

Orientalism and Knowledge Production of Terrorism in the Post-9/11 United States:  
the Case of Dzhokhar Tsarnaev and the Boston Marathon Bombing

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A thesis

submitted in partial fulfillment of the  
requirements for the degree of

Master of Arts in International Studies

University of Washington

2019

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Program Authorized to Offer Degree:

Jackson School of International Studies

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**Abstract**

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The 2013 Boston Marathon bombing resulted in the arrest of 19-year-old Dzhokhar (“Jahar”) Tsarnaev, a Muslim immigrant from Chechnya. Two years later, he was convicted in federal court and sentenced to death. Even before his arrest, he was publicly declared a radicalized “jihadist.” This image persists despite a multitude of evidence on the court record, which not only suggests that his older brother Tamerlan involved Jahar under duress, but that Tamerlan had accomplices who escaped accountability. My research examines how gendered Orientalist stereotypes, combined with Islamophobic assumptions, produced knowledge about the bombing. These derogatory beliefs were created and perpetuated by law enforcement, the press, and federal prosecutors, which established a “regime of truth” about Jahar and his role in the crimes.

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## **Acknowledgements**

This thesis would not exist if not for a huge number of people who helped me along the way. First and foremost, thanks to my parents, Jean and Tom Frizzell, for being supportive of me these last four years after I decided I needed to help someone the whole world thought of as a terrorist. Double thanks to my dad for the hours upon hours of legal advice, investigation and analysis to aid me in figuring out the nuts and bolts of Jahar's court case and what went wrong.

Special thanks to the UW faculty members who have worked with me, especially Vanessa Freije, Daniel Bessner, Laada Bilaniuk, and Hamza Zafer, who listened to what I knew about Jahar's case and helped me understand its larger context. Also to Valentina Zaitseva and Zoya Polack for their Russian language and culture instruction. I learned more than I could have hoped for in the last two years. And to Emily Keller, the most awesome librarian, who listened to hours of my ranting about the case and doggedly helped me figure out ways to learn more.

Thanks to my fellow JSIS cohort: DJ Smith, Niki Kallestad, Grant Dailey, Jacqueline Reyes, Lisa White and Hannah Grossblatt, for the solidarity, moral support and good humor that kept me going since our first quarter together. I could not have asked for better classmates.

Special thanks to Eric Bowsfield, for his indispensable help with field investigation, being my sounding board, and offering his keen insight. Also thanks to him and the rest of my gaming group in Boston: Shannon MacDonald, Claire Boman, Jennie Fountain (and Amalie!), Brian Francis, Tim Quinn, Sam Segal, and Shak Shibli, who kept me sane via our Pathfinder

campaign these last two years, and let me play remotely. And to Elise Mara and Leigh-Ann Olsen, who listened to unsolicited screeds about my research and responded with wicked senses of humor and appropriate memes. To my Seattle housemates and Call of Cthulhu gaming group, Ian Crawford, Nathan Wolfe, Karlee Johnston, DJ Smith (again), Elizabeth Giacobbi and Finny Kewa, who helped me let off steam when I felt too overwhelmed. To Michelle Anzovino and Jean Thrift for being unflinching friends since our misspent youth. To members of my Fairfield MFA family: Jill Ross, Barb Wanamaker, Lynne Heinzmann, and Eugenia Kim, who convinced me Jahar's story was worth telling in the first place.

Thanks to the audience of my blog, [usvtsarnaev.org](http://usvtsarnaev.org), for staying interested in Jahar's case, even years after it faded from the news cycle. I never would have gotten this far if I hadn't known there were people out there, wanting the truth and willing to listen. And to my former students at Bunker Hill Community College, whose unending intelligence, wit and resilience taught me so much about Boston's immigrant and Muslim communities.

And, of course, to Jahar. This is for you. Till we meet again.

## Introduction

In March of 2015, prosecutors in Boston, Massachusetts stood in a federal courtroom and stated that Dzhokhar (“Jahar”) Tsarnaev, 21, the surviving half of a pair of brothers to stand trial for the 2013 Boston Marathon bombing, was a jihadist. This, they said, was his motive for committing the crimes as an independent and willing participant, for which he should be found guilty of thirty charges and sentenced to death.

They entered evidence from his social media accounts, claiming that Jahar, a Muslim born in Chechnya, had “radicalized” over the internet, and this led him to bomb the Boston Marathon with his older brother Tamerlan. Among these pieces of evidence, prosecutors identified a secondary Twitter account registered to Jahar that presumably served as an outlet for him to espouse radical Islamic ideas over the internet.<sup>1</sup> During questioning of FBI analyst Steven Kimball on the witness stand, both prosecutor Alope Chakravarty and Kimball identified the banner on the Twitter account as “the holy city of Mecca,”<sup>2</sup> thus proving Jahar’s dedication to his secret Muslim identity. However, not only did the Twitter have a scant eight tweets, mostly about seemingly innocuous topics like prayer, but the banner image wasn’t Mecca.

As later pointed out by the defense team on cross-examination, the actual location was downtown Grozny, Chechnya, which sports a large mosque backlit by a quartet of skyscrapers.<sup>3</sup> A young man’s life hung in the balance, and no one at the FBI or US attorney’s office had

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<sup>1</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

<sup>2</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Steven Kimball. Personal collection.

<sup>3</sup> Ibid.

bothered to find out what Mecca looked like. This incident signaled a deep and systemic issue with the handling of Jahar Tsarnaev's case. Instead of thoroughly analyzing all the available evidence, law enforcement and prosecutors latched onto signs that their suspect is Muslim, and ran with that as an indicator of his criminality.

### **Research Question**

Orientalist discourse taints anti-terrorism policy and policing in the United States, and has done so for decades. From Samuel Huntington's "Clash of Civilizations" theory to Donald Trump's Muslim ban, the perceived inherent danger of Muslims and Islam has long been the foundation of the rhetoric and policy of combating terrorism. Scholars like Lisa Stampnitzky link this Orientalist discourse to academic fields like terrorism studies. According to Stampnitzky, the field of terrorism studies has been rooted in moral judgments – that terrorism is only studied as actions that can never be justified – and is inherently politicized, making it easy to brand anyone who does not subscribe to a certain ideology a "terrorist." While the role of intellectuals in perpetuating these ideas is understood, less attention has been paid to how court cases have produced key "knowledge" around terrorism.

In the Boston Marathon bombing case, Orientalist discourse, particularly the notion of a global network of Muslims banding together to attack Western civilization, is pervasive in the knowledge production of terrorism when it comes to the only person to stand trial for the attacks, Dzhokhar ("Jahar") Tsarnaev. This discourse persists despite factual evidence on the court

record pointing to different motives and, in many instances, different suspects. How did this case shape knowledge production of terrorism in the United States?

## **Argument**

The knowledge produced about the Boston Marathon bombing stems from three sources. The first is law enforcement, particularly the FBI. In the days after the bombing, their assumptions and misconceptions about terrorism suspects tainted their handling of the case. Due to post-9/11 counterterrorism protocols, flawed policing practices, and Orientalist thinking, their interactions with Jahar Tsarnaev betray their preconceived notions about him as a Muslim “terrorist.” Despite claiming to want to gather intelligence, they were not interested obtaining anything but admission of his guilt, particularly in a manner which reinforced what they already believed to be true: that he was a terrorist espousing “jihadist” beliefs. This is revealed by discourse in the interactions the FBI had with Jahar.

The second source of knowledge production is the media. In the days after the bombing, law enforcement passed along inaccurate crime scene details, mixed with gendered and racialized Orientalist speculation for the motive to the mainstream media, which amplified the message on the world stage. Post-9/11 hyper masculine US state identity formation played a large role in how the crimes and their suspected Muslim perpetrators were characterized in the press. This is especially evident in the discourse of *Boston Globe* journalist Kevin Cullen’s coverage of the attacks, but exists elsewhere in the media discourse, which declared Jahar guilty long before he went to trial. These elements combined to create a “regime of truth” – a narrative that those in power are able to present as true – about Jahar and his role in the bombing.

The third source of knowledge production is the federal prosecutors in Jahar's court case. Two years later after the Boston Marathon bombing, they reaped the seeds sown by law enforcement, presenting to the jury an image of Jahar which rested entirely on Orientalist attitudes toward Muslims and Islamophobic scare tactics in order to justify a conviction and death sentence. Additionally, the prosecutors, already given outsized power in the American criminal justice system, were able to exercise their influence to prevent Jahar's attorneys from putting on a proper defense. As a result, his defense counsel was also forced to resort to Orientalist tropes, presenting Jahar as a meek, feminized stereotype acting out of blind "love" for his older brother Tamerlan. The prosecutors were then able to use "expert" witnesses on terrorism to claim a causal link between Jahar's Muslim identity and a propensity for violence. In particular, Matthew Levitt of the right-wing think tank Center for Middle East Peace made a number of fallacious and Orientalist claims, especially about Jahar's supposed "jihadi" justifications for the attacks. Another expert witness to submit a consultation report to the prosecution on Jahar's radicalization is Sebastian Gorka, later a controversial figure in the Trump administration, noted Islamophobe and discredited academic.

Altogether, these sources exploited Islamophobic practices and perpetuated Orientalist discourse about Islam and Muslims, as well as Jahar's ethnic heritage as a Chechen, to produce a "regime of truth" about his role in the Boston Marathon bombing.

## Literature Review

According to the theory by Michel Foucault, a society's regimes of truth are "the types of discourse that it accepts and makes function as true, the mechanisms and instances which enable one to distinguish true and false statements" which are contingent upon "the status of those who are charged with saying which counts as true."<sup>4</sup> In the Foucauldian sense, the regime of truth has little to do with verifiable facts, and everything to do with who has the power to dictate what is "true" — therefore what is known about a particular topic in the conventional discourse. While the old adage says, "Knowledge is power," in actuality, it cuts both ways: power is knowledge.

The regime of truth surrounding what is known about terrorism in the United States is intrinsically tied to colonialism and Orientalism. Orientalism, a term coined by Edward Said in his 1978 book of the same name, exposes the legacy of colonialism through centuries of Western dominance over chiefly Islamic cultures and people. Orientalism creates a false binary by splitting the world into two presumably incompatible spheres: the East ("Orient") and the West ("Occident"). Through European colonization, Orientalism cast the Islamic non-West as the dangerous "other," and, therefore, everything that is "known" about the Islamic East is viewed through the prism of Western superiority and "Oriental" inferiority. Thus, the West prescribed to "Orientals" a number of deviant qualities, notions that still perpetuate today. Said writes:

No merely asserted generality is denied the dignity of truth; no theoretical list of Oriental attributes is without application to the behavior of Orientals in the real world. On the one hand there are Westerners. And on the other there are Arab-Orientals; the former are (in no particular order) rational, peaceful, liberal, logical, capable of holding real values, without natural suspicion; the latter are none of these things.<sup>5</sup>

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<sup>4</sup> Stuart Hall. "Hall on Foucault: Knowledge, Power and Discourse." *Representation: cultural representations and signifying practices*. London, UK: Sage Publications Ltd, 1997.

<sup>5</sup> Edward Said. *Orientalism*. New York, New York: Random House, 1978.

Said also ties Orientalism to knowledge production: that is, what is known across a variety of disciplines about a subject like “the Orient” has been filtered through this prism of Western domination and superiority. He calls Orientalism “the corporate institution for dealing with the Orient – dealing with it by making statements about it, authorizing views about it, describing it, by teaching it, settling it, ruling over it” and calls it an “enormously systematic discipline by which European culture was able to manage – and even produce – the Orient politically, sociologically, militarily, ideologically, scientifically and imaginatively in the post-Enlightenment period.”<sup>6</sup>

Although the world has, at least officially, gone through the process of decolonization, Orientalist attitudes and policies persist in the modern day. A number of scholars, particularly feminist scholars, have been in conversation with Said, and have expanded and deepened the definition of Orientalism into a framework entirely relevant to Jahar’s case. First, writing in 2001, feminist anthropologist Lila Abu-Lughod sums up the state of the field in regards to feminist scholarship on the Middle East:

Recognizing that stereotypes of the Middle Eastern woman have been crucial to negative depictions of the region and its culture(s), many scholars have sought through ethnographic or social historical research to reveal the complex ‘realities’ of gender and women in the Middle East, or, through literary study, how Middle Eastern women represent themselves.<sup>7</sup>

She adds that feminist scholars, while attempting to challenge stereotypes that Muslim women are “passive, silent and oppressed” by asserting that they are in fact “active, practical, powerful, and resourceful” are still contributing to the perpetuation of Orientalism: “As long as we are

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<sup>6</sup> Ibid.

<sup>7</sup> Lila Abu-Lughod. “Orientalism and Middle East Feminist Studies.” *Feminist Studies* 27, no. 1 (Spring 2001).

writing for the West about ‘the other,’ we are implicated in projects that establish Western authority and cultural difference.”<sup>8</sup> Abu-Lughod’s scholarship is important, not only to establish the negative gendered stereotypes that exist within Orientalism, but to hammer home the inherent splitting that exists when presenting an “other” to a Western audience. This was on full display in Jahar’s case, by the media when covering the attacks and Jahar’s subsequent court case, and also by the lawyers themselves when presenting their narratives to a jury who not only had to weigh his guilt or innocence, but decide whether he should live or die.

Second, scholar Maryam Khalid examines the role Orientalist attitudes play on perceptions of gender in the United States’ War on Terror. She asserts that discourse on the War on Terror has “legitimised and normalised assumptions about gender and race” and has placed “the ‘West’ in opposition to the ‘East’” through a number of false binaries: “Good vs. evil, civilised vs. barbaric, rational vs. irrational, progressive vs. backward.”<sup>9</sup> In her article, she writes that America’s War on Terror discourse is

shaped by a gendered orientalist logic that constructs and ascribes different masculinities and femininities to men and women according to race. This logic marks out the male ‘enemy’ as embodying a dangerous masculinity that is irrational and expresses itself in acts of barbarism, such as the oppression of women. At the same time, this enemy is also feminised by the superior masculinity of the USA... The West, led by the USA, is marked out by this superior and exaggerated masculinity and yet is also benevolent and paternal. ‘Other’ women are ascribed with feminine traits that deny them agency and require their liberation.<sup>10</sup>

Khalid’s case studies focus on US military intervention abroad, but this description is extremely pertinent in describing Jahar’s case, in which a young Muslim male was hunted, captured, and

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<sup>8</sup> Ibid.

<sup>9</sup> Maryam Khalid. “Gender, orientalism and representations of the ‘Other’ in the War on Terror,” *Global Change, Peace & Security*, 23:1 (2011), 15-29.

<sup>10</sup> Ibid.

put on trial for a “senseless” act of violence at home: terrorism. His treatment by law enforcement demonstrates the idea of his “dangerous” and “irrational” nature as a Muslim male. It also reinforces the “superior masculinity” of the United States, which manifested when law enforcement forced him to surrender (after nearly killing him twice) and confess (through torment and coercion) to his “barbaric” crimes. The superior masculinity of the United States was also presented during his court case. As Khalid states, “US masculinity is ultimately marked out as acceptable as it is controlled; its power and (military) violence are directed at the enemy and its benevolence is used to save those who are deemed to be helpless victims of this enemy.”<sup>11</sup> In this sense, because Jahar was not a purported soldier on a foreign battlefield, but a naturalized citizen in federal custody, the government was not able to use “controlled” military violence against him. Instead, it settled for the next best thing: the imposition of the death penalty, even in a state that had ceased to use it nearly seventy years prior.

Third, scholar Meghana Nayak points out the role gendered and racialized Orientalism plays in the building of US state identity, particularly after 9/11. While Nayak argues there are several facets of this, she singles out the way “US state identity involves coding particular acts and actors as Islamic fundamentalist.”<sup>12</sup> In particular,

The US state reduces the diversities of Islamic fundamentalist and secular ideologies to a metonymic relationship between Religion and Ideology in order to define a variety of actors and acts as Islamic fundamentalist, the primary source of conflict and danger in the world. Accordingly, actions by the USA can be justified against anything interpreted as Islamic fundamentalist, such as self-determination movements or critiques of US foreign policy.<sup>13</sup>

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<sup>11</sup> Ibid.

<sup>12</sup> Meghana Nayak. “Orientalism and ‘saving’ US state identity after 9/11,” *International Feminist Journal of Politics*, 8:1 (2006), 42-61.

<sup>13</sup> Ibid.

The vehicle for this is Orientalism, which

enables the simplistic division of the world into the Orient, or the hotbed of terrorism, ignorance, poverty, oppression, racism and misogyny, and the US-led West, or the savior, beacon of light and teacher of democracy and equality *par excellence*. The Orient is coded as Islamic fundamentalist; the West, although laden with Christian fundamentalist rhetoric and assumptions, is coded as naturally and universally right and good.<sup>14</sup>

All of this is in service of building a “hyper masculine” US state identity, which is threatened by “the very agency of Others” as it “challenges US conceptions of itself and its modes of internal/international domination, particularly since US state rhetoric interprets the events of 9/11 as evidence of the disastrous consequences if the Others’ agency goes unchecked.”<sup>15</sup>

There is also another dimension to Orientalism on display in Jahar’s case, one especially visible in the post-9/11 era: Islamophobia. In this phenomenon, specific negative thoughts and attitudes about Islam and Muslims operate as a vehicle for the larger Orientalism that perpetuates beyond the colonial era. In particular, Islamophobia assigns an inherent danger to Islam, an emphasis is on what scholar Fernando Bravo Lopez calls the “enemy image”: “‘It always involves the possibility of violence and destruction’... Islamophobia would be a hostile attitude ... based on the image of Islam as an enemy, as a threat to ‘our’ well-being and even to ‘our’ survival.”<sup>16</sup> Islamophobia is not simply the embodiment of hatred and discrimination toward Islam and its adherents, but the framing of Islam as an existential threat to “Western” democracy, and Muslims as the enemy’s soldiers that must be defeated. In this sense, the attitudes reinforce the old colonialist attitude that Islam is a force that must be dominated and controlled.

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Fernando Bravo López. “Towards a definition of Islamophobia: approximations of the early twentieth century.” *Ethnic and Racial Studies*, 34:4 (2011), 556-573.

Through Islamophobic attitudes, aided by Khalid's notions of "superior masculinity," the United States government crafted its policies for the War on Terror. Although Orientalist discourse and Islamophobic attitudes were evident in scholarship and policies well before 9/11 — popularized by publications such as Samuel Huntington's "The Clash of Civilizations"<sup>17</sup> and Bernard Lewis's "The Roots of Muslim Rage"<sup>18</sup> — the attacks on September 11, 2001 allowed the George W. Bush administration to seize an opportunity in order to implement them.

9/11 also exacerbated a discursive trend surrounding the concept of "terrorism" itself. The discipline of terrorism studies has historically been a problematic field. The very definition of terrorism contains within it a certain moralizing: terrorism exists, as an object to be studied, on completely subjective terms. As stated by scholar Lisa Stampnitzky:

Discourse about the inherent immorality of terrorism has centrally shaped the possibilities for the creation of both knowledge about terrorism and terrorism experts themselves... the concept of terrorism became inherently associated with a moral judgment about the acts that we place in that category: terrorism *is* unacceptable violence.<sup>19</sup>

Indeed, in the weeks following 9/11, President George W. Bush left no room for nuance: we are either with America, or with the "terrorists." This launched the War on Terror, and allowed the US government to implement scores of unconstitutional and discriminatory policies that targeted Muslims: from extrajudicial detentions in Guantanamo and other black sites where torture was rampant,<sup>20</sup> to mass surveillance of Muslim communities,<sup>21</sup> to registries of immigrants from

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<sup>17</sup> Samuel P. Huntington. "The Clash of Civilizations?" *Foreign Affairs* 72, no. 3 (1993): 22-49.

<sup>18</sup> Bernard Lewis. "The Roots of Muslim Rage." *The Atlantic*, September 1990.

<https://www.theatlantic.com/magazine/archive/1990/09/the-roots-of-muslim-rage/304643/>

<sup>19</sup> Lisa Stampnitzky. *Disciplining Terror: How Experts Invented "Terrorism."* Cambridge, UK: Cambridge University Press, 2013.

<sup>20</sup> Larry Siems. "Inside the CIA's Black Site Torture Room." *The Guardian*, October 9, 2017.

<https://www.theguardian.com/us-news/ng-interactive/2017/oct/09/cia-torture-black-site-enhanced-interrogation>

<sup>21</sup> "Factsheet: The NYPD Muslim Surveillance Program." *ACLU*. Accessed May 16, 2019.

<https://www.aclu.org/other/factsheet-nypd-muslim-surveillance-program>

Muslim countries.<sup>22</sup> Wars in Afghanistan and Iraq were launched, based on claims of knowledge Osama bin Laden's whereabouts and Saddam Hussein's stockpiles of weapons of mass destruction that were aiding terrorists. In the process, the knowledge about terrorism produced by the US government created a regime of truth based on Islamophobic perceptions of the Muslim threat, as well as gendered Orientalist thinking about the savage, barbaric East and the superior masculinity present in the benevolent paternalism of the United States in the West.

