially as they were the truth of the  
2 matter.

3 MR. BRUCK: I should also clarify when Mr. Weinreb  
4 said that he cleared this with me, what he said was that if we  
5 went into Chechnya, he was going to use Professor  
6 Reynolds' -- he was going to post Professor Reynolds. I didn't  
7 give it a moment's thought because we didn't go into that.

8 But this wasn't rebuttal. I had no conception of what  
9 it was they had in mind. This sort of sandbagging was so far  
10 from my mind when he caught me about that -- or mentioned it to  
11 me that there was no opportunity to respond to this.

12 MS. CONRAD: Should I keep going or do you want the  
13 government to respond?

14 THE COURT: Are you moving to a different point?

15 MS. CONRAD: Yes. One more point about Professor  
16 Reynolds. That was not displayed to the jury during the  
17 cross-examination by Mr. Weinreb. That was not put into  
18 evidence. We were not allowed to display the 302s when we  
19 offered them. It would be the same thing if Ms. Clarke had put  
20 the 302s up on the screen, except one difference is those were  
21 offered for the truth of the matter and these statements  
22 weren't.

23 It was also misleading because the line about -- that  
24 one could ask whether they were truly Chechen was explained by  
25 Professor Reynolds during the cross-examination. But the

1 government, by essentially making this argument during its  
2 rebuttal when we have no opportunity to respond, is misleading  
3 the jury. This was basically a second closing.

4 I have other points I'd like to make.

5 THE COURT: All right.

6 MR. WEINREB: All right. So with respect to Professor  
7 Reynolds, my recollection of what I said to Mr. Bruck is that  
8 if Ms. Clarke goes into Chechnya in any way at all, then I  
9 intend to use a couple of quotes from his article. And my  
10 recollection is that when I confronted him with these prior  
11 statements, he adopted them. So they then become evidence.

12 In addition, just so the record's clear, not that I  
13 think it really matters at all, I dispute the characterization  
14 that the government only wrote down three sentences and I  
15 didn't refer to them. Absolutely not true. But I think it  
16 hardly matters.

17 MS. CONRAD: Which part?

18 MR. WEINREB: If one party is skilled at guessing what  
19 the closing is going to be and manages to make substantial  
20 notes ahead of time, that's not -- you still have to wait and  
21 make sure that it's actually said before you can actually get  
22 up there and rebut it.

23 THE COURT: Yeah. My judgment is that it was proper  
24 rebuttal, even if it was more extensive than commonly, but it  
25 touched on the same topics that were addressed in the closing

1 by the defense. It seems to me that's what -- the measure of  
2 rebuttal, whether it responds to arguments made by the defense,  
3 and it did.

4 Now, again, it's possible to anticipate that,  
5 particularly where there is an aspect of the case as to which  
6 the defense has the affirmative burden. It's obviously  
7 possible to anticipate that those would be in the closing  
8 statement.

9 MS. CONRAD: Chechnya was barely mentioned.

10 THE COURT: Well --

11 MS. CONRAD: But the other thing is, this discussion  
12 of Sister Helen's testimony was entirely out of bounds. For  
13 the government to say she didn't explain what else -- what he  
14 said, she didn't give any insight, she didn't say that he had,  
15 you know, a promise of change in the future -- all of those  
16 things were things that we were prohibited from asking her and  
17 that the government objected to repeatedly. So for the  
18 government to stand up and say, "Well, she didn't tell you  
19 this, and she didn't tell you that," when they were the ones  
20 who blocked us from doing it, is entirely improper and  
21 extremely prejudicial. And I think that part of the argument  
22 should be struck.

23 THE COURT: All right.

24 MR. WEINREB: Your Honor, the Court asked the defense  
25 for a very detailed proffer of what Sister Helen said. We went

1 into the back, and the government objected to certain parts of  
2 it. Primarily what the government objected to were things  
3 about her experience, which I didn't touch on. Other than  
4 that, with respect to the sentence that was in the proffer that  
5 he spoke to her, that the government moved vigorously to keep  
6 out and the defense moved vigorously keep in, it stayed in.  
7 And so I think it was appropriate to refer to that.