The cracks in this façade have since been revealed: much "intelligence" about al-Qaeda and similar "global terror networks" were extracted via torture, calling their validity into question, and many Guantanamo detainees are now considered to be innocent.<sup>23</sup> In 2008, President Barack Obama, a Democrat and the nation's first black president, was elected. He ran on a platform that was against the war in Iraq; for closing Guantanamo; for adhering to the Constitution and honoring human rights; for fighting terrorism in a smarter, more precise way: with a scalpel, not with a meat cleaver. Despite Republican criticisms that he was being "soft" on terrorism, it seemed as though America had entered a more enlightened era in its War on Terror.

Then, in 2013, two explosions rocked the Boston Marathon, and someone had to be held responsible.

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<sup>22</sup> J. David Goodman and Ron Nixon. "Obama to Dismantle Visitor Registry Before Trump Can Revive It." *New York Times*, December 22, 2016.

<https://www.nytimes.com/2016/12/22/nyregion/obama-to-dismantle-visitor-registry-before-trump-can-revive-it.html>

<sup>23</sup> See, for example: Ben Taub, "Guantanamo's Darkest Secret." *The New Yorker*. April 15, 2019.

<https://www.newyorker.com/magazine/2019/04/22/guantanamos-darkest-secret> Taub's account draws on many sources detailing the systematic misclassification of detainees in Guantanamo, fueled by bad intelligence and a US military-sponsored kidnapping scheme in Afghanistan, which paid thousands of dollars to locals to hand over anyone "associated" with al-Qaeda or the Taliban.

## **Methodology**

On April 15, 2013, two improvised bombs exploded on and near the finish line of the Boston Marathon. The crime kicked off an unprecedented law enforcement search for the perpetrators, as well as a media frenzy. Then, on the night of April 18th, an MIT police officer named Sean Collier was killed, and a young man named Dun Meng carjacked. A few hours later, a shootout with police left one of the suspects dead: 26-year-old Tamerlan Tsarnaev, and a second suspect wounded and on the run: 19-year-old Jahar. His missing status caused the government to shut down the city of Boston and nearby suburbs the following day while law enforcement looked for him. Nearly twenty-four hours later, he was discovered hiding in a boat in someone's backyard, and eventually taken into custody.

I was personally present in the city for both the attacks and the lockdown; much of my research stems from my simple desire to understand what happened and why. This observational period lasted the two years between the attacks and Jahar's death penalty trial in 2015, when I followed the trial, first through media coverage, then when I visited the federal courthouse during the penalty phase. Therefore, much of what I describe in these pages I experienced as they happened.

However, to supplement my memory (which is inherently fallible), I have employed content analysis to analyze the language used in court documents, trial transcripts, and press coverage regarding the Boston Marathon bombing and Jahar's court case. I personally transcribed the handwritten confession notes between Jahar and FBI agents to aid in my

discourse analysis of the hospital interrogation. I have also analyzed counter-terrorism training manuals used by the US government in the post-9/11 years to measure protocol against practice in their treatment of Jahar as a terrorism suspect. Additionally, I have drawn on my outside investigations into the specifics of the case, including forensic reports on the court record, exhibit photos and videos, site visits of all relevant crime scenes, and consultations with a former criminal defense lawyer. I hope these efforts shed light on the “what” and “how” of the individual case, as well as illuminate the larger picture of Orientalism at work against a Muslim defendant in post-9/11 America.

### **A Note on Spelling**

The official spelling of Jahar’s name is “Dzhokhar,” from the Russian Джохар, and this is the spelling most often found in media coverage of the case. However, the more phonetic “Jahar” is his own preferred spelling, and court documents and transcripts often use the two interchangeably. For this project, I have opted to use “Jahar,” both out of respect for his preference and for the same reason he altered the spelling himself – it’s a lot easier for an English speaker to read off the page and pronounce correctly.

## **Chapter 1: Law Enforcement Plants the Seeds, and the Media Spreads Them**

### **Part A: The Regime of Truth Starts – Without Jahar**

On the evening of Friday, April 19, 2013, Jahar Tsarnaev was arrested in suspicion of being one of the perpetrators of the Boston Marathon bombing. This arrest came after he had spent nearly an entire day hiding in Watertown, Massachusetts. At the time of his arrest, he had suffered additional gunshot wounds at the hands of police and was transported to Beth Israel Deaconess Medical Center for treatment. It wasn't until nearly twenty-four hours after his arrest, when, emerging from major surgery and recovering in the ICU, the FBI began their interrogation.

The preceding day had been a tumultuous one for law enforcement, the media, and the public. The entire city of Boston and surrounding suburbs was shut down to allow for a door-to-door manhunt for Jahar, which lasted the majority of the daylight hours, even though his hiding place was on the same block as the car he'd abandoned after fleeing the police shootout that had occurred shortly after midnight on the 19th. This law enforcement overreach, effectively declaring martial law in the streets of Boston for a day, is in line with the hyper-masculine US state identity formation as discussed by Nayak. In this way, the US government effectively brought the War on Terror home to domestic soil, halting the functioning of a major metropolis to search for one individual. As a result, all citizens of this stretch of eastern Massachusetts were forced to sit inside their homes with the message that a dangerous terrorist was roaming around outside, armed and dangerous.

The hours before Jahar's arrest are crucial for understanding the inception point of the regime of truth. Despite his status as missing, and his brother Tamerlan's recent death, both of their identities were released to the media, along with a number of details from the government about their alleged crimes. These details conflated Jahar's actions with Tamerlan's and held them both responsible equally. As one entity, they were proclaimed to be the perpetrators not just of the Marathon bombing, but the murder of Officer Sean Collier on MIT's campus and the carjacking of Dun Meng shortly thereafter. For example, the front page story of the *New York Times* on April 20, 2013 reads:

The hunt for the bombing suspects took a violent turn Thursday night when two men believed to be the Tsarnaev brothers fatally shot an M.I.T. police officer, Sean A. Collier, 27, in his patrol car, the Middlesex County district attorney's office said. Soon after, two armed men believed to be the brothers s carjacked a nearby Mercedes S.U.V. and drove off with the driver in the car.

At one point, the suspects told the driver "to get out of the car or they would kill him," according to a law enforcement official. But then they apparently changed their plans, and forced the man to drive, the official said. At one point, the older brother took the wheel.<sup>24</sup>

This account stands in direct contrast to forensic evidence on the court record, in which only Tamerlan's prints were found on Sean Collier's murder weapon,<sup>25</sup> the only available surveillance footage shows two figures with no facial or body details,<sup>26</sup> and the testimony of Dun Meng at Jahar's 2015 trial, who stated Jahar was not present when Tamerlan carjacked him at gunpoint.<sup>27</sup> Additionally, despite repeated reports that Jahar was armed during the evening of April 18th

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<sup>24</sup> Katharine Q. Seelye, William K. Rashbaum, and Michael Cooper. "2nd Bombing Suspect is Captured, Wounded, After A Frenzied Manhunt Paralyzes Boston." *New York Times*, April 20, 2013.

<sup>25</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Chris Donahue. Personal collection.

<sup>26</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit 725. Personal collection.

<sup>27</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dun Meng. Personal collection.

through the 19th, no forensic evidence exists on the court record to suggest this is accurate – only one firearm, Collier’s murder weapon, was recovered.<sup>28</sup>

However, these inaccuracies reveal the assumptions of both law enforcement and the district attorney’s office at a time when the most that was known publicly about Jahar and Tamerlan were that they were immigrants of ethnic Chechen origin – and that Chechnya is a Muslim republic within Russia. Even at this early stage, the government was projecting an image of two violent Muslim men as equal partners in crime, in accordance with the “gendered orientalist logic” as discussed by Khalid. This accounts for the narrative presenting Tamerlan and Jahar in symmetry: both carrying firearms, both shooting Collier, both carjacking Meng and issuing him orders. In the minds of law enforcement, as Muslim males, they were barbaric, dangerous, on the loose, and perfectly interchangeable.

Speculation on the motives for the crimes during and immediately after the manhunt for Jahar on April 19th were plentiful as well. Scrutiny of press coverage before the start of Jahar’s interrogation the night of the 20th reveals recurring themes that reinforce previously discussed tropes: that Jahar and Tamerlan gleefully targeted “innocents,” that their actions were directly linked to US foreign policy decisions, and that they nihilistically hoped to die for their cause. Additionally, once the press succeeded in tracking down family and friends who could not conceive of Jahar’s involvement, the narrative shifted to embody a second, feminized version of Jahar, who lacked agency and blindly followed his domineering older brother on his murderous quest.

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<sup>28</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Chris Donahue. Personal collection.

## Kevin Cullen and the *Boston Globe*

These notions are all embodied in a column written by *Boston Globe* journalist Kevin Cullen. He presents an interesting case study. He is a longtime investigative journalist and columnist for the *Globe*, the city's largest and most well-known newspaper. At the time of the bombing, the *Globe* had a weekday circulation of about 225,000 and Sunday circulation of about 382,000,<sup>29</sup> including both digital and print circulation. Cullen holds an impressive record with the *Globe*, being part of two teams which received Pulitzer Prizes: one in 2003 for its coverage of sexual abuse by priests in the Roman Catholic church<sup>30</sup> and the other for its Boston Marathon bombing coverage in 2014.<sup>31</sup> From the week of the bombing through the conclusion of Jahar's 2015 trial, Cullen was featured in several dozen articles, not just presenting information as facts about the attacks, but offering opinion columns that ran on the paper's front page. However, in June 2018, Cullen was suspended for three months without pay<sup>32</sup> after complaints and an independent investigation revealed that he had fabricated details in his articles about the bombing.<sup>33</sup> However, the report released from the investigators notes that only his articles on the first responders at the bombing scene and tales of the victims were reviewed for accuracy, and nothing regarding the suspects was scrutinized.

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<sup>29</sup> Dan Kennedy, "In Latest Circulation Numbers, the Difference is Digital." *Media Nation*, April 30, 2013. <https://dankennedy.net/2013/04/30/in-latest-circulation-numbers-the-difference-is-digital/>

<sup>30</sup> Mark Feeney, "Globe wins Pulitzer gold medal for coverage of clergy sex abuse." *The Boston Globe*, April 8, 2003. <http://archive.boston.com/globe/spotlight/abuse/extras/pulitzers.htm>

<sup>31</sup> Don Seiffert, "Boston Globe columnist suspended for three months for ethics violations." *Boston Business Journal*, June 15, 2018. <https://www.bizjournals.com/boston/news/2018/06/15/boston-globe-columnist-suspended-for-three-months.html>

<sup>32</sup> Michael Levenson, "Globe, after extensive review, suspends columnist." *The Boston Globe*, June 15, 2018. <https://www3.bostonglobe.com/metro/2018/06/15/globe-after-extensive-review-suspends-columnist/SsU32LhLY5s07M3T7HnJcO/story.html>

<sup>33</sup> Kathleen Carroll and Tom Fiedler, "Subject: Report on Kevin Cullen." *The Boston Globe*, May 29, 2018. <https://assets.documentcloud.org/documents/4516853/Marathonreview.pdf>

My own review of articles particularly about Jahar (and, at times, Tamerlan) revealed the same issues highlighted by the investigators in their report about Cullen: that he often used free form narrative, making it difficult to distinguish facts from his own poetic license; heavy reliance on anonymous sources, making assertions and quotes impossible to verify for their veracity; and neglect on the part of the *Boston Globe* to ever correct the misinformation it printed. These technical issues aside, Cullen's characterization of both Jahar and Tamerlan is steeped with Orientalist and Islamophobic assumptions. This characterization begins mere hours after the announcement of their identities as the bombing suspects, and indeed, even before Jahar was apprehended by police. This suggests that Cullen's character sketch could only have been conjured by speculation in the media discourse, law enforcement contacts, and his own imagination.

Furthermore, it reflects the racialized and gendered Orientalism discussed by Khalid and Nayak. In her article, Nayak states: "After 9/11, the US state has conducted the 'war on terror' and locates questions such as, 'why do they hate us?' (read: how could one *possibly* hate us?) on bodies both abroad and within US territory."<sup>34</sup> As a stark example of this, Cullen's article published on April 19, 2013 is titled, "It Doesn't Matter Why They Hate Us, They Just Do." This combines the hyper-masculine US state identity formation as discussed by Nayak and Stampnitzky's theory of "new terrorism discourse" of the terrorist as an irrational actor. The central thrust of Cullen's column is that attempting to understand motive for the attacks is pointless, because it pales in comparison to the pain and horror inflicted on the homeland. He writes:

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<sup>34</sup> Meghana Nayak "Orientalism and 'saving' US state identity after 9/11," *International Feminist Journal of Politics*, 8:1 (2006), 42-61.

At least let's see how this ends. At least let us bury our dead first. At least let us heal our wounded. At least let us take care of our first responders. Then maybe I'll listen to "what did we do to make them hate us" claptrap. Then maybe I'll go to some soul-searching debate about how our foreign policy is screwed up and how we're creating too many enemies and too few allies.

But then, maybe I won't.<sup>35</sup>

Cullen's tone contains a hyper masculine defiance to the notion that anyone should attempt to understand the motivation for the attacks, using the false "us versus them" binary to shield himself. For justification, he uses the grief of the victims ("At least let us bury our dead first. At least let us heal our wounded") even though he personally did not experience loss or injury in the bombing, as well as the well-being of the law enforcement and medical personnel working at the crime scene ("At least let us take care of our first responders"). Despite the fact that the bombing took place in downtown Boston, with minimal risk to these workers, Cullen represents them as if they are military soldiers on a battlefield, fighting a civilizational threat.

In fact, some of the most egregious fabrications uncovered by investigators are personal anecdotes Cullen related over time in different venues. For example, in August 2013 he attended a panel for the Association for Education in Journalism and Mass Communication, which aired on C-SPAN. As quoted in Carroll and Fiedler's report, this story characterized Cullen as possessing a personal relationship with the firefighters responding to the bombing scene. This narrative put Cullen at the center of the action, coaxing a traumatized fireman who had tried to save the life of eight-year-old victim, Martin Richard, out of his home to a bar with other first responders:

I particularly knew Sean O'Brien, he's a friend of mine... After writing my column, I stopped off at the Eire Pub in Dorchester... As I was walking into the Eire Pub, Deputy

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<sup>35</sup> Kevin Cullen, "It Doesn't Matter Why They Hate Us, They Just Do." *The Boston Globe*, April 19, 2013. <https://www.bostonglobe.com/metro/2013/04/19/doesn-matter-why-they-hate-they-just/4SdIPesSXkbkM5dDh74YcM/story.html>

Fire Chief Joe Finn, a great fireman, grabbed me. He had his iPhone. He said, “This is Sean, Sean O’Brien. I can’t get him out of the house.”

And he goes, “Talk to him.” And I go, “What are you talking about?” [gesturing to the audience to show he now holds Finn’s phone]. And I go, “Sean, it’s Kevin.... Why don’t you come out? Come out and have a drink with me and Joe.”

And I don’t even know what I’m talking to him about. He says, “No, I don’t want to come out. I don’t want to come out.” And I said, “OK, well, I’ll see you later.”

And I said to Joe, “Joe, was Sean at the scene?” And he said, “Well, Sean found the kid,” and that’s when I found out that the boy had died.

And I wanted to kill Joe Finn when he put me in that spot.<sup>36</sup>

Carroll and Fiedler note that another version of this story appears in an essay Cullen wrote for a anthology book *Our Boston*, published in October 2013. In it, his personal role in the action is absent.<sup>37</sup> Carroll and Fiedler’s report investigates this and another similar anecdote, which Cullen had repeated several times, including in interviews on April 16, 2013 to BBC Radio 4 and BBC Ulster. In this story, Sean O’Brien had rescued Martin Richard’s sister Jane in the moments after the bombing. The authors state, “Lieutenant O’Brien denied speaking with Mr. Cullen at any time Monday [April 15, 2013], by telephone or otherwise. Indeed, he said he doesn’t think he had ever met Mr. Cullen until the day after the Marathon bombing when Mr. Cullen came to the fire station to interview him and other firefighters.”<sup>38</sup> In this way, Cullen was not only writing to assert a hyper-masculine US state identity, but assuming it himself by presenting an exaggerated version of reality that framed him as one of the “heroes.”

To return to his April 19th column, Cullen also makes the assumption that the motive for the crimes is tied to how “our foreign policy is screwed up,” even though at the time of the

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<sup>36</sup> Kathleen Carroll and Tom Fiedler, “Subject: Report on Kevin Cullen.” *The Boston Globe*, May 29, 2018. <https://assets.documentcloud.org/documents/4516853/Marathonreview.pdf>

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

article's writing, little was publicly known about Jahar and Tamerlan except their religion and immigration status. However, this was an issue on more than Cullen's mind that day, as he describes:

I was on an NPR show this morning, talking as I drove back from Cambridge to write this column, and a caller came on the air and started talking about how we've got to look in the mirror and ask what we as Americans have done to create angry young men like this.

I almost drove off the road.<sup>39</sup>

The characterization of Jahar and Tamerlan as "angry young men" fits into the previously discussed stereotype, and there is an interesting correlation in Cullen's language linking the assertion "what we as Americans have done" to "our foreign policy is screwed up." Whether that was the caller's original insinuation or not, Cullen has made the logical leap from criminal motive to actions of the American government abroad, a theme that recurs in the discourse of law enforcement when later interrogating Jahar.

Additionally, in his April 19th article, Cullen makes a number of speculations about Tamerlan and Jahar which makes use of both the unrestrained masculinity trope and the feminized, inferior masculinity trope. For example, at the beginning of the article, he states:

Somebody who went to high school with Dzhokhar Tsarnaev described him as a class clown.

Well, that 19-year-old class clown has somehow managed to trap 1 million people in Boston and its western suburbs in their homes as he and the police officers who think they might have him surrounded prepare for a final encounter, the outcome of which we all think we know.

Dzhokhar -- the American kids he went to school with pronounce it Ja-har -- is alone now. Unless he has hostages.<sup>40</sup>

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<sup>39</sup> Kevin Cullen, "It Doesn't Matter Why They Hate Us, They Just Do." *The Boston Globe*, April 19, 2013. <https://www.bostonglobe.com/metro/2013/04/19/doesn-matter-why-they-hate-they-just/4SdIPesSXkbbkM5dDh74YcM/story.html>

<sup>40</sup> Ibid.

This passage is interesting for a variety of reasons. First, it presents information that Cullen likely did get from friends of Jahar – noting the correct pronunciation of the name – but works to present him as “Other” from his high school friends, described by Cullen as “American kids.” This implies that Jahar is not American, even though he had grown up in Cambridge and at the time of the article’s writing had become a naturalized citizen. It also twists the description provided by Jahar’s friends, since a “class clown” is not inherently threatening, but someone who “somehow managed to trap 1 million people in Boston and its western suburbs in their homes” is. This lays the blame of the government’s decision to put the city on lockdown squarely on Jahar’s shoulders, even though days later it would be revealed he was unarmed during the hours of the April 19th manhunt.<sup>41</sup> Furthermore, the passage presents Jahar in accordance with the stereotype of barbaric masculinity, predicting that since the police have discovered his hiding place, they must “prepare for a final encounter, the outcome of which we all think we know” — hinting that Jahar is so dangerous the police will be forced to shoot him dead, the only acceptably violent solution. Cullen also speculates, despite having no evidence, that Jahar is all alone, “unless he has hostages,” reinforcing the image of a savage Muslim male terrorizing innocent bystanders.

At the same time, Cullen also presents Jahar in a feminized light, like a Muslim woman lacking agency due to the oppressive masculinity of his older brother Tamerlan. In the next section, Cullen writes:

His big brother, 26-year-old Tamerlan, is dead, a fate big brother must have known awaited them. He probably even welcomed it.

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<sup>41</sup> Sari Horwitz and Peter Finn, “Officials: Boston suspect had no firearm when barrage of bullets hit hiding place.” *The Washington Post*, April 24, 2013. [https://www.washingtonpost.com/world/national-security/officials-boston-suspect-had-no-firearm-when-barrage-of-bullets-hit-hiding-place/2013/04/24/376fc8a0-ad18-11e2-a8b9-2a63d75b5459\\_story.html](https://www.washingtonpost.com/world/national-security/officials-boston-suspect-had-no-firearm-when-barrage-of-bullets-hit-hiding-place/2013/04/24/376fc8a0-ad18-11e2-a8b9-2a63d75b5459_story.html)

By some accounts, he, the big brother, dragged the class clown into his huge orbit of grievance, real or perceived, about the great Satan. That, of course, being the very country that gave the Tsarnaev brothers more opportunity than they ever would have had if they had stayed in the troubled, poor country where they were born, Kyrgyzstan, or if the troubled, poor country where their ancestors came from, and that would be Chechnya.

<sup>42</sup>

Here, Cullen applies a number of Islamophobic tropes to Tamerlan in terms of Oriental masculinity: that he was nihilistic and welcoming of death due to his being a radicalized Muslim. In reality, court testimony from a paramedic treating Tamerlan revealed he was still alive and mobile after being shot multiple times and run over by a car – even resisting treatment in an ambulance until dying en route to Beth Israel hospital.<sup>43</sup> Next, Cullen reports that “by some accounts” – making it impossible to know which ones – Tamerlan “dragged” Jahar into “his huge orbit of grievance, real or perceived, about the great Satan.” The use of the verb “dragged” categorizes Jahar as a feminized version of an Oriental, lacking the agency to pull himself out of Tamerlan’s “huge orbit of grievance,” which Cullen refuses to confirm is valid, referring to it vaguely as “real or perceived.” Speaking from an imagined Tamerlan’s point of view, Cullen calls America “the great Satan,” echoing classic Orientalist language about how Muslims must view the West. He then, in a sentence that defies grammar, contrasts an image of an enlightened, free America as the “very country that gave the Tsarnaev brothers more opportunity than they ever would have had” in the Oriental East, or in Cullen’s words, “in the troubled, poor country where they were born, Kyrgyzstan, or if the troubled, poor country where their ancestors came from, and that would be Chechnya.” This statement is both factually inaccurate and does a lot of

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<sup>42</sup> Kevin Cullen, “It Doesn’t Matter Why They Hate Us, They Just Do.” *The Boston Globe*, April 19, 2013. <https://www.bostonglobe.com/metro/2013/04/19/doesn-matter-why-they-hate-they-just/4SdIPesSXkbkM5dDh74YcM/story.html>

<sup>43</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Michael Sullivan. Personal collection.

Orientalist heavy lifting. First, Cullen repeats a common piece of misinformation about Jahar and Tamerlan: neither were born in Kyrgyzstan, although their family did live there briefly in their childhoods.<sup>44</sup> Second, while they are ethnically Chechen on their father's side, their mother hails from the neighboring republic of Dagestan and is ethnically Avar, making them only half Chechen.<sup>45</sup> This fact is usually erased from the discourse regarding their heritage in favor of a monolithic representation of the war-torn legacy of Chechnya, often while furthering pre-existing Orientalist notions about the conflict, such as that the Chechen resistance movement took on an "Islamic flavor."<sup>46</sup>

Despite this, Cullen runs with the notion that Jahar and Tamerlan are from Kyrgyzstan, calling it a "central Asia country" which was "spawned" by the breakup of the Soviet Union "in the years that followed the collapse of a system of government built on repression and corruption." His description of the USSR is still building US state identity, implying America's system of government is built on something better than "repression and corruption" – and that Kyrgyzstan that was not a place that existed before the collapsing Soviet Union "spawned" it. He also assigns what he considers Kyrgyz traits to Jahar, stating that "it makes sense" he was told Jahar "was a terrific wrestler. ... In the country he was born, the Kyrgyzs are among the best wrestlers in the world. They regularly medal in Greco-Roman wrestling in international competitions, including the Olympics."<sup>47</sup> The premature referral to Jahar in the past tense aside, this irrelevant piece of information not only falsely links him to Olympic-level Kyrgyz wrestlers,

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<sup>44</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement (penalty phase) of David Bruck. Personal collection.

<sup>45</sup> Ibid.

<sup>46</sup> See, for example, Georgi Derluguian, "Che Guevaras in Turbans," *New Left Review*, October 1999: 237, 3-27.

<sup>47</sup> Kevin Cullen, "It Doesn't Matter Why They Hate Us, They Just Do." *The Boston Globe*, April 19, 2013. <https://www.bostonglobe.com/metro/2013/04/19/doesn-matter-why-they-hate-they-just/4SdIPesSXkbbKM5dDh74YcM/story.html>

but when juxtaposed to the image Cullen painted of Jahar in a standoff with police, possibly with hostages, once again twists a positive description into a derogatory one.

Finally, before Jahar was even arrested, Cullen provides the reader with speculation about the motive for the crimes. He writes:

Here's the portrait emerging, still subject to lots more reporting and confirmation and separation of fact and fiction: Tamerlan Tsarnaev had an overweening sense of grievance. He decided to kill and maim innocents. And he dragged his little, more impressionable brother into the whole thing.<sup>48</sup>

This passage reinforces the aforementioned stereotypes of Tamerlan as possessing a feral masculinity (“overweening sense of grievance”) and of Jahar as a feminized, subordinate male lacking agency (“Little, more impressionable brother”). The next day, on April 20, 2013, another column titled “Nothing Tough About This Boxer’s Character” ran in the *Boston Globe* from Cullen, using strikingly similar, though revised language. This theory is repeated, though with more specific attribution:

The authorities believe it was Tamerlan, the zealot, who pulled his little and presumably impressionable brother into his orbit of overweening grievance against the very country that gave the Tsarnaev brothers more opportunity than they ever would have had if they had stayed in the troubled, poor country where they were born, Kyrgyzstan, or the troubled, poor country where their ancestors came from, Chechnya.<sup>49</sup>

While the assertion of motive is the same, Cullen this time credits “the authorities” with coming up with this psychological profile of Jahar and Tamerlan. Interestingly, this assessment bears remarkable resemblance to language from a 2006 FBI counterterrorism manual entitled “The Radicalization Process: From Conversion to Jihad.” This document, which focuses exclusively on Muslim individuals becoming terrorists through increasing escalation of religious piety, reads:

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<sup>48</sup> Ibid.

<sup>49</sup> Kevin Cullen, “Nothing Tough About This Boxer’s Character.” *The Boston Globe*, April 20, 2013. <https://www.bostonglobe.com/metro/2013/04/19/tale-two-immigrants/m3alkAoSFQWPwVJ3FXvBkI/story.html>

Recruitment plays an important role in any terrorist organization, and a radicalized individual can use his experience to spot, assess, and encourage potential recruits to follow the same path. ... A charismatic recruiter with limited training or participation in jihad can transform that experience into an extremely enticing recruitment tool for individuals susceptible to an extremist message. Extremist Islamic clerics can play a major role due to their knowledge of Islam, ability to provide religious justification for terrorist attacks, and the emotional hold they can have over impressionable recruits.<sup>50</sup>

This passage provides the Orientalist molds that were applied to both Tamerlan and Jahar even at a time when neither were available for questioning. The untamable masculinity of Tamerlan became the leadership role in the crimes, as a “radicalized individual” and “charismatic recruiter” – or “zealot,” as written by Cullen – and the feminized masculinity of Jahar became the subservient role, since he was supposedly “susceptible to an extremist message” and “impressionable” due to Tamerlan’s “emotional hold” over him.

Interestingly, this very stereotype presented by the FBI at the time of the manhunt for Jahar would later be discarded by the prosecutors at Jahar’s trial, who instead insisted he had an “independent role” in the attacks and thus possessed equal culpability to Tamerlan. This alleged rationale for the crimes changed in order to justify a court conviction and a death sentence. Jahar’s own defense team would be forced to take up the FBI’s original theory of the case presented to Cullen, also playing into the established stereotypes instead of giving him a proper defense. This will be discussed in detail in the next chapter.

Additionally, further attention should be paid to the FBI counter-terrorism manual’s definition of a “homegrown Islamic extremist,” as Tamerlan and Jahar were categorized after the bombing. It states, “The FBI identifies a ‘homegrown Islamic extremist’ as a legal US person whose primary social influence has been the cultural values and beliefs of the United States, who

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<sup>50</sup> FBI Counterterrorism Division, “The Radicalization Process: From Conversion to Jihad.” *Cryptome*. May 10, 2006. <https://cryptome.org/fbi-jihad.pdf>

has the intent to provide support for or directly commit a terrorist attack inside the United States.”<sup>51</sup> This very definition contains many of the tropes previously discussed, including the bifurcation into a false binary that a Muslim “legal US person” would be divided between loyalties to Islam and “the cultural values and beliefs of the United States.” Additionally, the entire manual places Islam as the essential foundation for “extremism” and “terrorism” and uses the Arabic word “jihad” as synonymous to terrorist actions. Thus, the FBI counter-terrorism division was only attempting to police Muslims. Such policies became the cornerstone of the George W. Bush administration, but the Boston Marathon bombing case indicates these practices extended into the Barack Obama administration, despite public stances and posturing to undo the most harmful effects of the previous presidency.

### **The Right Speaks: Political Opportunism in Response to the Bombing**

This calls forth questions about the political opportunism of reactions to the Marathon bombing and the budding regime of truth about Jahar and Tamerlan. The Obama administration tried to distance itself from the most controversial aspects of its predecessor, including the indiscriminate targeting of the Muslim community for counter-terrorism operations. However, as a result, the political right used any crime in which a Muslim was implicated to target the Obama administration for not effectively combating terrorism. They insinuated that Obama himself was an inferior (and secretly Muslim) man, and that the illegal, hyper masculine efforts of the Bush administration were not only justified, but necessary and needed to continue. This is embodied in an article that ran in the *The Wall Street Journal* on April 22, 2013 entitled “Make No Mistake, It

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<sup>51</sup> Ibid.

Was Jihad.” Written by George W. Bush’s former attorney general Michael Mukasey, the article is not shy about drawing causal links between Islam and terrorism and faulting the Obama administration for not effectively managing the threat. For example, he states, “There is also cause for concern in the president’s reluctance, soon after the Boston bombing, even to use the ‘t’ word -- terrorism -- and in his vague musing on Friday about some unspecified agenda of the perpetrators, when by then there was no mystery: the agenda was jihad.”<sup>52</sup> He then makes a number of unfounded and Islamophobic assertions to harp on the inherent threat of Islam, including that Tamerlan was “apparently named for the 14th-century Muslim conqueror famous for building pyramids of his victims’ skulls to commemorate his triumphs over infidels” and wore a “suicide vest.” Mukasey confidently proclaims, “This was obviously a suicide operation” – which he describes as “not in the direct way of a bomber who kills all his victims and himself at the same time by blowing himself up, but in the way of someone who conducts a spree, holding the stage for as long as possible, before he is cut down in a blaze of what he believes is glory.” All of these images invoke the terrifying nihilism and masculinity of an Oriental Muslim, even though Timur the Lame was a Mongol conquering an already Muslim region, no forensic evidence indicates Tamerlan wore a suicide vest, and the escape attempt of April 18th, at the very least, implies a desire for self-preservation.

This matters little to Mukasey, whose construction of Islam’s enemy image quickly pivots to point fingers at the Obama administration for their mishandling of the tragedy. First, he frames the Marathon bombing as an escalation from previous terrorism tactics, using the “new terrorism discourse” as defined by Stampnitzky:

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<sup>52</sup> Michael B. Mukasey, “Make No Mistake, It Was Jihad.” *Wall Street Journal*, April 22, 2013. <https://www.wsj.com/articles/SB10001424127887324874204578436592210910044>

Until now, it has been widely accepted in law-enforcement circles that such an attack in the U.S. was less likely because of the difficulty that organizers would have in marshaling the spiritual support to keep the would-be suicide focused on the task. That analysis went out the window when the Tsarnaevs followed up the bombing of the marathon by murdering a police officer in his car -- an act certain to precipitate the violent confrontation that followed.<sup>53</sup>

Mukasey's logic rests on a large set of assumptions. First, he claims the Marathon bombing was intended to be a suicide attack, then that only Muslims are capable of suicide attacks, and finally that the murder of a police officer would inevitably lead to a dramatic confrontation with law enforcement. Then, the implication that the Obama administration is to blame soon becomes apparent:

For starters, you can worry about how the High-Value Interrogation Group, or HIG, will do its work. That unit was finally put in place by the FBI after so-called underwear bomber Umar Farouk Abdulmutallab tried to blow up the airplane in which he was traveling as it flew over Detroit on Christmas Day in 2009 and was advised of his Miranda rights. The CIA interrogation program that might have handled the interview had by then been dismantled by President Obama.<sup>54</sup>

The implication here is that the special task force sent to interrogate Jahar in the hospital, who invoked a provision of the Patriot Act to suspend his Miranda rights, was formed for the sole purpose of superseding the Constitutionally based Miranda warnings – because with Muslim terrorists, special measures must be taken to gain intel from the enemy. This is, however, both factually incorrect (as discussed in the next section), and gives the connotation that Obama's weak High Value Detainee Interrogation Group is inferior to Bush's hyper masculine CIA interrogation program – the one that was physically torturing detainees in Guantanamo and other black sites in the 2000s. In this way, Barack Obama, America's first non-white president, is also

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<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

being “Othered” as a feminized, Orientalist male, who inevitably cannot handle the civilizational Islamic threat invading America’s shores (and may even tacitly welcome them).

Thus, these stories, disseminated by law enforcement and spread by the media before any formal interrogation of Jahar was conducted, planted the seeds for the regime of truth that would become to be known about him in the months and years that followed. From the gendered and racialized tropes produced by the FBI, spread by journalists like Kevin Cullen, envisioning their own role in the civilizational battle for the West that occurred in Boston in April 2013, to the politicizing of the attacks by conservative pundits like Michael Mukasey, harmful misinformation, Islamophobic prejudice, and Orientalist stereotypes produced knowledge around Jahar Tsarnaev. The next step would soon follow. In his article, written before the details of Jahar’s hospital confession were made public, Mukasey poses a question about the imagined weakness he perceived in the HIG:

At the behest of such Muslim Brotherhood-affiliated groups as the Council on American Islamic Relations and the Islamic Society of North America, and other self-proclaimed spokesmen for American Muslims, the FBI has bowdlerized its training materials to exclude references to militant Islamism. Does this delicacy infect the FBI's interrogation group as well?<sup>55</sup>

No, it does not.

### **Part B: Law Enforcement Imposes the Regime of Truth on Jahar**

After major surgery, Jahar was held in custody in Beth Israel’s ICU to heal from substantial injuries, most seriously a gunshot wound to the face which required his jaw to be

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<sup>55</sup> Ibid.

wired shut. He was also prescribed potent opioid painkillers, Fentanyl and Dilaudid.<sup>56</sup> Despite this, and despite repeated requests for legal counsel, he was subjected to two suspect interviews by FBI agents Gregory T. Hughes and Matthew T. Dowd from the evening of April 20th through the morning of April 22nd.

### **The High Value Detainee Interrogation Group and Jahar's Hospital Confession**

Hughes and Dowd were members of the High Value Detainee Interrogation Group, also called HIG, a unit formed by executive order by President Obama in 2009. The HIG is reportedly made up of members of several intelligence agencies, including the CIA, DIA and FBI. Obama's aim with the HIG was to cycle away from the use of torture in interrogating terrorist suspects, a longstanding and criticized practice in the Bush era.<sup>57</sup> The HIG was formed to use psychological methods to extract intelligence from the detainees, with a heavy focus on what a 2016 "Review of the Science" report issued by the HIG described as "rapport-building" – the idea that the "interrogator" constructs a friendly relationship with the "subject," in order to entice the latter to confess to criminal activity.<sup>58</sup> The report, however, never addresses the inherent power discrepancy between interrogator and suspect, and only minimally acknowledges that being too chummy toward a criminal suspect may seem insincere and backfire. There are also no instructions for building successful rapport, nor clear indications what to do if the suspect truly does not appear to know anything about a crime. All directions are centered around obtaining

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<sup>56</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

<sup>57</sup> Anne E. Kornblut, "Obama Approves New Team to Question Key Terror Suspects." *Washington Post*, August 24, 2009. <http://www.washingtonpost.com/wp-dyn/content/article/2009/08/23/AR2009082302598.html>

<sup>58</sup> High Value Detainee Interrogation Group, "Interrogation: A Review of the Science." *FBI*. September 2016. <https://www.fbi.gov/file-repository/hig-report-interrogation-a-review-of-the-science-september-2016.pdf>

admission of guilt. Such practices are standard fare in all nationwide police departments and among federal investigators – and is the reason why a suspect’s right to silence under the Miranda laws is considered integral to a defendant’s Sixth Amendment right to legal counsel.<sup>59</sup>

However, at the time of Jahar’s arrest, the very concept that intelligence could be gathered without physically torturing a terrorism detainee was novel – and so, therefore, was the existence of the HIG. In contrast to Mukasey’s doomsday predictions of the HIG’s “delicacy,” a BBC article dated April 24, 2013 talked about the HIG in a positive light, noting that their “approach seems humane, particularly compared to the way other government officials have treated terrorism suspects in the past.”<sup>60</sup> A quoted anonymous forensics expert described the unit’s deployment to Jahar’s hospital bedside as a chance for the FBI “to bring out their shiny new toy.” Indeed, FBI agents Hughes and Dowd conducted their interrogation under a national security measure that allows the suspension of someone’s Miranda rights if he is suspected of being an “operational terrorist” and that there is an “immediate threat to public safety.”<sup>61</sup> Even so, the confession was later deemed by the trial judge in Jahar’s case to be made involuntarily – and all evidence of it legally considered “the fruit of the poisonous tree,” meaning that no information gained only from the confession could be used against Jahar at trial.<sup>62</sup>

However, even at the time, those interviewed by the BBC expressed doubt that the HIG could extract much intelligence from Jahar. The forensics expert commented, “To be honest,

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<sup>59</sup> *Miranda vs. Arizona*. 384 U.S. 436 (1966).

<sup>60</sup> Tara McKelvey, “Boston Bombings: How to Interrogate a Suspected Terrorist.” *BBC*, April 23, 2013. <https://www.bbc.com/news/magazine-22227704>

<sup>61</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. *United States vs. Dzhokhar Tsarnaev*, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

<sup>62</sup> “Fruit of the Poisonous Tree,” *Legal Information Institute, Cornell Law School*, accessed May 17, 2019, [https://www.law.cornell.edu/wex/fruit\\_of\\_the\\_poisonous\\_tree](https://www.law.cornell.edu/wex/fruit_of_the_poisonous_tree)

they don't need him to tell them everything he knows. But it would be nice.”<sup>63</sup> Former FBI agent Mike German added, “The interrogation could help to fit in a few details. ... But for the most part the information is well known.”<sup>64</sup> This attitude was reflected in Michael Mukasey's April 22nd article as well, stating the only negative aspect to violating Jahar's Miranda rights “is that his statements may not be used against him at trial,” but that “this is not much of a risk when you consider the other available evidence, including photo images of him at the scene of the bombings and his own reported confession to the victim whose car he helped hijack during last week's terror in Boston.”<sup>65</sup> Inaccuracies aside – Dun Meng testified that Tamerlan, not Jahar, was the person to carjack and confess to the Marathon attack and the murder of a police officer in Cambridge<sup>66</sup> – this attitude also reflects the post-9/11 hyper-masculine identity, asserted by law enforcement and the former attorney general of the United States. It presents a circular logic: that the intelligence-gathering from terrorists conducted by the superiorly masculine US government is so important that it supersedes a suspect's Constitutional rights, but if the inferior Muslim male suspect can't provide any information of value, it's okay, because the government already knew it all.

This raises a pragmatic question about the HIG: if the crime details were available to the authorities through other sources, and their methods of extraction inadmissible in court, what purpose is there for the group to exist? In 2015, two months after Jahar had been officially sentenced to death, a critical article in the Huffington Post asked the same question. Their

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<sup>63</sup> Tara McKelvey, “Boston Bombings: How to Interrogate a Suspected Terrorist.” *BBC*, April 23, 2013. <https://www.bbc.com/news/magazine-22227704>

<sup>64</sup> *Ibid.*

<sup>65</sup> Michael B. Mukasey, “Make No Mistake, It Was Jihad.” *Wall Street Journal*, April 22, 2013. <https://www.wsj.com/articles/SB10001424127887324874204578436592210910044>

<sup>66</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dun Meng. Personal collection.

investigation revealed that the HIG often comprises of “whoever’s left” from intelligence agencies’ internal interrogators, that they might not have prior interrogation experience before joining, and that they only receive a week of training.<sup>67</sup> Furthermore, although the 2016 HIG “Review of the Science” report includes no language on understanding the cultural or psychological mindset of the interrogation subjects, the Huffington Post’s article states that in the week long course, “Trainees learn to strip away stereotypes associated with ‘terrorists’ or ‘insurgents.’ In one training exercise, they are told to think of themselves as extremists.”<sup>68</sup> Given Stampnitzky’s theory about the inherent political and moral judgment surrounding a “terrorist,” the assumptions around picturing oneself as an “extremist” are, without pains made to achieve cultural sensitivity, likely to be highly flawed.

Interestingly, the 2016 HIG report is bereft of any mention of Islam or Muslims at all; few details regarding culture-specific contexts make up the text. A bizarre exception is a recommendation to interrogators to “engage processes of commitment and consistency,” because “people strive for consistency between their attitudes or beliefs and their behaviors,” especially when it is viewed as a “personal choice.” However, the report warns, “There is some evidence that this tendency is greater among members of individualistic cultures [e.g., the U.S.] than among members of more collectivist cultures [e.g., Asia].”<sup>69</sup> This generalization about all of Asia is one of the only mentions of cross-cultural communication in the 94-page report. The only other section arises in Chapter 4, about “Truth and Deception,” in which recommendations about

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<sup>67</sup> Ali Watkins, “Obama’s Secret Elite Interrogation Squad May Not Be So Elite — And Might Be Doomed.” *Huffington Post*, August 8, 2015.

[https://www.huffingtonpost.com/entry/the-elite-interrogation-group-that-isnt\\_us\\_55c8f85be4b0f73b20ba3501](https://www.huffingtonpost.com/entry/the-elite-interrogation-group-that-isnt_us_55c8f85be4b0f73b20ba3501)

<sup>68</sup> Ibid.