8 I don't think it's a fair characterization of the  
9 argument that I said that Sister Helen failed to provide  
10 greater insight into -- I said that the testimony didn't  
11 provide --

12 MS. CONRAD: Well, the testimony should be barred.  
13 And one of the things the government objected to and the Court  
14 prohibited us from asking her about was her ability to work  
15 with him in the future, which went to the point that the  
16 government said that it's only Ms. Clarke's statement that he  
17 could change in the future, that we didn't introduce any  
18 evidence of it. We didn't introduce evidence of it because we  
19 weren't permitted to introduce any evidence of it.

20 And, in addition, as far as the experience, her  
21 experience is what informs her insight, so the government is  
22 saying, "Well, she didn't really explain why it is that she  
23 thinks he's remorseful." Because the government wouldn't let  
24 us, and the Court sustained those objections.

25 THE COURT: Well, yes. And we explained that on the



1 record at the time.

2 What would you ask as a curative instruction?

3 MS. CONRAD: Disregard the government's argument  
4 regarding what testimony Sister Prejean -- Sister Helen Prejean  
5 did not provide, that she did not explain certain things or  
6 that we didn't offer certain evidence of certain things, and  
7 tell them that that is because the government objected to it.

8 MR. WEINREB: Your Honor, I think if you were to  
9 review the transcript of the argument I just gave, you will see  
10 that I made absolutely no reference to what Sister Prejean did  
11 not say.

12 MS. CONRAD: We did not present any evidence is what  
13 you said. The only person we could have --

14 THE COURT: Go ahead.

15 MR. WEINREB: What I argued is that what value is the  
16 testimony that she actually gave you -- what is its value?  
17 What insight does it give you really into the defendant's  
18 beliefs? That was all that the government asked. And I said  
19 that there's no evidence that he will, in fact, be remorseful  
20 in the future because, frankly, there can be no evidence. That  
21 is an unknown. It's speculative either way.

22 And so the point the government was making is that,  
23 despite what Sister Prejean said, they really haven't learned  
24 much, if anything, of value to them in weighing the  
25 remorsefulness.

1 THE COURT: Okay. Let's -- are there other points?

2 MR. FICK: One thing. The government made repeated  
3 arguments that the defense did not elicit evidence about  
4 certain witnesses, for example, the defendant's friends. Well,  
5 as the government well knows, the defendant's principal friends  
6 are being prosecuted by the government, have the Fifth  
7 Amendment privilege, and there was no realistic possibility we  
8 could have called them.

9 And so it's improper to suggest that there's something  
10 wrong with the defense approach for failing to do something we  
11 could not have done because of the government's prosecution of  
12 those people.

13 MR. WEINREB: And I will proffer on the record that  
14 there were several people who were, in fact, the defendant's  
15 very best friends growing up. I can give their names. It's  
16 Vakhabov, others, who the defense could have called, in fact,  
17 had on their witness list, for whom we are aware of no Fifth  
18 Amendment privilege and no reason to believe that they would  
19 have asserted a Fifth Amendment privilege.

20 THE COURT: Okay.

21 MS. CONRAD: I want to also note that the government  
22 misstated the evidence or argued facts not in evidence. For  
23 example, Mr. Weinreb said that he earned plenty of pocket money  
24 selling drugs at UMass Dartmouth. I believe there was no  
25 direct evidence of him selling drugs, much less how much money

1 he made. I think there was some cross on Alexa Guevara and  
2 Tiarrah Dottin about, you know, whether he had money. You  
3 know, the fact that he had money to buy Domino's pizza I don't  
4 think shows that he earned plenty of pocket money -- change  
5 selling drugs.