<sup>69</sup> High Value Detainee Interrogation Group, “Interrogation: A Review of the Science.” *FBI*. September 2016. <https://www.fbi.gov/file-repository/hig-report-interrogation-a-review-of-the-science-september-2016.pdf>

detecting deception from “other” cultures echoes the discussed stereotypes of the “Oriental,” such as “what is deception for a person from one culture may be good manners for a person from another culture [271,272], such as when preserving the other party’s honor [273] or protecting one’s own family [274].”<sup>70</sup> The references cite single case studies of deception in Chinese, Taiwanese, Japanese and Samoan subjects published in the years 2001, 1994, and 1995. For a report published in 2016, these assertions rely heavily on non-replicated studies nearly two decades old, which play into tropes of a veiled, hidden Oriental, unable to tell “deception” from “good manners” or capable of placing the rule of civilized Western law above loyalty to a foreign culture of “honor” and “family.” Additionally, for an interrogation group that has reportedly only been deployed to interrogate Muslim suspects, these guidelines almost comically side step any possibility of helpful advice. This is, perhaps, what Mukasey references when he claims the “FBI has bowdlerized its training materials to exclude references to militant Islamism”<sup>71</sup> – suggesting that while Obama era policies attempted to correct anti-Muslim prejudices by removing mention of a causal link between Islam and terrorism, the Orientalist attitudes and practices continued regardless.

All of which becomes relevant to what transpired in Jahar’s hospital room between him and the HIG interrogators. Due to the nature of his jaw injury, as well as receiving intubation, he was rendered nonverbal and was forced to communicate via answers written in a notebook provided to him by the agents while in Beth Israel’s ICU. As previously stated, he was also highly narcotized on powerful opioids, estimated to be exponentially stronger than both

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<sup>70</sup> Ibid.

<sup>71</sup> Michael B. Mukasey, “Make No Mistake, It Was Jihad.” *Wall Street Journal*, April 22, 2013. <https://www.wsj.com/articles/SB10001424127887324874204578436592210910044>

morphine and heroin.<sup>72</sup> Even so, he was subjected to two interviews by agents Hughes and Dowd. From the agents' notes, the first lasted nearly twelve hours, from approximately 7:22 p.m. on April 20 until 7:00 am the following morning, April 21. The second reportedly ran for about fifteen hours, from approximately 5:35 p.m. on April 21 until approximately 9:00 a.m. on April 22.<sup>73</sup> Each interview was peppered with intermediate breaks, noted by the agents. On the court record, the documents relating to the confession exist in three disparate parts: the handwritten notes of the agents, the handwritten notes of Jahar, and the typed summaries of the interviews submitted by Hughes and Dowd, known as 302s. While there are two sets of interview notes from the agents and two sets of 302s, there is only one set of notes from Jahar. Scrutiny of the discourse in all documents revealed that Jahar's responses correspond *only* to the first interview. Although unacknowledged by the agents, with no sign that his physical condition improved to allow for oral communication, the second typed 302 states that Jahar "verbally indicated"<sup>74</sup> the contents therein. However, accompanying court documents filed by his defense lawyers state the agents at times used a series of nods and head shakes to confirm or deny the "facts" of the confession.<sup>75</sup>

This was not a radical approach on the part of Hughes and Dowd. The 2016 HIG report recommends to interrogators the following technique:

***Elicit information by telling stories.***

In instances where the interrogator has some information about an issue of concern, he maintains a friendly demeanor and engages in storytelling with the subject, reflecting back to the subject information about the particular topic. The interrogator asks no direct

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<sup>72</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

questions, but uses *confirmation* or *disconfirmation* to elicit additional details from the subject, without the subject realizing that he provided any information.<sup>76</sup>

It is impossible to verify the exact transcript of the two interviews of Jahar, because at the time of his arrest, it was not FBI policy to record interviews with suspects. It was, in fact, criticism of this incident that led to a policy change within the FBI to record interviews, although loopholes exist in cases of “immediate public safety concerns” – the phenomenon that led to the agents’ mistreatment initially.<sup>77</sup> However, this described interrogation framework allows, and even recommends, what the confession documents suggest happened during these interviews: that agents Hughes and Dowd arrived with preconceived notions about Jahar, as evidenced by the law enforcement contacts with the media even before his arrest, and imposed this regime of truth onto him.

This is evident in a holistic review of all mentioned components to the confession. Although there are moments in Jahar’s notes when he appears more lucid, his major contribution is a request for a “lawyer,” (at least 10 times; on pages 9, potentially on 10 with the letters “la,” twice on 11, twice on 12, 13, twice on 14, 15, and 16, occasionally circled or underlined for emphasis) and repeated complaints of being “tired” (3 times; on pages 9, 10, 47) or “exhausted” (1 time; page 12) and expressing a desire to “sleep” (5 times; pages 12, 13, 14, 15, 80).<sup>78</sup> This is also at times coupled by assertions of his Constitutional rights (“human / rights / lawyer” and “human right / man,” page 11; “Listen buddy / I know my rights,” page 13).<sup>79</sup> Even so, the agents

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<sup>76</sup> High Value Detainee Interrogation Group, “Interrogation: A Review of the Science.” *FBI*. September 2016. <https://www.fbi.gov/file-repository/hig-report-interrogation-a-review-of-the-science-september-2016.pdf>. Emphasis in original.

<sup>77</sup> Richard Serrano, “FBI and other federal agents must now tape interviews with suspects.” *LA Times*, May 22, 2014. <https://www.latimes.com/nation/la-na-fbi-interviews-20140523-story.html>

<sup>78</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

<sup>79</sup> *Ibid*.

repeatedly deny his request for rest and legal counsel. This is unacknowledged by the agents in their written notes, and addressed only at the end of the typed 302 corresponding to the first interview:

During the second session, when being asked about the type of detonator used in the device JAHAR detonated, JAHAR asked to speak to a lawyer on multiple occasions. JAHAR was told that he first needed to answer questions to ensure that the public safety was no longer in danger from other individuals, devices, or otherwise.<sup>80</sup>

In this exchange, the agents are asserting their hyper-masculinity by invoking an imagined “public safety” threat to justify denying Jahar his right to an attorney. The interview was occurring nearly a full 24 hours after his arrest, when all law enforcement agencies had declared the threat was over and the relevant suspects dead or in custody. Indeed, this demonstrates an assertion of post-9/11 US state identity, as their overzealous actions come at a time when he attempts to assert his own identity as an American citizen. He even calls them out on their behavior, writing, “Listen buddy I know my rights.” However, as he is a Muslim, the agents cannot abide any attempts by an inferior Orientalist male to gain control over the situation, and ignore him, later justifying it by claiming the needs of the American homeland were more important than a “terrorist’s” rights.

Although perhaps not in direct causality, there is an interesting correlation between the power struggle between Jahar and the FBI agents and language in a CIA document obtained by the ACLU titled “Countermeasures to al-Qa’ida Interrogation Resistance Techniques.” Written in 2002 and released in relation to a 2016 lawsuit regarding physical torture of detainees in CIA black sites, the heavily redacted document, which does not reveal exact methods, regardless assures that “skillfully crafted countermeasures can be developed in such a way that they do not

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<sup>80</sup> Ibid.

violate the Geneva Conventions.”<sup>81</sup> It also purports to be pulling on a “training manual” used by al-Qaeda to resist US interrogation techniques, and states:

The text in these documents converge to construct captives to stick to a preplanned cover story during interrogation, request legal counsel, complain about treatment and conditions, ask for medical attention, and then report that they have been tortured and mistreated regardless of actual events. In total, the information contained in these documents reveals that a sophisticated level of resistance training is available to high-risk al-Qa’ida operatives.<sup>82</sup>

Chillingly, the indicators of the “sophisticated level of resistance training” are indistinguishable from any person resisting any course of action aside from total deference to the interrogator and the acceptance of the accusations against him as immutable fact. In this way, from a hyper-masculine counter-terrorism perspective, Jahar’s requests for legal counsel in accordance with his Constitutional rights may have played to the agents as a wily Oriental terrorist’s attempt to outplay the Western “good guys.” Using this logic, such rights stand in the way of what is justified and necessary to combat terrorism – requiring the total subjugation of barbaric Muslim men, in which case the rules of civilized Western society do not apply to them.

In fact, over the course of the interviews, any attempts at agency on Jahar’s part is erased by agents Hughes and Dowd, and only becomes more pronounced over time. In the notes of the first interview, the agents at least attempted to parse the various scribbblings he provided. However, the resulting narrative is largely nonsensical and often directly contradictory to forensic evidence on the available court record, such as the notion that the brothers bought a large sum of fireworks and cut out the gunpowder from them to fill the pressure cooker bombs.<sup>83</sup>

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<sup>81</sup> “Countermeasures to al-Qa’ida Interrogation Resistance Techniques,” *The Torture Database*, December 20, 2016. [https://www.thetorturedatabase.org/files/foia\\_subsite/960.pdf](https://www.thetorturedatabase.org/files/foia_subsite/960.pdf)

<sup>82</sup> Ibid.

<sup>83</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

Additionally, the most lucid of Jahar's statements consistently express non-involvement with his brother Tamerlan's plot and actions.<sup>84</sup>

In contrast, the second interview, initiated after a twelve-hour gap in which the agents likely reported back to their superiors, contains no direct written statements from Jahar. Yet suddenly it offers a wealth of information that *does* correspond to the court record. Indeed, despite the likelihood that Jahar himself directly contributed less to the second interview, the handwritten notes of the agents have him doing significantly *more* crimes. This included using remote control car parts for the bomb detonator<sup>85</sup> and the fuse from Christmas lights as an ignition device.<sup>86</sup> This was all evidence gathered from Tamerlan's residence<sup>87</sup> and receipts of Tamerlan's purchases found in his wallet<sup>88</sup> that would have been available to the authorities immediately after the April 18th confrontation with police.

Additionally, as the agents began to wear down Jahar's resistance, motivation for the attacks in his notes begin to reflect the Orientalist tropes that were already stemming from law enforcement and circulating into the media prior to his arrest. Press interviews of Jahar's family and friends during the April 19th manhunt,<sup>89</sup> as well as dozens of defense character witnesses at trial<sup>90</sup> expressed complete ignorance of any plans, sense of grievance, violent tendencies, or strong political opinions on Jahar's part. His Twitter account, updated prolifically from 2011

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<sup>84</sup> Ibid.

<sup>85</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Edward S. Knapp. Personal collection.

<sup>86</sup> Ibid.

<sup>87</sup> Ibid.

<sup>88</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibits 948-563, 948-571, 948-572, 948-573, 948-574, 948-575. Personal collection.

<sup>89</sup> See, for example, Sarah Coffey, Patricia Wen and Matt Carroll, "Bombing Suspect spent Wednesday as typical student." *The Boston Globe*, April 20, 2013.

<https://www.bostonglobe.com/metro/2013/04/19/bombing-suspect-attended-umass-dartmouth-prompting-school-close-college-friend-shocked-charge-boston-marathon-bomber/8gbczia4qBiWMAp0SQhViO/story.html>

<sup>90</sup> Personal observation at trial while waiting to hear any indication of such from these witnesses.

until two days before his arrest, similarly revealed no knowledge of or motivation for the attacks.

<sup>91</sup> Only twice did Jahar express a so-called “jihadist ideology” – and both times coincide with interactions with law enforcement, particularly the FBI. The first is the hospital confession, and the second will be discussed in the next chapter.

Indeed, the discourse regarding motive in the hospital confession documents reflects the preconceived notions circulating in the media, particularly Kevin Cullen’s April 19th *Boston Globe* article, about Jahar and his role in the crimes: that American foreign policy was the motivating factor for the attacks. In fact, this assumption falls squarely within the post-9/11 Orientalist discourse of the US government examined by Nayak: “Muslims who are ‘peaceful’ cannot also fundamentally oppose US hegemonic politics and foreign policy. Rather, they fall out of civilization’s purview and accordingly become terrorists.”<sup>92</sup> In comparison, during Jahar’s interrogation, agents Hughes and Dowd are fixated on an article from an online magazine called *Inspire*, allegedly affiliated with al-Qaeda, which was criticizing the actions of the US military in Iraq and Afghanistan. In the progression of language from the handwritten notes of Jahar, the handwritten notes of the agents, and the typed FBI report, the implication of the subject matter shifts significantly. Jahar’s rendering reads as follows:

It was just  
An article  
America is at war is it not?  
Where are your troop?  
Are you not killing innocent  
People in Afghan, Iraq,<sup>93</sup>

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<sup>91</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit 3000. Personal collection.

<sup>92</sup> Meghana Nayak, “Orientalism and ‘saving’ US state identity after 9/11,” *International Feminist Journal of Politics*, 8:1 (2006), 42-61.

<sup>93</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

Jahar's language does not put significant weight on the issue ("it was just an article"), and puts forth a valid claim about US foreign policy – something that the agents may be denying in an assertion of their own versions of US state identity that is, in Nayak's terms, "the savior, beacon of light and teacher of democracy and equality *par excellence*."<sup>94</sup> However, in the Orientalist logic of his interrogators, this amounts to an admission of motive, and the agents' corresponding notes reflect this:

It was just a article  
Only? → America is @ war  
Are you not killing innocents in Afghanistan?  
This was their way of doing their part<sup>95</sup>

The inclusion of the question "Only?" suggests skepticism on Hughes and Dowd's part that as a Muslim male, Jahar *wouldn't* find such an article sufficient to incite his untamed Oriental rage. Furthermore, they take his elaboration as a steadfast assertion of criminal motive, and add the claim, "This was their way of doing their part" on behalf of the Islamic world, even though that sentiment is nowhere in Jahar's notes. Finally, it becomes codified in the agents' typed report, in which they summarize the exchange:

JAHAR also repeatedly indicated that the reason he and his brother conducted the attack is because America is at war and is killing innocents in Afghanistan and other countries. The attack was their way of doing their part to protect their people. JAHAR explained that America needed to feel that same pain.<sup>96</sup>

This report is in accordance with the Orientalist stereotypes, drawing causality between motivation for violence and American foreign policy. It also casts Jahar in a monolithic "Other" light, describing the attack as something that was done to protect "their people." The report

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<sup>94</sup> Meghana Nayak, "Orientalism and 'saving' US state identity after 9/11," *International Feminist Journal of Politics*, 8:1 (2006), 42-61.

<sup>95</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

<sup>96</sup> Ibid.

ascribes a Muslim masculinity to the motive, presenting an imagined Jahar who thought America needed to “feel that same pain.”

Another example of gendered Orientalist motive imposed upon Jahar during the interrogation is the notion that he was “recruited” by his older brother Tamerlan. As speculated by “the authorities” in Kevin Cullen’s articles on April 19th and 20th, during the interview into the early morning hours of the 21st, this image of Jahar as the “impressionable” feminized male creeps into the descriptions of motive. In particular, this occurs when other statements from Jahar are at their least lucid – the previous page includes statements like “whats that noise, she made it stop can you tell her please,” “what do you mean,” “You guys came at a bad time” and “whats up with my feet.”<sup>97</sup> After that come pages of the most stereotypical Orientalist “jihadist” rhetoric, including that the attack was committed for “the promise of Heaven,” that Islamic cleric Anwar al-Awlaki (considered an “extremist” cleric like the ones described in the 2006 FBI counter-terrorism manual “The Radicalization Process: From Conversion to Jihad”) “is pretty convincing,” and “I don’t know whether you have any knowledge of the mujahideen but we are promised the highest levels, and when we die we die with smiles on our faces.”<sup>98</sup> Then, even though he himself doesn’t sound very sure, adding, “Clearly not every muslim is inspired” and “people have doubts ya know” he describes almost verbatim the version of events that ran in Cullen’s article on the 19th:

Yes my brother did offer  
Me to follow along with him  
And I very much wanted to.  
You gotta talk to God on this one buddy.<sup>99</sup>

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<sup>97</sup> Ibid.

<sup>98</sup> Ibid.

<sup>99</sup> Ibid.

These Orientalist notions are prevalent in words like “offer” and “follow along,” implying, as stated in the 2006 counter-terrorism manual, Tamerlan was the “charismatic recruiter” expressing the overwhelming Muslim masculinity that the weaker Jahar was unable to resist, and so he “very much wanted” to “follow along” – like a puppy unable to tell that blowing people up was wrong.

These tropes are further codified in the FBI agents’ typed summary of the exchange, in which they write:

JAHAR’s brother intended to carry out the Marathon attacks with or without JAHAR, and he offered JAHAR to follow him on that day. JAHAR very much wanted to follow him.

JAHAR did not know who convinced his brother to act, and suggested only Allah knew the answer to that question.<sup>100</sup>

This imagined version of both brothers presents the overbearing, dangerous Tamerlan, who planned the attack independently, and the impressionable, feminized Jahar, who found out about the plan and, tapping into the roots of his Muslim rage, immediately wanted in. It also others Jahar’s original statement by replacing “God” with “Allah.” The proposed version of events continues:

JAHAR’s brother showed JAHAR a couple of issues of Inspire Magazine to give JAHAR a different perspective and to show JAHAR the truth of what was occurring in Afghanistan and Iraq. ...

JAHAR’s brother had previously talked about the events taking place in Iraq and Afghanistan, and the discussions would make both JAHAR and his brother angry. They had been having these discussions for a long time - ever since America first invaded. JAHAR is from Chechnya and people are dying there too, just as they are in Iraq, Afghanistan, and Syria.<sup>101</sup>

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<sup>100</sup> Ibid.

<sup>101</sup> Ibid.

In the FBI agents' Orientalist imaginations, "a couple of issues of Inspire Magazine" is all it takes to recruit Jahar into the "jihadist ideology" – as if years of reporting in the press wouldn't have exposed Jahar to the same issues with American military actions. They also present an imaginary version of the brothers sharing grievances over US intervention abroad for over a decade – even though Jahar was eight years old in 2001, when "America first invaded." Regardless, the agents turn Jahar's home country of Chechnya into a part of the false binary of the Islamic east, lumping it in with Iraq, Afghanistan and Syria, and in their minds the motives for the attack are all but assured.

In these ways, drawing upon an enormous well of Orientalist inspiration, FBI agents Hughes and Dowd, members of the High Value Detainee Interrogation Group, meant to extract key intel from terrorism suspects, entered the hospital room of a critically injured teenager. Many hours later, they ultimately left with the story they wanted – the one they already believed to be true about Muslims in general, and about Jahar Tsarnaev in particular.

### **Conclusion: The Self-Fulfilling Prophecy**

The regime of truth about Jahar began without his consent and even his presence. During the hours he was hiding, injured, from heavily armed law enforcement searching for him, rumors about his role in the Boston Marathon bombing and his motives for committing terrorism swirled in the media. These rumors, planted by the government's misrepresentation or dismissal of factual evidence, and enhanced by gendered Orientalist stereotypes dictated to the press by the

FBI, were the building blocks of the knowledge production about what would be known about the attacks. Assuming not only his culpability but his state of mind, law enforcement planted the seeds of how Jahar would be perceived by the public: both an unbridled, dangerous Muslim male, and a feminized, inferior child lacking agency and under the sway of his older, even more dangerous brother, Tamerlan.

Once Jahar was arrested, FBI agents Hughes and Dowd, members of a special task force who were supposed to painstakingly extract information from a terrorism detainee, furthered the regime of truth. Fueled by the same Orientalist assumptions, they questioned Jahar, seriously injured and in a vulnerable mental state, until he relented and agreed with their assumptions about him. They used standard law enforcement techniques and forced their own version of events upon him – reinforcing the rumors that had already reached the press. In this way, speculation that motive for the attacks was American foreign policy became “fact,” and the “impressionable” Jahar’s radicalization at the hands of his oppressive older brother Tamerlan became the obvious explanation for what happened, and why.

Once Hughes and Dowd left Jahar’s hospital room, the story crafted within circled back to the press. On April 23, 2013, the *Boston Globe* ran another article by Kevin Cullen, entitled “Dzhokhar Tsarnaev admits to setting bombs with brother, source says.” In it, Cullen writes:

Dzhokhar Tsarnaev admitted to authorities Sunday that he and his brother were behind the Marathon bombings, according to a senior law enforcement official.

Tsarnaev made his admissions to FBI agents who interviewed him at Beth Israel Deaconess Medical Center, where he is being treated for multiple gunshot wounds. He had not yet been given a Miranda warning.

Tsarnaev’s attorneys are certain to challenge the legal admissibility of those admissions, and other information he gave them, such as claiming that he and his brothers acted alone, and that his brother was radicalized in an extreme form of Islam in part because he opposed US actions in Iraq and Afghanistan.

But in an interview with the *Globe*, a senior police official said authorities are not worried about the initial admission to authorities being thrown out, because they have a strong witness: the man who was abducted by the Tsarnaev brothers last Thursday night.

Police sources told the *Globe* that the carjack victim has told police that Tamerlan Tsarnaev and his brother, Dzhokhar, pointed guns at him and, in an apparent effort to intimidate the victim and dissuade him from trying anything foolish, Tamerlan Tsarnaev told him, “We just killed a cop. We blew up the marathon. And now we’re going to New York. Don’t [expletive] with us.”<sup>102</sup>

Thus, the regime of truth perpetuated, as it would for another two years, until Jahar’s death penalty trial in March 2015.

## **Chapter 2: The Prosecutors Set the Stage for the Regime of Truth, and Their Expert Witnesses Legitimize It**

### **Part A: The Regime of Truth is in the Hands of Jahar’s Prosecutors – and is Echoed by the Defense**

On March 4, 2015, in the federal courthouse in Boston, opening arguments in Jahar Tsarnaev’s capital trial began. This came after a lengthy jury selection, in which prosecutors and defense attorneys attempted to seat jurors who had not been tainted by pretrial publicity. His lawyers had tried to change the venue several times due to the nature of the media coverage, but never with success. Finally, after two months, a jury was seated and the trial could begin.

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<sup>102</sup> Kevin Cullen, “Dzhokhar Tsarnaev admits to setting bombs with brother, source says.” *The Boston Globe*. April 23, 2013.

<https://www3.bostonglobe.com/metro/2013/04/23/source-marathon-bombing-suspect-admitted-that-and-brother-det-onated-bombs-killed-police-officer/BrBQCAOsqpFU2ShoJ4YoQM/story.html?arc404=true>

Death penalty trials are different from regular criminal cases. They occur in two phases: the guilt phase, which determines the defendant's guilt or innocence; and the penalty phase, which, if the defendant is convicted, weighs "aggravating" and "mitigating" factors in determining whether the defendant deserves a death sentence, or life in prison without parole. The same jury is seated for both phases. At the time of his trial, thirty charges were leveled against Jahar; seventeen of these carried the possibility of the death penalty. In Massachusetts, the death penalty had not been utilized since 1947, being officially abolished in 1984.<sup>103</sup> However, since the charges against Jahar were federal in nature, he faced capital punishment regardless.

Polling in Massachusetts at the time showed an overwhelming disapproval for the death penalty. Eighty-five percent of the population stood against capital punishment.<sup>104</sup> Legally speaking, in order to seat a jury in an American capital case, they must be "death-qualified" – willing to impose the death penalty if the need arises, and not opposed to it on moral grounds. There is a wealth of legal literature suggesting that not only are death-qualified juries more likely to impose the death penalty, but more likely to find the defendant guilty beforehand, regardless of the evidence.<sup>105</sup> Additionally, this literature suggests that

death-qualified jurors are also more likely to be white and male (Eisenberg 2017; Summers, Hayward, and Miller 2010; Haney, Hurtado, and Vega 1994), to hold attitudes that are less supportive of due process ideals (Butler and Wasserman 2006; Filkins, Smith, and Tindale 1998; Haney, Hurtado, and Vega 1994; Fitzgerald and Ellsworth 1984), and to hold more "out-group" biases, including having negative attitudes toward

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<sup>103</sup> "Massachusetts." *Death Penalty Information Center*. Accessed May 23, 2019.

<https://deathpenaltyinfo.org/massachusetts-0>

<sup>104</sup> Amy Goodman, "Death Penalty for Dzhokhar Tsarnaev in Anti-Execution State Brings Complications, Not Closure." *Democracy Now!*, May 18, 2015.

[https://www.democracynow.org/2015/5/18/death\\_penalty\\_for\\_dzhokhar\\_tsarnaev\\_in](https://www.democracynow.org/2015/5/18/death_penalty_for_dzhokhar_tsarnaev_in)

<sup>105</sup> Mona Lynch and Craig Haney, "Death Qualification in Black and White: Racialized Decision Making and Death-Qualified Juries." *Law & Policy*, 40:2 (April 2018), 148-171.

women, racial minorities, gays, the elderly, and the physically disabled (e.g., Levinson, Smith, and Young 2014; Butler 2007, 2010).<sup>106</sup>

There is also a racial component to these biases. The American Civil Liberties Union reports that non-white races make up 43% of all executions since 1976, and 55% of those currently awaiting execution. Additionally, 80% of all death penalty cases involve white victims, while white victims only make up half of all murder victims.<sup>107</sup> However, less scholarly attention has been paid to anti-Muslim bias present in jurors seated in trials with Muslim defendants, especially death-qualified ones.

Therefore, the task before the prosecutors in Jahar's case was to seat a jury willing to impose the death penalty – roughly fifteen percent of the available population – and convince them that he was not only guilty, but deserved to die. Their audience were jurors who skewed whiter and older than a robust cross section of Boston would suggest.<sup>108</sup> The picture prosecutors painted of Jahar and his motives through their opening statements, expert witness testimony, and additional material provided by consultants not only furthered the “regime of truth” started by the FBI in their interrogation of Jahar, but perpetuated the practice of Orientalism. Indeed, so egregious was their approach that Jahar's appellate lawyers dedicated an entire issue of their opening appellate brief to contesting “anti-Muslim bias.” In it, they state the prosecutors' narrative “played to commonly held biases against Muslims: that they are foreign, frightening, and violence-prone” which portrayed “an uncomplicated, simplistic picture of ‘who Dzhokhar Tsarnaev is’: a recalcitrant Muslim zealot, unfazed by his actions, and unable to be contained.”<sup>109</sup>

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<sup>106</sup> Ibid.

<sup>107</sup> “Race and the Death Penalty.” *ACLU*, accessed May 23, 2019. <https://www.aclu.org/other/race-and-death-penalty>

<sup>108</sup> Author's personal observation in the courtroom during Jahar's trial.

<sup>109</sup> United States Court of Appeals for the First Circuit. *Opening Brief for Defendant-Appellate* by David Patton, Deirdre D. Von Dornum, Daniel Habib, Mia Eisner-Grynberg, Anthony O'Rourke. *United States v. Dzhokhar A. Tsarnaev*, Appeal No. 16-6001. Boston, Massachusetts, 2018.

While his lawyers never mention Orientalism, they are tapping into the rich history of stereotypes that define it.

### **Opening Statements: the Prosecution**

The majority of the charges accused Jahar of conspiring and acting with his brother Tamerlan. Because the defense's clear intention was to argue that Tamerlan caused him to act, the prosecution presented a version of Jahar that was, as frequently discussed in the media, "independently involved" in Tamerlan's actions, instead of the result of anything Tamerlan might have done to involve him. The prosecutors sought to portray Jahar as someone on even footing with Tamerlan, a difficult task even at first glance. Tamerlan was taller, larger, and seven years older, a former professional boxer with a history of domestic abuse, having previously been arrested for domestic assault and battery of a girlfriend in 2009.<sup>110</sup> Over the course of the penalty phase, defense witnesses also testified to incidents of Tamerlan's controlling behavior and violent outbursts.<sup>111</sup> Jahar, in contrast, had no criminal record, is slight in stature, and had a lengthy character witness list attesting to his kind and gentle nature. However, from Jahar's alleged "terrorist" interests in the months and years prior to the attacks to his actions on the afternoon of April 15, 2013, and the evening of April 18, 2013, the prosecutors presented him not as his own person, but a nebulous entity that could easily be conflated with his brother. In fact, they encouraged the jury to find Jahar guilty solely on his association with Tamerlan, stating, "So even though Tamerlan Tsarnaev is not here, we will be offering evidence about his

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<sup>110</sup> Cambridge Police Department. *Incident Report #9005495* by Angela Pereira. Domestic A&B, Cambridge, MA, 2009. Personal collection.

<sup>111</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Gina Crawford; testimony of Amanda Ransom; testimony of Judith Russell. Personal collection.

role in these crimes... In the end, it doesn't matter what role each of them played, so long as you find that they were partners and carried out these crimes together.”<sup>112</sup> Days earlier, the prosecutors had filed an unprecedented motion, which the trial judge George O'Toole granted, preventing the defense from even *mentioning* Tamerlan in their case during the guilt phase.<sup>113</sup> This created a situation which enabled the prosecution to use Tamerlan to convict Jahar, but prevented the defense from using Tamerlan, in turn, to defend him. Thus, the prosecutors were able to build a regime of truth about Jahar, that he was a Muslim terrorist who “independently radicalized” and decided to act with Tamerlan, with his own legal counsel powerless to stop them. The resulting portrayal of Jahar in the prosecution's opening statement is wildly inconsistent, stemming from the absence of evidence that he ever planned the attacks or even knew about them beforehand.

Instead, in his opening statements, lead prosecutor William Weinreb tried to turn the *lack* of such facts into evidence of Jahar's guilt: that, because one could not see his outward wickedness, he had to be hiding it on the inside. While describing Jahar on the day of the 2013 Boston Marathon, Weinreb states:

He pretended to be a spectator, but he had murder in his heart, although you wouldn't have known it just to look at him. The defendant looked and acted like a typical young adult, but the evidence will show that he wasn't. He had a side to him that he kept hidden, even from his closest friends. When he was with his friends, he hung out and played video games. But when he was by himself, he read terrorist writings and listened to terrorist lectures. Those writings and lectures convinced him that he should kill innocent Americans in order to punish the United States for mistreating Muslims in other countries. And by doing so, he thought he would earn a place in paradise, which explains what happened next.<sup>114</sup>

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<sup>112</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

<sup>113</sup> United States vs. Dzhokhar Tsarnaev (2015), motion hearing, March 2, 2015. Personal collection.

<sup>114</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

This description, not just of the “murder in his heart,” but that “you wouldn’t have known it just to look at him,” that “he had a side to him that he kept hidden, even from his closest friends” plays into stereotypes of a Muslim threat lurking just out of sight. Not only is the enemy image present, but the notion makes use of both masculine tropes (his alleged thirst for violence) and feminized tropes (he successfully kept it veiled from everyone who knew him). By Weinreb’s account, although Jahar presented as a “typical young adult” in American society, who “hung out and played video games,” in secret he was a radical Muslim fanatic, consuming “terrorist lectures” and “terrorist writings” on the internet, which inspired him to violence. This was the story even though the digital forensic evidence is dubious. As discussed in the previous chapter, the major indicators of Jahar’s “terrorist” activity were a couple of lecture mp3s from Anwar al-Awlaki and a PDF collection of Inspire Magazine. These were harped on by the FBI after his arrest and made an appearance in the court case as well. However, there has been literature criticizing law enforcement’s use of certain Islam-based media as an predictor of violence; for example, Islamic cleric Anwar al-Awlaki’s online sermons.<sup>115</sup> In addition, Jahar’s defense team entered a digital forensic exhibit showing that the majority of these so-called “jihadi” materials were transferred to his laptop by Tamerlan, not a collection he had gathered on his own.<sup>116</sup> Furthermore, the government’s expert witness report, prepared by Evan Kohlmann, addressing the digital forensics of Jahar’s Sony Vaio laptop, suggests that once put there, the Inspire Magazine PDFs were never opened.<sup>117</sup> Kohlmann’s report also indicates that the majority of incidents that show internet browsing and media consumption of a “jihadi” nature on the Sony

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<sup>115</sup> See, for example, Akbar, Amna. “Policing ‘Radicalization.’” *UC Irvine Law Review*, 809 (2013).

<sup>116</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibits 3312-001, 3312-002, 3312-003. Personal collection.

<sup>117</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit C3. Personal collection. It is also debatable whether these publications, media and websites can even be considered “jihadi” or “terrorist” as described, especially considering Kohlmann’s own dubious qualifications as an expert. For more information, see Footnote 199.

coincide with a timeline that pre-dates September 2011, when Jahar took the laptop to college.<sup>118</sup> Before that, it was in wider use by the extended Tsarnaev family, as indicated by the Windows account name of “Anzor,” Jahar and Tamerlan’s father.<sup>119</sup> This makes it difficult to prove Jahar was actually consuming this content. Despite all this, the image presented of Jahar as secret Muslim radical, stockpiling jihadist literature and reading up on ways to plan attacks on innocent Americans, was used by the prosecutors to inspire fear and loathing in the jury.

Furthermore, Weinreb presents a vague and monolithic descriptor when using the word “terrorist,” particularly as an adjective. As discussed by Stampnitzky, here the word takes on a moral component: because the materials were found on the laptop of a person accused of terrorism, they must be “terrorist” in nature. Weinreb also uses this descriptor elsewhere, this time as a noun, when portraying Jahar’s arrival at the Marathon: “He had a backpack over his shoulder, and inside that backpack was a homemade bomb. It was the type of bomb favored by terrorists because it’s designed to tear people apart and create a bloody spectacle.”<sup>120</sup> Weinreb makes no attempt to define who the “terrorists” are, what their affiliation is, nor even what their goals are aside from causing a “bloody spectacle.” This plays into the discourse of terrorists as irrational and incomprehensible, as defined by Stampnitzky: “In the ‘new terrorism’ discourse . . . terrorists were less understandable, more unpredictable, and more dangerous than ever before.”<sup>121</sup> Furthermore, it implies, without providing evidence, that there is some marketplace of ideas for “terrorists” to hang out and discuss favored IEDs. Given the heavy emphasis on internet

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<sup>118</sup> Ibid.

<sup>119</sup> Ibid.

<sup>120</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

<sup>121</sup> Lisa Stampnitzky, *Disciplining Terror: How Experts Invented 'Terrorism'*. Cambridge: Cambridge University Press, 2013.

“radicalization,” Weinreb’s language suggests that there is a Yelp review site out there for jihadists – not only emphasizing the monolithic threat of Islam, but harping on the notion that they’re lurking just on the other side of an everyday tool like the internet. In fact, this is reflected in one of the several versions of events presented by agents Hughes and Dowd. In the first FBI 302 after Jahar’s hospital interrogation, they claim “JAHAR and his brother looked up the instructions on how to make the device on the internet by searching for the word ‘bomb.’”<sup>122</sup> This ignores just how many hits an internet search for such a word would yield (on Google, as of this writing in May 2019, the number is 612,000,000), and implies a Muslim male’s internet searches would magically lead him to the aforementioned “terrorist” sites.

This monolithic concept of a “terrorist” is repeated yet again when Weinreb speaks about motive and how Jahar became “radicalized:”

He believed that punishing America by killing innocent young women and children would cause America to stop targeting Muslim terrorists overseas and help win him a spot in heaven. And you will hear evidence of how he acquired that belief. He acquired it by reading books, listening to songs, and watching videos that were created by other terrorists, and they convinced him that he should become a terrorist too.”<sup>123</sup>

In this simplistic version of events, there is a well of “terrorist” knowledge out there that Muslims can tap into just by reading books, listening to songs, and watching videos. Of course, these “materials” taught him how to act in accordance to the tropes of Oriental masculinity, and to particularly target “young women and children.” This is reflective of the Bush administration’s justification for wars of liberation in the Middle East, as discussed by Nayak: “After 9/11, the US government, the media and ‘experts’ collaborated to signify the oppression

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<sup>122</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

<sup>123</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

of Arab/Muslim women as the categorical proof of Islamic terror, and women accordingly became a central point of the war on terror,” and even though that their methods received criticism, “Few doubt the inherently beneficial goal of ‘freeing’ women from the religious and cultural oppression of Islam, regardless of the US governmental role in creating some of the conditions for such oppression or of the particular political and historical specificities of the oppression.”<sup>124</sup> Additionally, Nayak notes that in the president’s speeches, “Bush names only categorically oppressed women and children in brothels as the victims of ‘evil’, showing an interest not in building on the international community’s work to stop [sex] trafficking but in extending a discourse about fear and immorality.”<sup>125</sup> Weinreb’s rhetoric in opening arguments did this same work, casting Jahar as a maddened Muslim male who specifically targeted women and children at the Boston Marathon.

There is also an interesting shift in whom Jahar allegedly acted to defend. In the suspect interviews with Hughes and Dowd, the focus was on the “innocent people” dying in Muslim countries like Iraq, Afghanistan, Syria and Chechnya. In Weinreb’s retelling, these civilians have transformed into “Muslim terrorists,” so that not only is Jahar cast as a terrorist, but anyone he might find common cause with is as well. This version of Jahar possesses no empathy or humanity; he lives only for the monolithic “terrorist” cause – and anyone he could possibly sympathize with must be a terrorist too. This logic not only envisions an Orientalist East, but an Islamophobic one as well – full of nothing but Muslim terrorists who hate America’s freedoms.

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<sup>124</sup> Meghana Nayak, “Orientalism and ‘saving’ US state identity after 9/11,” *International Feminist Journal of Politics*, 8:1 (2006), 42-61.

<sup>125</sup> Ibid.

Furthermore, in his opening statements, Weinreb fabricates details that don't exist on the court record and even misrepresents events that occur in exhibits entered into evidence. For example, in his opening statement, he describes an occurrence captured on surveillance video outside the Forum restaurant on Boylston Street, where Jahar was standing at the time of the first explosion: "A few seconds after that [first explosion], the defendant walked briskly back the way he had come, leaving his own bomb behind him on the ground. When he was a safe distance away, he detonated the bomb by remote control."<sup>126</sup>

This version of events is quite damning for Jahar. It describes a cold, calculated individual personally responsible for a bomb detonation. It also echoes earlier press coverage from April 18-19, 2013, when the FBI first released the suspect photos of Tamerlan and Jahar; one such outlet was the *New York Times*, which reported, "According to officials, when the blasts went off, most people fled in panic, but these two did not and instead walked away slowly, almost casually."<sup>127</sup> However, the matching exhibit depicts something quite different. While compacted in a large crowd, Jahar gives no indication he is aware a bomb is about to go off. He, like those around him, does not move when the first blast occurs off frame to the left.<sup>128</sup> Afterward, he takes no actions that could be described as "casual." He jumps a few steps backward, wavers for a few seconds, and looks in several directions before leaving – along with plenty of others around him, reacting in identical confusion to the explosion.<sup>129</sup> He is also still within frame when the second blast goes off. No detonator is visible, and this is hardly a "safe

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<sup>126</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

<sup>127</sup> Katharine Q Seelye, Michael Cooper, Michael S. Schmidt, "F.B.I. Posts Images of Pair Suspected in Boston Attack." *New York Times*, April 19, 2013.

<sup>128</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit 22. Personal collection.

<sup>129</sup> Ibid.

distance.” He is then seen running from the scene with the multitudes of people around him, indistinguishable from other victims.<sup>130</sup> This, plus the lack of forensics revealing a second bomb detonator (and the first only containing Tamerlan’s prints), not only contests Weinreb’s assertion, but offers a chilling alternate possibility: that Tamerlan detonated a bomb in close proximity to his own brother, with no care for whether Jahar would be hurt or killed. This, however, would not fit into the narrative as presented by Weinreb, because not only would it garner sympathy for Jahar, but it would require observers to believe that Jahar could be a victim of his older brother instead of his accomplice. Given the Orientalist narrative being constructed, Jahar’s only role could be that of a fellow Muslim zealot.

Finally, Weinreb ascribes militant language to the motive, claiming that Jahar “believed that what he had done was good, was something right” because he was “a soldier in a holy war against Americans” and thought that by bombing the Marathon, “he had won an important victory in that war.”<sup>131</sup> Weinreb’s language divides the world into the Orientalist false binary of East and West, reinforces the notion that Islam is at “war” with the West, particularly America. Furthermore, according to Weinreb, Jahar “believed that by winning that victory, he had taken a step toward reaching paradise.”<sup>132</sup> This plays into existing Orientalist stereotypes about Muslim terrorists, that they are fueled by fanatical religious fervor, and thus their violence is directly linked to securing a place in the afterlife.

Thus, the process of Jahar’s supposed “radicalization” became a centerpiece of the trial, and how he “acquired that belief” played most importantly toward weighing his guilt or his

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<sup>130</sup> Ibid.

<sup>131</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

<sup>132</sup> Ibid.

innocence – even though, in actuality, he was never allowed to be innocent. There was no debate over *whether* he believed these things; that conclusion was foregone. The trial became a bizarre drama of thought crime, hinging upon *who* or *what* radicalized him. The prosecutors argued that he “self-radicalized” – by himself, over the internet, eagerly consuming “jihadist propaganda” to feed the roots of his Muslim rage. The defense had a different take, but one that was no less problematic.

### **Opening Statements: the Defense**

The defense team argued that his older brother Tamerlan radicalized him, and Jahar blindly followed out of love and obligation due to their foreign Chechen “culture.” From a legal perspective, this is not a valid defense. There is no legal statute that allows for innocence on account of cultural differences – unless it can be proven those cultural differences resulted in an “honest mistake of fact;” that is, a perception of reality that did not include a criminal intent.<sup>133</sup> Even a duress defense, which seems to best fit the circumstances of this case, focuses on the lack of criminal intent in a defendant who commits a crime under threat or coercion.<sup>134</sup>

Jahar’s defense team did not claim his intent was not criminal. Instead, they claimed Tamerlan’s influence on Jahar was so strong he was made to think bombing the Boston Marathon was a good idea. As a result, this approach infantilized a defendant, who was nineteen at the time of the crimes, to a point which strained credulity. Furthermore, the defense’s strategy echoed precisely the FBI’s initial Orientalist take on motive that circulated in the media starting

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<sup>133</sup> Personal consultation with a criminal defense lawyer.

<sup>134</sup> Ibid.