6 The argument that there were others there to step in,  
7 like Uncle Ruslan, talking about in the 2012 time period, I  
8 don't think there's any evidence --

9 THE COURT: Well, you know, I think this has gone from  
10 objection into reply, actually.

11 MS. CONRAD: Well, I would like an opportunity to  
12 reply. We would like an opportunity to reply.

13 THE COURT: No, I don't think there was enough of it.

14 So I want to move to a different topic, which is, I  
15 think we -- I do have to give you the opportunity to preserve  
16 any objections to the substantive instructions --

17 MS. CONRAD: Does that mean your Honor is rejecting a  
18 request for a curative instruction as to Sister Helen?

19 THE COURT: Yes.

20 MS. CONRAD: Can I just note that I wrote down, "Did  
21 she give you any insight?" That was the quote.

22 MS. CLARKE: Can we do that after you discharge the  
23 jury?

24 MS. CONRAD: No, you can't discharge the jury.

25 MS. CLARKE: I mean after you send them back for the

1 night.

2 MS. CONRAD: You can't do that.

3 MS. CLARKE: Can we get our notes?

4 THE COURT: This is the time it's usually done while  
5 it's still possible to correct any misstatement.

6 (Discussion off the record.)

7 MS. CONRAD: Are you going to have them begin  
8 deliberating?

9 THE COURT: Yeah. They'll have a half an hour, 45  
10 minutes, just so they -- really to make the point of beginning.

11 MR. BRUCK: Part of this is to object to the  
12 instructions you're about to give. So is this the time for  
13 that too?

14 MS. CONRAD: No, we'll have to come back.

15 THE COURT: I think I have to give it first. So if  
16 you want me to do that and then we'll do everything.

17 MR. BRUCK: Then we'll do everything. Let's do that.

18 THE COURT: All right.

19 (In open court:)

20 THE COURT: Jurors, I'm going to just complete my  
21 instructions with a few relatively brief remarks.

22 I've outlined for you the rules of law applicable to  
23 your consideration of the death penalty and the process by  
24 which you should determine the facts and weigh the evidence.  
25 And in a few moments, you'll retire to the jury room.

1           The importance of your deliberations should be  
2 obvious. I remind you that you can return a decision  
3 sentencing Mr. Tsarnaev to death only if all 12 of you are  
4 unanimously persuaded that the death penalty is, in fact,  
5 appropriate. And, again, I remind you that no juror is ever  
6 required by law to impose a death sentence.

7           When you're in the jury room, please discuss all  
8 aspects of these sentencing issues among yourselves with candor  
9 and frankness, but also with a due regard and respect for the  
10 opinions of one another. This has been a long case, and you  
11 have spent a lot of time together as jurors. Regardless of any  
12 personal regard you may have for each other, you must each  
13 decide this case for yourself. No juror should surrender his  
14 or her own conscientious conclusion merely because other jurors  
15 might feel otherwise or simply to get to a unanimous decision.

16           Remember that the parties and the Court are relying on  
17 you to give full, considered and mature consideration to the  
18 question of sentencing. By so doing, you carry out, to the  
19 fullest, your oath as jurors, that you will well and truly try  
20 the issues of this case and render a just verdict.

21           As with the prior phase, if it becomes necessary  
22 during your deliberations to communicate with me for any  
23 reason, simply send a note signed by the foreman of the jury.  
24 If you send a note, do not indicate any decision-making on any  
25 of the issues that are before you or provide any details about

1 your progress. And additionally, do not attempt to communicate  
2 with the Court or any other court personnel, except the court  
3 security officer by telling him that you have the need for him  
4 to convey it, other than in writing, a signed writing. There  
5 will be no oral communications. Any questions you have, you  
6 should present in writing.

7           When you have reached a decision, send me a note  
8 signed by the foreman that you have reached a decision. Do not  
9 indicate on the note what the decision is. And in no  
10 communication with the Court prior to a verdict should you ever  
11 give a numerical count of where the jury stands in its  
12 deliberations on any issue.

13           Whichever decision you reach, the foreman must also  
14 sign and fill out the verdict form accordingly, according to  
15 the verdict, and be prepared to report to the Court your  
16 findings as to the issues in the verdict form, the defendant's  
17 age, the gateway, aggravating and mitigating factors and your  
18 sentencing decision.