April 19, 2013. It is interesting that the prosecutors abandoned the FBI's own explanation for motive, preferring a version that left no ambiguity about Jahar's culpability – thus providing sufficient justification for a death sentence. However, it is even more interesting that Jahar's defense counsel fed the Orientalist regime of truth instead of attempting to fight it. Fighting this image is the work being currently done by his lawyers on appeal. One of the many legal challenges in the 1000+ page brief includes failure to change the venue of the trial, which argues that the nature of the pretrial publicity about Jahar poisoned the jury pool against him and prevented him from receiving a fair trial in the city of Boston.<sup>135</sup> It also argues not just presumed prejudice in the jury pool, but actual prejudice within the jurors seated. For example, Juror 286, who served as the foreperson, lied about being in the lockdown in her Dorchester home on April 19, 2013. Furthermore, she “concealed Twitter posts in which she mourned the victims of the bombings, praised the law enforcement officers who captured Tsarnaev—several of them trial witnesses—and called Tsarnaev a ‘piece of garbage.’”<sup>136</sup> A second juror, number 138, went against instructions from the trial judge not to discuss the case, wrote about it on Facebook, and then “falsely told the Court and the parties that he had not.” On Facebook, a friend “urged him to ‘play the part,’ ‘get on the jury,’ and send Tsarnaev ‘to jail where he will be taken care of’.”<sup>137</sup> Jahar's trial counsel knew of these incidents and used them to request a venue change outside Boston, and when that didn't work, to remove the aforementioned jurors. However, Judge

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<sup>135</sup> United States Court of Appeals for the First Circuit. *Opening Brief for Defendant-Appellate* by David Patton, Deirdre D. Von Dornum, Daniel Habib, Mia Eisner-Grynberg, Anthony O'Rourke. *United States v. Dzhokhar A. Tsarnaev*, Appeal No. 16-6001. Boston, Massachusetts, 2018.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid.

O'Toole denied all requests. In particular, he called the evidence of jury prejudice “speculative” and “collateral.”<sup>138</sup>

Given these circumstances, the trial defense team must have known they were playing to a hostile jury, and thus did everything they could to tap into existing prejudices in a way that might spare Jahar's life. This, plus the moratorium on even mentioning Tamerlan, the alleged co-conspirator, forced them to use the prosecution's own Orientalist framework to argue their side of the case. For example, in Judy Clarke's opening statement, also on March 4, 2015, she states, “For the next several weeks, we're all going to come face to face with unbearable grief, loss, and pain caused by a series of senseless, horribly misguided acts carried out by two brothers: 26-year-old Tamerlan Tsarnaev and his younger brother, 19-year-old Jahar.”<sup>139</sup> At the get-go, she represents the events at the 2013 Boston Marathon as “senseless” and “horribly misguided,” as if they were done by children who didn't know any better. She also catastrophizes the attacks by using the words “unbearable grief, loss and pain,” playing into the notion of US state identity that crimes committed by Muslim males cause damage on the civilizational level. The statement places equal blame on both Tamerlan and Jahar, exactly as the prosecutors argued the jury *should* consider the crimes.

However, instead of the prosecutors' image of Jahar's unbridled Muslim masculinity, the defense presented an extended version of the FBI training manual's archetype of a feminized “impressionable recruit” radicalized by a “charismatic recruiter.” In her opening statements, Clarke goes on to say:

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<sup>138</sup> Ibid.

<sup>139</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of Judy Clarke, Lead Defense Attorney, District Court of Massachusetts. Personal collection.

After their pictures were on television and on the Internet, Tamerlan and Jahar went on a path of devastation the night of April the 18th, leaving dead in their path a young MIT police officer and a community in fear and sheltering in place. Tamerlan held an unsuspecting driver, Dun Meng, at gunpoint, demanded his money and compelled him, commanded him, to drive while Jahar followed behind.<sup>140</sup>

This section continues the work of the previous sentence, describing the alleged actions of Jahar and Tamerlan in according with the Islamophobic enemy image: “path of devastation,” “leaving dead in their path,” and “a community in fear and sheltering in place” all imply the actions of two people who somehow managed to paralyze an entire metropolitan area, even though the order to shelter in place didn’t occur until the following morning. Additionally, the description makes use of the trope which characterizes Tamerlan as the out-of-control, overbearing force, using words like “unsuspecting,” “compelled” and “commanded” to describe his interaction Dun Meng – and Jahar is inserted into the image as someone who meekly “followed behind.”

This characterization of Jahar as the lost child trailing behind his brother’s carnage begins a trend in Clarke’s monologue. The sentiment is repeated several times throughout the rest of the opening statements. For example, she states, “It was Tamerlan Tsarnaev who self-radicalized. It was Jahar who followed him,” “The evidence will not establish, and we will not argue, that Tamerlan put a gun to Jahar’s head or that he forced him to join in the plan, but you will hear evidence of the kind of influence that this older brother had,” and “You’ll see from the evidence that Tamerlan had a special kind of influence dictated by his age, their culture, and Tamerlan’s sheer force of personality.”<sup>141</sup> All of these statements construct a confusing picture of Jahar: one who is infantilized enough to have been “influenced” in a “special” way by his brother through “his age, their culture, and Tamerlan’s sheer force of personality,” but one who is still culpable

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<sup>140</sup> Ibid.

<sup>141</sup> Ibid.

for the crimes because Tamerlan did not “put a gun to Jahar’s head” nor “forced him to join in the plan.” The rhetoric used by Clarke is a clash of both masculine and feminine Orientalist tropes, presenting Jahar as a Muslim male who embraces violence, but only because the otherness of his “culture” removes his agency so that he can’t think like an enlightened member of the West. This is reinforced a final time in Clarke’s conclusion to her opening statement:

They committed the acts in April of 2013 that led to death and destruction, and they are inexcusable and for which Jahar must be held responsible. But he came to his role by a very different path than suggested to you by the prosecution: a path born of his brother, created by his brother, and paid by his brother. And unfortunately and tragically, Jahar was drawn into his brother’s passion and plan, and that led him to Boylston Street.  
<sup>142</sup>

All of this stands in stark contrast to evidence on the court record that could have told a different story, including that Tamerlan was the only one to possess a firearm,<sup>143</sup> thus making it possible that Tamerlan *did*, at some point, hold a gun to Jahar’s head. For the regime of truth, however, facts do not matter.

Both sets of opening statements had an immense effect on the production of knowledge regarding the Boston Marathon bombing and how Jahar was perceived to be a part of it. These Orientalist tropes would then be hammered home by the prosecution through the use of “expert witnesses,” particularly the ones employed to talk about Jahar’s “radicalization.”

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<sup>142</sup> Ibid.

<sup>143</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Chris Donahue. Personal collection.

## **Part B: The Prosecution's Expert Witnesses Legitimize the Regime of Truth**

### **Expert Witness Testimony: Matthew Levitt**

Despite harping on religious radicalization as motive, the only expert witness called to the stand by the prosecutors to discuss the “radicalization” process was Dr. Matthew Levitt. Levitt is a former FBI consultant on terrorism, holding a PhD in political science from Tufts University. He is a fellow at the Washington Institute for Near East Policy, a think tank that, despite being described by him as “non-partisan” and “educational”<sup>144</sup> was flagged by Stampnitzky in *Disciplining Terror* as being “right wing.”<sup>145</sup> It was founded in 1985 by a member of AIPAC and has been criticized as having strong interests in advancing the pro-Israel lobby in the United States.<sup>146</sup>

While testifying on March 23, 2015, Levitt stated he has no special knowledge of Islam as a religion, and his regional area of expertise lies with the militant groups of Hezbollah in Lebanon and Hamas in Palestine. Despite this, the prosecutors called upon him to discuss the intimate details of how a generic Muslim “radicalizes” into a terrorist, as well as the regional history of Jahar’s birthplace, Chechnya. The standard for determining whether a witness qualifies as an expert in a federal court case is known as the Daubert standard, which states that the expert must represent the scientific consensus of the relevant discipline, but that the trial judge acts as a

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<sup>144</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dr. Matthew Levitt. Personal collection.

<sup>145</sup> Lisa Stampnitzky, *Disciplining Terror: How Experts Invented 'Terrorism'*. Cambridge: Cambridge University Press, 2013.

<sup>146</sup> Stephen M. Walt, “Robert Satloff Doth Protest Too Much.” *Foreign Policy*, April 9, 2010. <https://foreignpolicy.com/2010/04/09/robert-satloff-doth-protest-too-much/>

gatekeeper.<sup>147</sup> In Jahar's case, despite objections from the defense, Judge O'Toole decided Levitt met the requirements of the Daubert standard. Levitt's testimony is laden with Islamophobic tropes that serve to further the prosecution's Orientalist narrative, lending further credence to their regime of truth as he presents himself as an expert in the field.

First, he furthers Islamophobic stereotypes, even as he tries to portray a modicum of tolerance and inclusivity when discussing the religion of Islam. For example, he states:

And the fact is that Islam is not terrorism full stop, and the fact is that all religions have the capability for extremism, but the fact is that today the radicalization that we are seeing kind of as almost a global insurgency is happening in the name of Islam; not in the name of the Islam practice by the vast majority of Muslims, but it's happening in the name of Islam, and the twisting of certain Islamic concepts.<sup>148</sup>

This is the first of many instances in which he tries to paint himself as free from prejudice by leading with phrases such as “the fact is that Islam is not terrorism full stop” and “the fact is that all religions have the capability for extremism.” However, he immediately undercuts that by adding “but the fact is that today the radicalization that we are seeing kind of as almost a global insurgency is happening in the name of Islam.” After trying to dispel the myth that Islam and terrorism are linked, and trying to frame Islam as one of many world religions that can generate extremists, making his view seem more moderate, he continues into an assertion that Islam is leading a “radicalization” effort on the scale of a “global insurgency.” This notion of a global, civilizational threat from Muslims presents Islam as a monolithic threat to the West. Even as he tries to claim this is not the mainstream opinion of “the vast majority of Muslims,” he mentions this “global” network is working “in the name of Islam” and is “twisting” existing “Islamic

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<sup>147</sup> “Daubert Standard.” *Legal Information Institute, Cornell University*.  
[https://www.law.cornell.edu/wex/daubert\\_standard](https://www.law.cornell.edu/wex/daubert_standard)

<sup>148</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dr. Matthew Levitt. Personal collection.

concepts” – with the underlying assumption being that Islam possesses concepts that are easy to twist.

Over the course of his testimony, Dr. Levitt makes several statements about regular Muslim practices and radicalized individuals, then never defines the difference between the two, nor the line where one supposedly gives way to another. The overall effect of these repetitive claims is the erasure of the alleged line drawn between “normal” and “radicalized” Muslims, making it impossible to know which is which. He merely repeats on that outwardly respectful adage: “As I said earlier, you know, Islam does not equal terrorism full stop. I can’t stress that enough,” and in the next breath adds, “But this particular set of radicalized ideologies is an extremist variation of Islamic concepts.”<sup>149</sup> He continues this by trying to qualify that radicalizing factors aren’t exclusive to Islam: “Now, mind you, of course, it doesn’t have to be a deviation of Islam. It doesn’t have to be radical Islamist ideology, right?”<sup>150</sup> but then identifies traditional Muslim music as “nasheeds, which are like devotionals — which can be devotional in a purely, you know, religious way, but many radical Islamist groups use them to — in singing a song to some type of percussion music promoting dangerous radical, explicitly violent ideas.”<sup>151</sup> He also sums up a long explanation about the history of “global jihadism” by saying, “Those are critical concepts for moving someone beyond traditional Islam to this radical Islamist ideology that says that there is an obligation to engage in jihad against the enemy” but later claims, “again, let’s not associate this with traditional Islam.”<sup>152</sup> Therefore, any sign that Jahar is a Muslim, by Levitt’s logic, also exists as a sign, or at least a suspicion, that he is a *radicalized* Muslim. This was

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<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> Ibid.

<sup>152</sup> Ibid.

advantageous for the prosecution, because although they possessed scant evidence that Jahar was involved in the crimes for which he was on trial, they had plenty of evidence that he is a Muslim.

Levitt also espouses the “new terrorism discourse” as identified by Stampnitzky, warning the jury about the unpredictability of the radicalization process of these Muslims: “The problem that we have nowadays ... is that the pace of radicalization is much, much faster, the time period is much, much shorter over the past few years than we have seen in the past.” In fact, he claims, a Muslim experiencing “short-term immersion of just a few particularly inspiring pieces of radicalization written, audio, video will be enough.”<sup>153</sup> The implication here is that the uncontrollable masculinity of a Muslim male contains such a propensity for violence that it won’t take much to set him spiraling off into violence. Levitt provides no statistics nor studies to back up these claims, but his rhetoric also matches the unpredictability in Stampnitzky’s new terrorism discourse by implying that when one least expects it, a Muslim might see an errant piece of internet propaganda and be ready to strike. Again, this is a convenient finding for the prosecution, who possessed little to no evidence Jahar was actually reading any “jihadist propaganda” – but if it takes almost nothing to set him off, that makes their burden of proof all the lower.

Second, Levitt perpetuates several unverified claims about Chechnya and its role in the “global jihadist movement,” most of which draws upon an existing regime of truth regarding the Russian-Chechen conflicts. As with all Bush era intelligence extracted via torture,<sup>154</sup> what is

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<sup>153</sup> Ibid.

<sup>154</sup> See, for example, Charles R. Church, “What Politics and the Media Still Get Wrong About Abu Zubaydah.” *Lawfare*. August 1, 2018. <https://www.lawfareblog.com/what-politics-and-media-still-get-wrong-about-abu-zubaydah>. Zubaydah was classified as a “high value detainee” and after his capture was touted by the Bush administration as one of al-Qaeda’s “top operatives.” He provided information under torture that his legal team now assert to be entirely false. The CIA has since conceded that Zubaydah is not a member of al-Qaeda, but as of May 2019, he remains detained without trial in Guantanamo.

known about Chechnya's role in "international Islamic terrorism" is highly suspect. For example, Levitt is asked by prosecutor Alope Chakravarty to explain Chechnya's relationship to the "global jihad movement," to which Levitt monologues:

When the Soviet Union fell, the Republic of Chechnya rebelled. And there were two distinct wars in the 1990s. Within these, there also grew a jihadi element. And Chechnya became a prominent rallying cry for the jihadists. Not all of this war was jihadi; there were Chechens who were rebelling against the new Russia and they weren't jihadis. But the jihadists used this as a platform. And many key jihadists tried to go to Chechnya. Many did. Some current al-Qaeda leaders tried to go and made it close but didn't get all the way there, but the fact that they were trying to get there shows how prominent it was at the time in the jihadi landscape. And it has continued to be ever since one of many foreign conflicts that jihadis have taken for themselves, whether it was originally theirs or not, to use to radicalize people. Look what the infidels, in this case the Russians, are doing to Muslims, in this case in Chechnya.<sup>155</sup>

In this rambling account of post-Soviet Chechnya, there are a number of troubling assertions.

First is the glossing over of the colonial legacy inherent in the Russian-Chechen relationship, as well as the framing of the Chechen wars not as a struggle of independence, but as Chechnya as a region that merely "rebelled." Next is the frequent use of the words "jihadist" and "jihadi" without providing context for who these mysterious shadowy figures are – reminiscent of the abstract "terrorist" descriptor used by prosecutor Weinreb in his opening statements. The use of such interchangeable terms reinforces an Orientalist narrative by defining whole swaths of people as unknown others. This also casts a moral judgment on them, as Stampnitzky describes: they're Muslims and they fight against the Western powers, therefore they must be jihadists, jihadis, terrorists. The situating of the Chechen independence movement within a "global terrorism network" is particularly complicated, as Russia as an imperial power has long had a contentious relationship with the "West." However, at the time of the start of the War on Terror,

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<sup>155</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dr. Matthew Levitt. Personal collection.

President Vladimir Putin was facing international criticism for human rights abuses committed against civilians during the second Chechen war, an operation he himself had touted as an “anti-terrorism operation.” Therefore, the United States and Russia had mutual interests in uniting to fight against “international terrorism” – and, thereby doing so, Putin was able to brush aside the criticisms of abuse, as with the Bush administration’s support, the radical Muslim threat on the international stage was simply something that had to be dealt with.

Although US and Russian cooperation has tapered off in the years since, the perception of Chechen rebels as Muslim terrorists, particularly in certain intellectual circles, has persisted. This accounts for Levitt’s vague claim that “some current al-Qaeda leaders tried to go and made it close but didn’t get all the way there” – likely a variation of some oft-repeated myths: that Chechen militia leader Shamil Basayev had ties to al-Qaeda,<sup>156</sup> that his foreign compatriot Commander Khattab was Osama bin Laden’s right hand man,<sup>157</sup> and that prominent al-Qaeda leader Ayman Zawahiri tried to sneak into Chechnya in 1996, only to be detained in Dagestan.<sup>158</sup>

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<sup>156</sup> In 2002, the United States designated Basayev as a member of an international terrorist group for his “ties to al-Qaeda.” However, this is an oft-repeated but unverified claim utilized by President Vladimir Putin, usually as a deflection from criticisms about the Russian government’s human rights abuses in Chechnya. Despite proof, US policy analysts often echo this sentiment, even when critical of maintaining a permissive attitude toward Russia’s actions in Chechnya. See, for example, Dmitri V. Trenin, “The Forgotten War: Chechnya and Russia’s Future.” *Carnegie Endowment for International Peace*, November 28, 2003.

<sup>157</sup> Khattab was a mysterious figure in Chechnya’s resistance movement, an associate of Basayev, and the only non-Chechen to gain prominence fighting on the Chechen side during the wars. His real name and origin remain unknown, although some accounts assert he hailed from Jordan or Saudi Arabia. He seems to be a favorite example of Western “experts” when claiming the “radical Islamic” threat is transnational, and might be why Basayev was thought to have al-Qaeda ties. However, the only account I could find linking Khattab and bin Laden comes from one article in *Asharq al-Shawat*, a London based newspaper owned by the Saudi royal family with disputed neutrality, quoted in Fawaz A. Gerges, *The Far Enemy: Why Jihad Went Global*, New York, NY: Cambridge University Press, 2005.

<sup>158</sup> Sourcing for this account is spotty as well, with a 2002 *Wall Street Journal* article claiming it was previously unknown to anyone but “Islamist chieftains” and thus why it was not reported at the time it occurred. The article relies heavily on the word of Russian officials, and the only named individual who supposedly interacted with Zawahiri told the paper he did not remember the incident. Alan Higgins and Alan Cullison, “Terrorist’s Odyssey: Saga of Dr. Zawahiri Illuminates Roots Of al Qaeda Terror --- Secret, Failed Trip to Chechnya Turned Key Plotter’s Focus To America and bin Laden --- Sojourn in a Russian Prison,” *Wall Street Journal*, July 2, 2002.

Nevertheless, according to Levitt, the attempted journey “shows how prominent it was at the time in the jihadi landscape.” Again, this reinforces the Islamophobic view that all Muslim rebel groups comprise a vast global network, even when scholarship on the North Caucasus estimates the presence of foreign fighters during the Chechen wars was actually quite small, likely no more than 300.<sup>159</sup>

Therefore, the notion that the Chechen independence movement has become “one of many foreign conflicts that jihadis have taken for themselves” is dubious, as it doesn’t define the conflict, nor the supposed “jihadis,” nor explains how it was “taken for themselves” – except when viewed through the Orientalist prism that Chechnya *could* have been a Western democracy, and instead was snatched away by the radical Islamic east. However, this is not true either, as Russia retained control over Chechnya and has been ruling it since the mid-2000s through a brutal strongman. No such context is provided by Levitt; he is entirely focused on the so-called “jihadi element” – one that, ostensibly, would explain to an easily swayed jury why a defendant of Chechen Muslim heritage might be radicalized to violence.

### **Jahar’s Boat “Confession” and Its Many Iterations**

A particularly damning piece of evidence used by the prosecution against Jahar was a “note” he wrote on the walls of the boat in which he was hiding on April 19, 2013. These statements were not only touted by the prosecutors in the opening statements as evidence of his guilt and radicalization, but were later discussed by expert witness Matthew Levitt and

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<sup>159</sup> Emil Souleimanov and Ondrej Ditrych, “The Internationalisation of the Russian-Chechen Conflict: Myths and Reality,” *Europe-Asia Studies*, 60:7 (September 2008), 1199-1222.

legitimized as a “jihadi” manifesto. In the opening statements, prosecutor Weinreb proclaims: “How do we know that [the motive]? We know it in part because the defendant wrote out an explanation of why he committed these crimes. The police found that writing when they arrested him, and you will see it later on in court.”<sup>160</sup> Conveniently for Weinreb, not only is the prosecution’s version of Jahar a radicalized Muslim terrorist, he is one who thoughtfully wrote out the motives for his crimes while waiting to be captured.

This writing was presented to the jury as a manifesto, even though it is a brief and highly inconsistent mashup of innocuous Islamic prayers and incriminating statements. It was denied an explanation of the context in which Jahar wrote it: sometime after being shot by law enforcement the first time, and sometime before being shot by law enforcement the second time, as evidenced by the blood and bullet holes that adorn the exhibit photos.<sup>161</sup>

Before analyzing the role of the boat note in the court case, the statements must be placed in their proper context, as they have never before been presented as anything but irrevocable proof of Jahar’s radicalization and guilt – and in fact was circulated in the media as such, with false attributions of what was written, long before the start of the trial.

It is unknown for certain exactly when Jahar wrote these statements. However, his arrest occurred after a reported three hour “standoff” with a multitude of officers from several law enforcement agencies. A precise number is not known, but a report from the Massachusetts Emergency Management Association (MEMA) estimates that “within 12 hours of the initial firefight with the two suspects, over 2,500 federal, state, and local officers converged on

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<sup>160</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

<sup>161</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibits 826, 827, 828. Personal collection.