19           As we did in the prior phase, you will have an  
20 envelope in the room that at the end of the day, each day, as  
21 you deliberate, you will put the verdict slip inside the  
22 envelope and seal it, and it will remain sealed and be returned  
23 to you in a sealed condition the following day and you will  
24 remove it from the envelope yourselves.

25           I note for the record that you will not have your

1 cellular phones, PDAs or other electronic devices during the  
2 deliberations. I understand they have already been collected  
3 from you and will not be returned to you until the court  
4 recesses each day.

5 Of course, as I previously said, it would be improper  
6 and a violation of your oath as a juror to conduct any outside  
7 research or investigation on the Internet or otherwise to -- or  
8 otherwise, or to communicate with anyone, including your fellow  
9 jurors, outside the deliberations conducted by the jury as a  
10 whole in the jury room.

11 As in the first phase, only 12 jurors will be  
12 deliberate. The alternates remain important because you may be  
13 called to serve in the event that a deliberating juror is no  
14 longer able to participate in the deliberations. But as  
15 before, the alternate jurors will be separated from the  
16 deliberating jurors during the deliberations.

17 And among the alternate jurors, you're not to discuss  
18 anything about the case or the penalty among each other. In  
19 other words, you're not to act as if you were also a  
20 deliberating jury.

21 When the court is in session, you will return to the  
22 courtroom as well so that you may hear any responses to jury  
23 questions and any other remarks that are necessary from me.

24 Let me conclude by reminding you again that nothing I  
25 have said in my instructions and nothing I've done or said

1 during the course of the trial has been said or done to suggest  
2 to you what I think the outcome should be. What the sentencing  
3 decision should be is your exclusive duty and responsibility.

4 Let me see counsel again at the side, please.

5 (Discussion at sidebar and out of the hearing of the  
6 jury:)

7 MR. BRUCK: Well, the first objection we'd like to  
8 make is the Court's refusal of our Instruction No. 3, which is  
9 the instruction that -- concerning the consequences of a  
10 deadlock.

11 THE COURT: Okay. All right.

12 MR. BRUCK: And I understand that the rule may require  
13 me to spell that out unless --

14 THE COURT: I don't think so.

15 MS. CONRAD: The First Circuit does. You can't just  
16 refer to it by the number. You actually have to state what was  
17 requested and what's not --

18 MR. BRUCK: No, that's not the one.

19 THE COURT: I think that's stating a summary.

20 MR. BRUCK: Maybe I should read it to be sure.

21 MS. CONRAD: The First Circuit says -- it's very  
22 short. The First Circuit says you have to read it.

23 MR. BRUCK: The request --

24 THE COURT: Well, I'm concerned about the jury hearing  
25 it.



1 MS. CONRAD: Well, your Honor, I'm telling you the  
2 First -- that our appeals chief is in the courtroom. If you  
3 want to bring her up to sidebar, she'll tell you. She'll be  
4 all over me if we don't read it.

5 THE COURT: Well, I'll tell you what, we can excuse  
6 the jury without commissioning them to begin deliberating.

7 MR. BRUCK: That would be great.

8 (In open court:)

9 THE COURT: Jurors, we have to do this outside your  
10 hearing, and because the music is dipping on us, we are afraid  
11 that you might be able to hear it. So we're going to actually  
12 ask you to step out of the room, not to begin deliberating.  
13 We're going to have you back in before you do that. But just  
14 step out so that we can have a conversation, frankly, without  
15 having to worry about whether you're hearing things you  
16 shouldn't hear.

17 THE CLERK: All rise for the jury.

18 (The jury exits the courtroom at 3:56 p.m.)

19 THE COURT: Okay. You may be seated.

20 I don't think there's any need to be at sidebar,  
21 particularly since everybody can hear anyway.

22 MR. BRUCK: If I may?

23 THE COURT: Please.

24 MR. BRUCK: If it please the Court, we would first  
25 like to object to the Court's refusal to include in its

1 instructions and the verdict slip our Request No. 3, which is  
2 an instruction regarding the effect of the jury's inability to  
3 reach a unanimous decision.