Watertown”<sup>162</sup> with little in the way of instructions or oversight. When word spread that Jahar had been found in the boat, many of them “self-deployed” to the scene.<sup>163</sup> The operation was overseen by the FBI<sup>164</sup> and a negotiator provided by the FBI’s Crisis Negotiating Unit.<sup>165</sup> By then, Jahar had spent nearly twenty-four hours hiding without food, water, a bathroom, or medical treatment. At some point, law enforcement threw flash bang grenades into the boat as an attempt to disorient him.<sup>166</sup> Then, at another, according to the MEMA report, “An officer fired his weapon without appropriate authority in response to perceived movement in the boat, in turn causing many officers to fire at the boat in the belief that they were being shot at by the suspect.”<sup>167</sup> As a result, law enforcement fired over 100 bullets into the boat,<sup>168</sup> although Jahar was unarmed.<sup>169</sup> However, the notion that he had been armed persisted until April 24th, when the *Washington Post* broke the story that this was not true. The *Post* article states that at first, “police officials said he had fired from the boat and he was reported to have been captured with several weapons” and that the gunshot wound to his jaw “might have been an attempt to kill himself as

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<sup>162</sup> Massachusetts Emergency Management Association, “After Action Report for the Response to the 2013 Boston Marathon Bombings.” April 3, 2015. <https://www.mass.gov/files/documents/2016/09/uz/after-action-report-for-the-response-to-the-2013-boston-marathon-bombings.pdf>

<sup>163</sup> Ibid.

<sup>164</sup> Sari Horwitz and Peter Finn, “Officials: Boston suspect had no firearm when barrage of bullets hit hiding place.” *The Washington Post*, April 24, 2013. [https://www.washingtonpost.com/world/national-security/officials-boston-suspect-had-no-firearm-when-barrage-of-bullets-hit-hiding-place/2013/04/24/376fc8a0-ad18-11e2-a8b9-2a63d75b5459\\_story.html](https://www.washingtonpost.com/world/national-security/officials-boston-suspect-had-no-firearm-when-barrage-of-bullets-hit-hiding-place/2013/04/24/376fc8a0-ad18-11e2-a8b9-2a63d75b5459_story.html)

<sup>165</sup> Janet Reitman, “Jahar’s World.” *Rolling Stone*, July 17, 2013. <https://www.rollingstone.com/culture/culture-news/jahars-world-83856/>

<sup>166</sup> United States vs. Dzhokhar Tsarnaev (2015), Testimony of Francis Hughes. Personal collection.

<sup>167</sup> Massachusetts Emergency Management Association, “After Action Report for the Response to the 2013 Boston Marathon Bombings.” April 3, 2015. <https://www.mass.gov/files/documents/2016/09/uz/after-action-report-for-the-response-to-the-2013-boston-marathon-bombings.pdf>

<sup>168</sup> Denise Lavoie, “Watertown Shootout Detailed In Boston Bombing Trial; Jury Sees Boat Where Tsarnaev Hid.” *WBUR*, March 16, 2015. <https://www.wbur.org/news/2015/03/16/dzhokhar-tsarnaev-jury-boat>

<sup>169</sup> Sari Horwitz and Peter Finn, “Officials: Boston suspect had no firearm when barrage of bullets hit hiding place.” *The Washington Post*, April 24, 2013. [https://www.washingtonpost.com/world/national-security/officials-boston-suspect-had-no-firearm-when-barrage-of-bullets-hit-hiding-place/2013/04/24/376fc8a0-ad18-11e2-a8b9-2a63d75b5459\\_story.html](https://www.washingtonpost.com/world/national-security/officials-boston-suspect-had-no-firearm-when-barrage-of-bullets-hit-hiding-place/2013/04/24/376fc8a0-ad18-11e2-a8b9-2a63d75b5459_story.html)

police moved in.”<sup>170</sup> This suggests that law enforcement operated on the assumption that Jahar, as a Muslim male, was heavily armed and even eager to die. Therefore, despite the presumed negotiation, genuine communication between law enforcement and Jahar was likely not attempted, or they would have been able to ascertain sometime in that three hour window that he did not pose a threat.

Unfortunately, no transcript between the FBI negotiator and Jahar exists, so it is unclear what might have been said to him and vice versa. However, in the 2016 report recommending best interrogation practices to the HIG, the FBI states that standard law enforcement interrogation techniques are interchangeable with negotiation tactics, and invokes a method called the “Cylindrical Model”:

The three-dimensional Cylindrical Model of *sensemaking* provides a way to understand a subject’s resistance and a method to make a resistant subject more cooperative. The Cylindrical Model is based on research that shows successful negotiations and interrogations can be understood in terms of the extent to which the interrogator and subject are ‘in sync;’ that is, how they align their dialogue over the course of the interaction. The framework of the Cylindrical Model and research on resistance and counter-resistance provides a roadmap for transitioning a subject being resistant to being cooperative.<sup>171</sup>

This model measures negotiation success on a metric of how much the language of a suspect changes to match that of the negotiator. Besides the hospital confession discussed in the previous chapter, the boat writing is the only recorded incident in which Jahar espouses so-called “jihadist ideology” – several lines of which embody the very same gendered Orientalist tropes, and echo both the sentiments circulating in the media before his arrest and the hospital confession later extracted by FBI agents Hughes and Dowd. These statements were even characterized as a

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<sup>170</sup> Ibid.

<sup>171</sup> High Value Detainee Interrogation Group, “Interrogation: A Review of the Science.” *FBI*. September 2016. <https://www.fbi.gov/file-repository/hig-report-interrogation-a-review-of-the-science-september-2016.pdf>

“confession” in early press coverage,<sup>172</sup> and reportedly were written “as police closed in on him,”<sup>173</sup> hardly an ideal time to pen a voluntary manifesto. The common denominator of these two confessions is interaction with law enforcement, namely the FBI. Both sets of statements were written while Jahar was in an extremely vulnerable position: in the hospital while potentially narcotized and denied access to legal counsel, and in the boat while having dozens of guns pointed at him.

The full transcription of the boat “confession” did not become available until Jahar’s 2015 trial.<sup>174</sup> Even so, early media coverage of the bombing aftermath attributed statements to the boat writing that do not appear in the text, including that Jahar called the Marathon bombing victims “collateral damage”<sup>175</sup> and that he described Tamerlan as a “martyr in paradise.”<sup>176</sup> The writing itself does not mention any specific crimes, only the vague “our actions,” and does claim, “I’m jealous of my brother” who had been given “the reward of jannutul Firdaus (inshallah) before me.”<sup>177</sup> However, at the time Jahar was writing, he would have had no access to news coverage to know his brother had indeed died. In fact, he asked about Tamerlan’s status both to paramedics transporting him to the hospital<sup>178</sup> and to FBI agents Hughes and Dowd during his bedside interrogation.<sup>179</sup> The only ones who could have provided information about Tamerlan’s death while Jahar was still in the boat is law enforcement, furthering the idea of contamination in his written statements.

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<sup>172</sup> Richard Serrano, “Dzhokhar Tsarnaev indicted on 30 counts in Boston Marathon bombing,” *McClatchy - Tribune News Service*, June 27, 2013.

<sup>173</sup> Kevin Cirilli, “Report: Tsarnaev’s confession note,” *Politico*, May 16, 2013.

<sup>174</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit 830. Personal collection.

<sup>175</sup> Kevin Cirilli, “Report: Tsarnaev’s confession note,” *Politico*, May 16, 2013.

<sup>176</sup> *Ibid.*

<sup>177</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit 830. Personal collection.

<sup>178</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Laura Lee. Personal collection.

<sup>179</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

It's difficult to tell whether this misinformation in the press is the result of law enforcement sources so confident about the rhetoric of Muslim terrorists they didn't feel the need to give accurate quotations, or if the journalists themselves were adding their own colorful interpretations to Jahar's alleged statements. A particularly bizarre example of media coverage straddling this line is a passage from the July 2013 *Rolling Stone* article, at the time considered so controversial for "humanizing" Jahar that several outlets in the city of Boston refused to sell it.<sup>180</sup> Despite the backlash against supposedly portraying him in a sympathetic light, the issue's cover ran with the words "THE BOMBER" emblazoned below his photo,<sup>181</sup> and the subtitle of the article, called "Jahar's World," reads, "He was a charming kid with a bright future. But no one saw the pain he was hiding or the monster he would become."<sup>182</sup> Neither are ringing endorsements, and both play into tropes of the deceptive nature of a Muslim male, shielding his true radical self from view.

In the article, author Janet Reitman describes the boat writing as a "jihadist screed" that was "discovered" by law enforcement.<sup>183</sup> "In it, according to a 30-count indictment handed down in late June," she states,

Jahar appeared to take responsibility for the bombing, though he admitted he did not like killing innocent people. But "the U.S. government is killing our innocent civilians," he wrote, presumably referring to Muslims in Iraq and Afghanistan. "I can't stand to see such evil go unpunished. . . . We Muslims are one body, you hurt one, you hurt us all," he continued, echoing a sentiment that is cited so frequently by Islamic militants that it has become almost cliché. Then he veered slightly from the standard script, writing a statement that left no doubt as to his loyalties: "Fuck America."<sup>184</sup>

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<sup>180</sup> "Rolling Stone's 'The Bomber' Issue Banned By CVS, Walgreens, Rite Aid And Kmart (UPDATE)." *The Huffington Post*, July 17, 2013. [https://www.huffpost.com/entry/cvs-tedeschi-rolling-stone\\_n\\_3611805](https://www.huffpost.com/entry/cvs-tedeschi-rolling-stone_n_3611805)

<sup>181</sup> Janet Reitman, "Jahar's World." *Rolling Stone*, July 17, 2013. <https://www.rollingstone.com/culture/culture-news/jahars-world-83856/>

<sup>182</sup> Ibid.

<sup>183</sup> Ibid.

<sup>184</sup> Ibid.

This passage is strange for several reasons. First, Reitman interprets the vague statement “our innocent civilians” as “presumably referring to Muslims in Iraq and Afghanistan,” even though the attributed document, the indictment, does not make this connection.<sup>185</sup> Second, she characterizes the incriminating statements as “almost cliché” and a “standard script” — showing some awareness that these notions are stereotypes in the discourse around Muslim terrorists. But, instead of questioning their veracity, she doubles down on the assumption that Jahar got the ideas from “Islamic militants,” adding that her final quoted line leaves “no doubt as to his loyalties.” This is most puzzling of all, because the statement “Fuck America” exists nowhere on the court record as something Jahar wrote, not even in the indictment Reitman claims as her source.

Whether she heard this epithet from a law enforcement source or conjured it from her own imagination, the overall effect of this and other media misquotes is the same. They present a version of Jahar in league with the Islamic east, at last showing his “loyalties” after “hiding” his transformation into the “monster he would become.” It is especially noteworthy that Reitman’s piece, the beginning of which touts a scolding note from the editors that it is “important for us to examine the complexities of this issue and gain a more complete understanding of how a tragedy like this happens,”<sup>186</sup> nevertheless frames Jahar’s story the way it does. Despite spanning several thousand words and including glowing, heartfelt interviews with many of his friends, Reitman’s article does not come to the conclusion that law enforcement could be wrong or prejudiced, but — like prosecutor Weinreb in his opening statement nearly two years later — that Jahar must have been hiding something.

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<sup>185</sup> District Court of Massachusetts. *Grand Jury Indictment* by Alope Chakravarty, William Weinreb, Nadine Pellegrini. United States vs. Dzhokhar Tsarnaev, 1:13-cr-10200. Boston, Massachusetts, June 27, 2013. Personal collection.

<sup>186</sup> Ibid.

### Levitt Discusses the “Boat Note” and the “Jihadi Materials”

To return to the portrayal of the “boat note” at trial, not only was none of the aforementioned context provided to the jury, but the prosecution used the “note” to demonize Islamic terms, then used Matthew Levitt to declare the writing a “jihadist” justification for the crimes. During opening statements, prosecutor Weinreb quoted a portion of the writing, and harps on certain Islamic terms, presenting them as terms only a terrorist would use: “‘Shahied’ means martyr, and ‘Allah Akbar’ means God is great. ... ‘Ummah’ is a word that people with the defendant’s beliefs use to describe the Muslim people.”<sup>187</sup> Categorizing the word *ummah* as something found solely in the lexicon of “people with the defendant’s beliefs” implies only terrorists would use language like this – thereby othering not just the concept of the Muslim community, but Arabic words and phrases, turning mainstream Muslim discourse into criminal markers. His mispronunciation of *Allahu Akbar* in particular betrays his ignorance of the underlying subject matter.

This distinct lack of familiarity with Islam on the part of the government is pervasive throughout trial, perhaps best exemplified by the incident in which both prosecutor Alope Chakravarty and his FBI analyst Steven Kimball thought a photo of downtown Grozny, Chechnya was actually Mecca. The prosecutors presented no experts on Islam, instead leaning on Matthew Levitt to provide religious context to the statements given by Jahar in the boat. This happened even though Levitt stated he had no expert knowledge of Islam, and as such, he often

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<sup>187</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

ascribed a “jihadi” meaning to statements that are simply Arabic words and phrases, or lines from the Quran, either in transliterated Arabic or English. For example, Levitt states that *shahid* means, “Martyr. In this case, a martyr for God. To be killed in the process of doing an act of jihad. It’s not the only definition of martyr, but in the radical jihadi context, that’s what it’s referring to.”<sup>188</sup> He also interprets the line “He who Allah guides, no one can misguide” as “that if you were doing something in the name of and in defense of and for Allah, for God, you cannot be misguided”<sup>189</sup> without apparent knowledge that this is a direct line from the Quran,<sup>190</sup> nor that contextually it has a different connotation.<sup>191</sup> He also claims that *Allahu Akbar*, which prosecutor Chakravarty asks him to confirm is “a common phrase in the materials that you reviewed over the course of your experience as a terrorism expert” has a “jihadi connotation.”<sup>192</sup>

Next, Levitt gives a series of classic Orientalist explanations for other lines in the boat, including the false binary of the West versus the East, and in interpreting these lines imagines Jahar as a Oriental male who not only sees himself separate from the West but hates it as well. Interestingly, these lines include the addressee “you,” and Levitt claims, “I think it’s clear from the grammar that the audience is kind of the American public. This is clearly not written for fellow travelers, fellow jihadis; this is an attempt to explain what’s been done.”<sup>193</sup> He claims this again later, saying, “This is speaking to an American audience, this is speaking to a Western audience. The author is not associating himself with this audience, but it’s ‘our,’ ‘your,’ us versus

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<sup>188</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dr. Matthew Levitt. Personal collection.

<sup>189</sup> Ibid.

<sup>190</sup> Sura 39:37.

<sup>191</sup> For example, two lines previous, Sura 39:34-35 (The Study Quran), reads: “With their Lord they shall have whatsoever they will—that is the recompense of the virtuous— 35 that God may absolve them of the worst of that which they have done and render unto them their reward for the best of that which they used to do.” This is a far cry from Levitt’s claim of infallible justification and reward for actions done in the name of God.

<sup>192</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dr. Matthew Levitt. Personal collection.

<sup>193</sup> Ibid.

them.”<sup>194</sup> However, these lines from Jahar conveniently parallel the same stereotypes evident in the discourse of his hospital interrogators, including the use of American foreign policy as a motivator for the attack. For example, one line is, “The U.S. government is killing our innocent civilians but most of you already know that.”<sup>195</sup> In Levitt’s imagination, this is the magnanimous effort of a radicalized Muslim to explain to an abstract Western “you” why he committed an act of terrorism against them, and that he considered acts abroad to be killing “our” innocent civilians, as if all Muslims were residents of some united Islamic east. This line is contradicted by statements Jahar wrote barely twenty-four hours later in the hospital, when he identified himself as being from Chechnya and knowing his rights as an American citizen.<sup>196</sup> However, it plays into existing Orientalist notions, which enables Levitt to hone right in on it and declare that Jahar believes these things, too. Levitt’s imagined explanation ignores the far more likely scenario of an injured, terrified teenager, held at literal gunpoint, telling “you” – “you” being law enforcement – what they want to hear.

Additionally, Levitt’s testimony attempts to line up the statements made by Jahar in the boat directly to lines from the “jihadi” materials found on his laptop, to prove these exact materials “radicalized” him and caused him to act. This portion of testimony reveals a specific desperation to link their Muslim defendant to the “jihadi” image. However, it also says something larger about just what these government actors consider to be “jihadi” in nature. The parallels between the lines from Jahar in the boat and the quoted materials are not smooth, with no direct linkage between the two – unsurprising, given the digital forensic evidence. However,

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<sup>194</sup> Ibid.

<sup>195</sup> Ibid.

<sup>196</sup> District Court of Massachusetts. *Motion to Suppress Statements* by Miriam Conrad. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, 2014. Personal collection.

the quoted sections from the “jihadi” materials, the ones which are reportedly so “radicalizing” in nature, aren’t actually very groundbreaking. For example, Levitt reads out a quote from an unidentified “jihadi” author:

“We must also awaken in the hearts of the ummah the spirit of resistance and jihad; confrontation of aggression, oppression and tyranny; firmness on the truth; and rejection of the culture of concession and methodology of backtracking, which has led some to abandon the government of the Sharia and concede four-fifths of Palestine.”<sup>197</sup>

Removing the Islamic terminology, a sentence like this reads like any social activist rhetoric, particularly in response to colonialism; one might find it in the work of Vladimir Lenin, Martin Luther King, Jr. or Franz Fanon. Even so, the prosecution’s implication is that Jahar could *not* have been exposed to these ideas through any other means than “jihadi literature” – and not, for example, any social or political theory class covering Marxist or postcolonial thought, or even simply growing up in a liberal area like Cambridge, Massachusetts. What this logic reveals is the criminalizing of any thought outside of blind loyalty to the American Empire, and in particular making any Muslim flavor to social activism terrorist activity. Particularly interesting is the mention of the Israel/Palestine conflict, given Levitt’s affiliation to the Center for Near East Policy, the think tank funded by AIPAC.

### **Expert Witness Consultation: Sebastian Gorka**

Matthew Levitt was not the only terrorism “expert” the prosecutors used, although he was the only one to testify. Two others submitted reports to the prosecution and in 2014 memos were stated as intended to be on the witness list, though neither appeared at trial.<sup>198</sup> One is Evan

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<sup>197</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Dr. Matthew Levitt. Personal collection.

<sup>198</sup> District Court of Massachusetts. *Exhibit A1: Re: United States v. Dzhokhar Tsarnaev, Crim. No. 13-10200-GAO*

Kohlmann, who submitted an erroneous and misrepresented report regarding the “jihadi materials” on Jahar’s laptop.<sup>199</sup> The other is Sebastian Gorka, whom the prosecutors hired to write a report and testify about the “social factors” which contributed to Jahar’s “radicalization.” Gorka is a controversial figure who gained some infamy in 2017 when he was named one of President Donald Trump’s national security advisers. It was quickly revealed his previous accolades had been as a pundit on Fox News – including a memorable soundbite from December 2016 when he told host Sean Hannity, “The era of the Pajama Boy is over January 20th, and the Alpha Males are back.”<sup>200</sup> He also served as the editor of the right-wing site Breitbart.<sup>201</sup> In early 2017, it was also revealed he was part of a pro-Nazi far-right group in Hungary called the Vitezi Rend.<sup>202</sup>

Once named as a national security adviser, Gorka was quickly critiqued by the academic and policy community as well. In an article in *Foreign Policy*, Georgetown University professor Daniel Nexon reviewed a copy of Gorka’s PhD dissertation from Corvinus University in

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by Alope Chakravarty, William Weinreb, Nadine Pellegrini. United States vs. Dzhokhar Tsarnaev, 13-CR-10200-GAO. Boston, Massachusetts, August 1, 2014. Personal collection.

<sup>199</sup> It should be noted that Kohlmann’s contribution as an “expert witness” is worthy of study in its own right, although Gorka presents a more egregious case for the scope of this thesis. Nevertheless, my preliminary research into Kohlmann also revealed questionable credentials. According to his report filed in Jahar’s case, he has “traveled overseas to interview known terrorist recruiters and organizers ... and to attend underground conferences and rallies” since “approximately 1997.” At this time he would have been eighteen years old and a freshman at Georgetown University, with no apparent knowledge of Arabic or other relevant languages. Despite this, Kohlmann has testified as an expert witness in a staggering thirty terrorism prosecutions against Muslim defendants, both in US federal court and at Guantanamo Bay. He currently runs a “private intelligence firm” called Flashpoint Intel. It is unclear why Kohlmann, like Gorka, did not appear at Jahar’s trial; however, like Gorka’s report, the findings from Kohlmann’s were used by prosecutors regardless.