4 The instruction as requested and as refused by the  
5 Court is as follows: "If the jury is unable to reach a  
6 unanimous decision in favor of either a death sentence or a  
7 life sentence, I will impose a sentence of life imprisonment  
8 without possibility of release upon the defendant. That will  
9 conclude the case. At the sentencing stage of the case, the  
10 inability of the jury to agree on the sentence to be imposed  
11 does not require that any part of the case be retried. It also  
12 does not affect the guilty verdicts that you have previously  
13 rendered."

14 We argued this issue yesterday. As the Court is  
15 aware, I simply want to note at this time that, notwithstanding  
16 the authority of the *United States versus Jones*, we think that  
17 under the extraordinary circumstances of this case, any  
18 misapprehension, which is very likely, that the jury will labor  
19 under that a non-unanimous -- or failure to achieve unanimity  
20 would require a mistrial, and a retrial would be  
21 extraordinarily prejudicial because of the nature of this  
22 particular case and what it would signify to put the victims  
23 and the survivors and the entire community through this entire  
24 case again.

25 Of course, everybody but the jury now knows that

1 that's not what happens, and we think that this is a situation  
2 which is fraught with the risk of coercion. So understanding  
3 that there is a -- that there is, at this time, authority  
4 supporting the Court's decision, we note that it is a practice  
5 which is very commonly -- the practice of informing the jury,  
6 of telling them the truth about the results of a failure to  
7 agree, is extremely widespread in the federal courts, even  
8 under cases where the necessity, we believe -- or where the  
9 reasons for giving a full and complete and accurate instruction  
10 are nowhere near so compelling as here.

11 THE COURT: All right. As to that, I've made my  
12 reasons clear on the lobby conference record. I don't think  
13 it's necessary to repeat them. I adhere to those views.

14 MR. BRUCK: Very well.

15 In the alternative, and reserving our rights under  
16 that request, we would request that the Court give the  
17 instruction contained in Sand's *Modern Federal Jury*  
18 *Instructions*, Instruction No. 9A-20, which, in pertinent  
19 part -- I've handed the entire instruction up to the Court  
20 yesterday at the lobby conference, but the pertinent part for  
21 purposes of the record reads as follows: "If, after engaging  
22 in the balancing process I have described to you, all 12  
23 members of the jury do not unanimously find beyond a reasonable  
24 doubt that the defendant should be sentenced to death, then you  
25 may not impose the death penalty. In that event, Congress has

1 provided that life imprisonment without any possibility of  
2 release is the only alternative sentence available. If the  
3 jury reaches this result, you should do so by unanimous vote  
4 and indicate your decision in Section" blank "of the special  
5 verdict form."

6 So we, as a follow-up, reserving our rights under  
7 Request No. 3, make that request as well and object to the  
8 Court's having declined to give it at the lobby conference  
9 yesterday and today.

10 THE COURT: Okay. Again, my reasons were stated on  
11 the record yesterday, and I adhere to them.

12 MR. BRUCK: Next, we submitted a proposed instruction  
13 following the language from Sand's *Modern Jury Instructions*  
14 that on the issue of the appropriateness of the death penalty,  
15 the reasonable doubt standard should apply. That is to say  
16 that the jury should only impose the death penalty if it found  
17 beyond reasonable doubt that the aggravating circumstances  
18 outweigh the mitigating circumstances sufficiently so as to  
19 justify the death penalty. That is the language from Judge  
20 Sand. That was the language of our request. The Court removed  
21 the requirement of beyond a reasonable doubt from that  
22 instruction, and we wish to preserve our objection to having  
23 done so.

24 THE COURT: As you know, the ruling was consistent  
25 with circuit law.

1 MR. BRUCK: We also except to the Court's refusal to  
2 include as a mitigating factor that the defendant would be  
3 sentenced to a sentence of life imprisonment without  
4 possibility of release, if the death penalty is not imposed, we  
5 understand that the jury has been informed of that fact, but we  
6 think that that is a mitigating factor or a circumstance  
7 weighing against imposition of the death penalty. Mitigating  
8 factor within the meaning of the Federal Death Penalty Act and  
9 the Eighth Amendment, which should have been included on the  
10 list of mitigating factors.

11 THE COURT: Okay.

12 MR. BRUCK: I went to check with counsel to make sure  
13 I haven't missed anything.

14 (Counsel confer off the record.)

15 MR. BRUCK: That's it. Thank you.

16 THE COURT: Okay. Does the government have anything?

17 MR. WEINREB: No, your Honor.

18 THE COURT: All right. Let's get the jury back in.

19 (Pause.)

20 THE CLERK: All rise for --

21 MR. BRUCK: Oh, before the jury is summoned -- I'm  
22 sorry -- just to be absolutely clear, we are requesting not  
23 only the instruction but also a spot on the verdict slip for  
24 the jury -- where the jury would be informed of the  
25 consequences of a failure to agree.

1 Thank you.

2 THE COURT: All right. Noted.

3 (Pause.)

4 THE CLERK: All rise for the jury.

5 (The jury enters the courtroom at 4:04 p.m.)

6 THE COURT: Okay. Thank you, jurors.

7 THE CLERK: Be seated.

8 THE COURT: So we're ready to have you commence your  
9 deliberations, jurors. We know it's late in the day. It has  
10 been a long day. We would like you to just perhaps get  
11 started, do a little organizing if you wish. We won't go too  
12 long today. We know you've had, as I say, a long day, and we  
13 don't expect you to work overtime today.

14 So I will ask the first 12 jurors who deliberated in  
15 the guilt phase, again, to withdraw to deliberate upon the  
16 evidence and, when you have reached a verdict, to notify us of  
17 that fact, and we will receive your verdict.

18 With respect to the six alternates, you will again be  
19 separated but kept available in case there may be need to call  
20 one of you into service if something should prevent a  
21 deliberating juror from continuing with the deliberations.

22 So if the clerk will now lead the 12 into the jury  
23 room, and the other six alternates will be led to a separate  
24 room.

25 We will be in recess.

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

2 (The Court and jury exit the courtroom at 4:06 p.m.)

3 THE CLERK: We will be in recess.

4 (There is a recess in the proceedings at 4:06 p.m.)

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

6 (The Court and jury enter the courtroom at 4:53 p.m.)

7 THE COURT: All right, jurors. So this is as far as  
8 we'll go today. We did want you to just, you know, begin the  
9 process. Obviously you have a long way to go.

10 You've been through this overnight adjournment before.  
11 I just want to emphasize some things again. Of course it is  
12 very important now that you abide fully with all my  
13 instructions about avoiding any discussions of the case with  
14 anyone, any communications about the subject matter of the case  
15 at all, and of course avoid any investigation or peeking at  
16 things on the Internet or otherwise and, again, maintain your  
17 ability to put aside and avoid any media coverage of the case,  
18 of which there will be considerable, as you can imagine.

19 Same goes for the alternates. Because you still are  
20 in the bullpen as a potential deliberating juror, you should  
21 abide by the same instructions.

22 To remind you of our procedure, as of now, you  
23 finished deliberating for the day. No further discussion.  
24 Tomorrow as you assemble, no discussion until you've been  
25 brought into the courtroom, and we will record that you've

1 returned and are ready to continue deliberating. At that  
2 point, when you go back in, you can resume discussing the case.  
3 All right? But until that time, just social chat before then.  
4 Okay?

5 So have a restful evening, and we'll look forward to  
6 seeing you tomorrow as you continue your work. We'll be in  
7 recess.

8 THE CLERK: All rise for the Court and the jury.  
9 Court will be in recess.

10 (The Court and jury exit the courtroom and the  
11 proceedings adjourned at 4:56 p.m.)  
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## 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: 5/13/15