<sup>200</sup> Sean Hannity, “Gorka: The Alpha Males Are Back on January 20th.” *Fox News*, December 16, 2016. <https://www.youtube.com/watch?v=mUMQ7hWpX6g>

<sup>201</sup> Allegra Kirkland, “Breitbart Staffer Turned Trump Aide Is Posterboy For New Admin’s Nationalism.” *Talking Points Memo*, February 3, 2017. <https://talkingpointsmemo.com/dc/sebastian-gorka-public-face-donald-trump-foreign-policy>

<sup>202</sup> Lili Bayer and Larry Cohler-Esses, “EXCLUSIVE: Nazi-Allied Group Claims Top Trump Aide Sebastian Gorka As Sworn Member.” *Forward*, March 16, 2017. <https://forward.com/news/national/366181/exclusive-nazi-allied-group-claims-top-trump-aide-sebastian-gorka-as-sworn/>

Budapest, entitled “Content and End-State-based Alteration in the Practice of Political Violence since the End of the Cold War: - the difference between the terrorism of the Cold War and the terrorism of al Qaeda: the rise of the ‘transcendental terrorist’.”<sup>203</sup> In his article, Nexon cautions that “I am not a terrorism expert” but that he was “shocked by the lack of scholarly merit.”<sup>204</sup> In particular, he notes that:

Gorka’s discussion of Islam and democracy is sourced pretty much exclusively to Louis Milliot’s 1953 book, *Introduction a l’étude du Droit Musulman* — a scholarly, but dated, work by a French academic born in Algeria during the colonial period. He writes: “In fact of the few Western scholars who have written on the subject it is the French speaking world that has most to offer with Louis Milliot’s *Introduction a l’étude de Droit Musulman* being a seminal work.” Gorka also cites conversations with “leading Hungarian Arabist Miklós Maróth.” Maróth is a Hungarian academic and government advisor who has argued that European Muslims should be stripped of their citizenship and that Muslims who fail to assimilate should be “wrapped in pig skin.”<sup>205</sup>

Although Nexon does not discuss it, this is about as Orientalist as one can get without being an outright farce. The use of a French book on Islam from 1953 as the sole source on Islam, plus personal conversations with an “Arabist” spouting anti-Islamic hate speech is laughable for a dissertation written at any period, let alone in 2007, as Gorka’s was. Although Nexon does not discuss it either, the very topic of Gorka’s dissertation plays right into the “new terrorism discourse” laid out by Stampnitzky: the notion that in the 1990s, terrorism somehow became bigger, stronger, and less predictable.

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<sup>203</sup> Sebastian Gorka, “Content and End-State-based Alteration in the Practice of Political Violence since the End of the Cold War: - the difference between the terrorism of the Cold War and the terrorism of al Qaeda: the rise of the ‘transcendental terrorist,’” (PhD diss., Corvinus University, 2007). All punctuation and capitalization is as in the original.

<sup>204</sup> Daniel Nexon, “Sebastian Gorka Might Be a Far-Right Nativist, but for Sure He’s a Terrible Scholar.” *Foreign Policy*, March 17, 2017.  
<https://foreignpolicy.com/2017/03/17/dr-sebastian-gorka-may-be-a-far-right-nativist-but-for-sure-hes-a-terrible-scholar-trump-radical-islam/>

<sup>205</sup> Ibid.

Gorka's stance that Islam is the cause of such changes is troubling, as is his problematic grasp of the religion, through which he asserts that "for the Muslim understanding of law and political order the bedrock is faith and more specifically the will of Allah... As a faith-system Islam believes completely in the concept of predestination" and therefore "our version of democracy cannot be sustained in a Muslim context, for if there is no free will, if the world and the future are predetermined, then the people's choice as prerequisite is irrelevant."<sup>206</sup> Even if one ignores Gorka's erroneous claim that Islam functions entirely on a system of predestination, his conclusion is still typical of this sort of Orientalist thinking: as a result, Islam is incompatible with Western democracy. Therefore, the only solution is force and subjugation by the more enlightened West. This is not an exaggeration; Gorka really argues for this. One of his proposed solutions is removing "internal barriers between the police force, the army and various intelligence services" creating a "unitary body which conglomerated all the skills of the various separate agencies and units into a new structure better suited to facing threats transcendental terrorist threat such as al Qaeda."<sup>207</sup>

Nexon was not Gorka's only critic; other scholars jumped on board, including the associate editor of the academic journal *Terrorism and Political Violence*, who told Newsweek that Gorka had not submitted within the last five years, and that, "We would not have used him as a reviewer because he is not considered a terrorism expert by the academic or policy community."

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<sup>206</sup> Sebastian Gorka, "Content and End-State-based Alteration in the Practice of Political Violence since the End of the Cold War: - the difference between the terrorism of the Cold War and the terrorism of al Qaeda: the rise of the 'transcendental terrorist,'" (PhD diss., Corvinus University, 2007).

<sup>207</sup> Ibid.

<sup>208</sup> These cumulative criticisms forced the Trump administration's Chief of Staff John Kelly to fire him after only seven months on the job.<sup>209</sup>

Despite Gorka's public discrediting, little attention has been paid to the role he played as an expert witness for Jahar's terrorism trial. In May 2015, he even appeared on Fox News shortly after Jahar's death penalty verdict, advertised as an expert witness at the trial, to draw a direct causal link between Islam and terrorism. In his appearance, he declares that Jahar and Tamerlan are part of a dangerous threat posed by the "jihadi warrior" and that "there are people out there who want to kill you for God."<sup>210</sup> However, when he was appointed to the Trump cabinet in 2017, only one outlet, *Splinter*, inquired with the US Attorney's office in Boston about their employment of Gorka. An unnamed official claimed Gorka "was certainly on the list of potential witnesses," but that "he was never called, nothing he gave us was ever used."<sup>211</sup>

This stands in clear contrast to elements on the court record. Most notably, a report titled "The Predator War" that Jahar wrote in high school, criticizing the US's use of drone strikes in Pakistan, was presented to the jury alongside the "jihadi materials" as evidence of Jahar's radicalization.<sup>212</sup> This was ostensibly done to bolster the claims made by prosecutor Weinreb during open arguments that Jahar's "transformation into a terrorist took place over a year or

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<sup>208</sup> Jeff Stein, "Exclusive: Listen to Controversial White House Terrorism Adviser Sebastian Gorka's Call to a Critic." *Newsweek*, February 23, 2017.

<https://www.newsweek.com/sebastian-gorka-white-house-terrorism-adviser-angry-call-559805>

<sup>209</sup> Maggie Haberman and Matt Stevens, "Sebastian Gorka is Forced Out as White House Adviser, Officials Say." *New York Times*, August 25, 2017.

<https://www.nytimes.com/2017/08/25/us/politics/sebastian-gorka-leaves-white-house.html>

<sup>210</sup> Tucker Carlson, "Expert witness in Tsarnaev trial: It was a religious crime." *Fox News*, May 17, 2015.

<https://video.foxnews.com/v/4241116900001/#sp=show-clips>

<sup>211</sup> Anna Merlan, "Trump adviser who claimed to be an expert witness in Boston bombing trial never actually testified." *Splinter*, February 10, 2017.

<https://splinternews.com/trump-adviser-who-claimed-to-be-an-expert-witness-in-bo-1793858592>

<sup>212</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Kevin Swindon. Personal collection.

two.”<sup>213</sup> To counter this, during the penalty phase, Jahar’s defense counsel called the teacher from his class, Rachel Otty, to testify that she assigned the 2009 *New Yorker* article “The Predator War,”<sup>214</sup> in which Pulitzer Prize-nominated journalist Jane Mayer criticizes the US’s drone program, to the entire class. The assignment was simply Jahar’s written response.<sup>215</sup>

This piece of evidence can only have come from the report that Gorka submitted to the prosecutors. In it, he claims Jahar’s “progress toward the religiously justified use of terrorist violence was not rapid or sudden but the result of several years of radicalization” and “This is supported by the open sentiments expressed in several of the high school papers he wrote.”<sup>216</sup>

About Jahar’s essays, he writes:

Then in his two papers on the book *Ask Me No Questions* by Marina Budhos, the Defendant agrees with and amplifies the argument that the events of September 11th 2001 led to a “dehumanization” of Muslim immigrants in the US and the broader Muslim world, and in his essay *The Predator War*, he calls the US use of drones “basically murder” which could spark a “rebellious movement.”

Together these sentiments can be considered as the foundation for the beliefs that fed the Defendant’s radicalization, his move to violent acts of terrorism, which culminated in Tsarnaev’s justification and explanation of his actions as provided in the narrative left in his hand in the boat where he was captured.<sup>217</sup>

As prevalent in other discourses analyzed, Gorka’s rhetoric reflects the assumptions that criticism of US foreign policy results in a Muslim’s radicalization to terrorist violence. This occurs even though both publications grappled independently with these tangible issues. *Ask Me No Questions*, for example, is a fictional account of a Muslim immigrant family living in New

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<sup>213</sup> United States vs. Dzhokhar Tsarnaev (2015), opening statement of William Weinreb, Lead Prosecutor, District Court of Massachusetts. Personal collection.

<sup>214</sup> Jane Mayer, “The Predator War.” *The New Yorker*, October 19, 2009. <https://www.newyorker.com/magazine/2009/10/26/the-predator-war>

<sup>215</sup> United States vs. Dzhokhar Tsarnaev (2015), testimony of Rachel Otty. Personal collection.

<sup>216</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit C1. Personal collection.

<sup>217</sup> Ibid.

York City after 9/11, when the Bush era Muslim registry went into effect.<sup>218</sup> However, Jahar's attempts to engage with these concepts intellectually have been vilified and labeled as foundation for his alleged terrorist actions.

Gorka's report is riddled with other Orientalist discourse, all of which take unfounded shots at Jahar's character due to his religion and ethnic background. For example, Gorka claims that for Jahar, "Russia contained the elements of a Muslim community ruled and persecuted by an un-Islamic leadership – the infidel regime in Moscow."<sup>219</sup> He also states that in America, "the Defendant was in the position to have to choose between emigration to a Muslim land or jihad against the infidel state in which he lived,"<sup>220</sup> citing no evidence that Jahar expressed this opinion. In one sentence, he illustrates the false East-West binary between the "Muslim land" and the "infidel state" Jahar was supposedly caught between. This is further exemplified in another statement in Gorka's report: "In the case of the Tsarnaevs, one can point to geopolitical events that may have contributed to the process of radicalization, or at least accelerated it."<sup>221</sup> The use of terms like "contributed" and "accelerated" implies the radicalization was inevitable – as it is, by Orientalist logic, for all Muslim males.

### **Conclusion: The Legal System Codifies the Regime of Truth, and the Media Spreads It**

On the whole, the outsized power wielded by the federal prosecutors in Jahar's case allowed for the perpetuation of the regime of truth about Jahar and his role in the Boston

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<sup>218</sup> Marina Budhos, *Ask Me No Questions*. New York, NY: Atheneum Books For Young Readers, 2007.

<sup>219</sup> United States vs. Dzhokhar Tsarnaev (2015), Exhibit C1. Personal collection.

<sup>220</sup> Ibid.

<sup>221</sup> Ibid.

Marathon bombing. In a prolonged, heavily publicized death penalty trial, the prosecutors were able to present an image of Jahar as an unrepentant and violent fanatic. His own defense team, their hands tied by a series of prejudicial court rulings, were forced to play into infantilizing Orientalist tropes, originally set forth in the media by law enforcement themselves to explain the crimes, in the service of saving Jahar from a death sentence.

However, the prosecutors were able to codify Orientalist assumptions about Muslims into fact by crafting their case based on the work of “experts” like Matthew Levitt and Sebastian Gorka. In presenting Levitt to the jury as someone well-versed in “jihadism,” they were permitted to pass many harmful stereotypes off as scientific fact. In utilizing Gorka’s report, they were able to claim any critical academic thinking on Jahar’s part was evidence of a long radicalization process, building in him for years. In light of these things, it is little surprise that on May 15, 2015, the jury handed down a death sentence, and 9 out of 12 jurors believed that even without Tamerlan’s involvement, Jahar would have acted on his own.<sup>222</sup>

Once again, during and immediately after the trial, the media amplified this regime of truth. All major news outlets covered the trial; when offering opinions, all observed publications expressed belief in the prosecutors’ side of the story. This is reflected once more in Kevin Cullen’s *Boston Globe* coverage. On March 4, 2015, in an article titled, “Tsarnaev had four minutes to change history,” he gives a summary of opening statements that openly favored prosecutor Weinreb’s version of events. The beginning paragraphs read:

Four minutes. That’s how long Dzhokhar Tsarnaev stood there, next to the kids watching the Marathon on the sidewalk on Boylston Street, outside the Forum.

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<sup>222</sup> Mark Berman, “How a jury decided to sentence the Boston Marathon bomber to death.” *The Washington Post*, May 15, 2015. <https://www.washingtonpost.com/news/post-nation/wp/2015/05/15/how-a-jury-decided-to-sentence-the-boston-marathon-bomber-to-death/>

Four minutes. That's how long he had to consider what the pressure cooker bomb he had in his backpack would do to those children, the Richard kids.

He had 240 seconds to play in his head the way the BBs and tiny pieces of metal would be propelled, like hot razors, into those kids.<sup>223</sup>

In Cullen's usual style, he presents a version of Jahar as if he were inside the radicalized Muslim mind, deviously waiting to kill and mutilate children. At the time of this article's writing, the prosecution had barely put on any evidence, and had not yet called Levitt to discuss radicalization. Even so, Cullen accepts and repeats as fact Weinreb's claim that Jahar specifically targeted children:

This was not a rash act. The children killed and maimed were not collateral damage. They weren't unlucky. They were targeted. Explicitly. When Dzhokhar Tsarnaev put that backpack down outside the Forum, he had to know he was going to kill and dismember children.<sup>224</sup>

He then expresses skepticism for the defense's side of the story:

Clarke must have known how devastating that piece of information was. Even as she admitted her client had done what she called "the incomprehensible, the inexcusable," she offered an excuse that was easy to comprehend: His big brother made him do it.

While Weinreb told the jury that Dzhokhar became radicalized by reading Islamic extremist propaganda, by watching Islamist snuff films, by reading a magazine put out by Al Qaeda, Clarke said it was Tamerlan who gave Dzhokhar all of his misguided direction.<sup>225</sup>

It is obvious from flippant remarks that he does not believe this version of events. After the painstaking lengths taken by Clarke to say that Jahar bore culpability and should be held responsible, the takeaway of someone like Cullen was nonetheless "his big brother made him do it." To Cullen, this "excuse" of "misguided direction" was meant to cover the real reason for the

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<sup>223</sup> Kevin Cullen, "Tsarnaev had four minutes to change history." *The Boston Globe*, March 4, 2015. <https://www.bostonglobe.com/2015/03/04/four-minutes/JoDzDJiC8BO0qDRtyPgMQI/story.html>

<sup>224</sup> Ibid.

<sup>225</sup> Ibid.

attacks: Jahar's barbaric, out of control Muslim masculinity, "explicitly" targeting "those children."

Cullen's article barely mentions the defense's opening statements again. Instead, he gives a play-by-play of the prosecution, presenting each as immutable truth even though the evidence hadn't been presented yet:

Weinreb suggested that the evidence pointing to that guilt is overwhelming. "He pretended to be a spectator, but he had murder in his heart," Weinreb said of Dzhokhar Tsarnaev.

Weinreb said Dzhokhar Tsarnaev's bomb shredded flesh, severed arteries, lit people on fire.

While the city reeled, as surgeons pulled saws to amputate legs, Dzhokhar Tsarnaev walked into the Whole Foods in Central Square and bought a gallon of milk.

It was Dzhokhar Tsarnaev who got the gun used to murder MIT Police Officer Sean Collier, Weinreb said. Collier's bloodied gloves were found in the car Tsarnaev drove that night.

When he was captured, cowering in a boat in a back yard in Watertown, Dzhokhar Tsarnaev's motive was literally written on the walls, on the wall of the boat, in pencil. He bombed the Marathon to punish Americans, because America was killing Muslims.<sup>226</sup>

Once again, those for whom Jahar committed the crimes shift – from innocent civilians, to Muslim terrorists, and now, in Cullen's retelling, to simply Muslims. In the Orientalist mind, there is hardly a difference.

"He did it," Bill Weinreb said, in closing, "because he thought it would help secure him a place in paradise."

Paradise would last forever. A lot longer than the four minutes that Dzhokhar Tsarnaev stood there, next to the kids whose bodies and souls he destroyed before he went to buy some milk.<sup>227</sup>

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<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

If Cullen's garish, sensationalist writing – still dripping with the hyper masculine US identity that had affected his coverage of the bombing two years earlier – is any indication, by the first day of Jahar's trial, he had already lost. The regime of truth against him was already too well-established.

### **Conclusion: the United States v. the Truth**

In conclusion, the knowledge produced in the days, months and years following the Boston Marathon bombing created a regime of truth about Jahar Tsarnaev and his role in the crimes. This image was crafted via gendered Orientalist logic and Islamophobic assumptions that cast him, in varying turns, as a barbaric Muslim man delighting in senseless violence, and a feminized, child-like male, "impressionable" and susceptible to the whims of his oppressive older brother Tamerlan. Jahar's image as a terrorist was crafted via three venues: law enforcement, particularly the FBI, in the days before and after his arrest; this prosecutors, their "expert" witnesses, and by force, his own defense counsel, two years later at his death penalty trial; and, throughout, the media. These sources worked three-fold to present an image of Jahar that would aid hyper-masculine US identity-building: a force so despicable, so unstoppable, that only controlled state violence is capable of dealing with him, first, by gunfire, and then, at some time in the future, by lethal injection.

This mischaracterization of Jahar began even before he was arrested, when the FBI, operating off of prejudiced protocols crafted for the War on Terror to legitimize torture and

indefinite detention, cast him and Tamerlan as identical to al-Qaeda soldiers, ignoring entirely that they had no military backing and were from a completely different part of the world. The FBI's image of them as a two-man militant group, with Tamerlan as a charismatic leader and Jahar as an impressionable recruit, was relayed to the press, even before Jahar could be arrested, and Tamerlan, already deceased, could provide them with no information. This image was accepted without delay by journalists like *Boston Globe* writer Kevin Cullen, so eager to cast himself on the winning side in the War on Terror he invented details about his own camaraderie with the first responders, characterizing downtown Boston as the front lines in a civilizational battlefield.

Likewise, once the FBI had access to Jahar, instead of attempting to get his side of the story, they imposed their own preconceived notions onto him. This is evidenced by the discourse in two forced confessions from Jahar: one obtained while held at gunpoint before his capture, and the other from his hospital bedside, while denying his Constitutional right to legal counsel. The recurring theme of motive, US military intervention in Iraq and Afghanistan, is pervasive in all modes of discourse, and reflects the Orientalist belief that any Muslim opposing American hegemony must therefore be a terrorist. Once these confessions were obtained, they were embellished and amplified in the media as irrevocable proof of Jahar's "radicalization" and "jihadist" sympathies. Details were added and used to politicize the crimes, particularly on the part of the American right, trying to frame hyper-masculine Bush era policies as right and necessary, and criticize Obama era attempts at reform as weak and feminized. The lack of any indication that Jahar had prior motive or intent was not used as evidence of his potential

innocence, but as his overwhelming guilt: as a Muslim, he must have had a secret dark side, kept perfectly hidden from everyone who knew him.

This notion of his dual nature was expanded and harped upon by prosecutors at his death penalty trial. In a shift in discourse from the FBI's initial profile, done to justify the imposition of a death sentence, their characterization of Jahar became one of hidden loyalties and clandestine forays into the jihadist corners of the internet, all the while masking as a "typical" American adolescent.

"Expert" witnesses brought in by the government to legitimize to the government's claims. Matthew Levitt, admittedly not an expert in Islam or Chechnya, nevertheless testified that all of Jahar's statements written in the boat were the product of a jihadist mind, and provided a simplistic, biased view of the Russian-Chechen conflict that presented Chechen separatists as part of a "global jihadist network." Evan Kohlmann, a seasoned self-proclaimed expert on jihadist literature, provided a report misrepresenting the digital forensic evidence on Jahar's computer, making him look like a zealot drinking in anti-American propaganda. Sebastian Gorka, a colorful and disgraced former member of the Trump administration, provided a report that claimed Jahar's high school assignments holding socially liberal views were evidence of radicalization, even though they were based on readings given to him by his teachers.

Prejudicial rulings by the trial judge prevented a venue change outside of Boston, as well as the removal of jurors who were overtly biased against Jahar. As a result, his defense counsel abandoned any attempt at contesting his guilt and focused solely on trying to save his life. To do this, they played into Orientalist stereotypes already prevalent in the discourse around the Boston Marathon bombing, claiming the FBI's original read on the situation as the correct one. Their

version of Jahar became a weak, infantilized foreigner, unable to tell that killing people is wrong because of his culture and his domineering brother's influence. This strategy proved unsuccessful, as Jahar received a death sentence anyway, and only three jurors believed he would not have conducted the attack alone if Tamerlan had been removed from the equation.

Thus created the regime of truth that still exists about Jahar Tsarnaev today. Six years after the Boston Marathon bombing, even as more public attention has been given to the abuses of counter-terrorism measures in the Bush era, and criticisms made of the anti-Muslim policies championed by the Trump administration, he exists to the majority of public consciousness as the worst kind of criminal. I hope my research challenges these assumptions and provides some badly needed context to the events in question. Perhaps, in the future, as Jahar's appeal of his convictions and death sentence continues, more scholars can contest these longstanding regimes of truth about Muslims, and bring the actual truth to light.

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