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## The Boston Bombers

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## THE BOSTON BOMBERS

*Leti Volpp\**

### INTRODUCTION

On Monday, April 15, 2013, two bombs were set off during the Boston Marathon.<sup>1</sup> As Amy Davidson wrote in the *New Yorker*, a “twenty-year-old man who had been watching the Boston Marathon had his body torn into by the force of a bomb.”<sup>2</sup> He was far from alone in this: two homemade bombs killed three people and injured 264 more.<sup>3</sup> Yet, this young man “was the only one who, while in the hospital being treated for his wounds, had his apartment searched in ‘a startling show of force’ . . . with a ‘phalanx’ of officers and agents and two K9 units.”<sup>4</sup> According to CBS News, a bystander saw the badly hurt young man running and tackled him because he “looked suspicious.”<sup>5</sup> The *New York Post* immediately asserted, “Investigators have a suspect—a Saudi Arabian national.”<sup>6</sup>

By Tuesday morning, however, reports began referring to this man as a witness rather than as a suspect.<sup>7</sup> Discussion groups on social media websites Reddit and 4chan provided platforms for members of the public who sought to identify the perpetrators.<sup>8</sup> These websites collected photographs with persons circled as “suspects” and notations next to the

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1. Amy Davidson, *The Saudi Marathon Man*, NEW YORKER (Apr. 17, 2013), <http://www.newyorker.com/online/blogs/comment/2013/04/the-saudi-marathon-man.html>.

2. *Id.*

3. See Deborah Kotz, *After Double-Checking Records, Injury Toll from Marathon Bombs Reduced to 264*, BOS. GLOBE, Apr. 24, 2013, at B3.

4. Davidson, *supra* note 1.

5. *Id.*

6. *Authorities ID Person of Interest As Saudi National in Marathon Bombings, Under Guard at Boston Hospital*, N.Y. POST (Apr. 15, 2013, 8:28 PM), <http://nypost.com/2013/04/15/authorities-id-person-of-interest-as-saudi-national-in-marathon-bombings-under-guard-at-boston-hospital/>.

7. Chelsia Rose Marcius, Joseph Straw & Larry McShane, *Report: Saudi Man Questioned in Boston Marathon Bombing Is a Witness Not a Suspect*, N.Y. DAILY NEWS (Apr. 16, 2013, 1:41 PM), <http://www.nydailynews.com/news/national/report-saudi-man-boston-suspect-article-1.1318272>.

8. Connor Adams Sheets, *10 Boston Marathon Bombing ‘Suspects’ 4chan and Reddit Found*, INT’L BUS. TIMES (Apr. 17, 2013, 2:51 PM), <http://www.ibtimes.com/10-boston-marathon-bombing-suspects-4chan-reddit-found-photos-1199213>.

photos explaining the reason why the “suspect” was allegedly suspicious—in some cases, merely stating “brown.”<sup>9</sup>

An individual image that had attracted more than 2.5 million hits by late afternoon Wednesday was replicated on the *New York Post*'s front page with the headline: “Bag men: Feds seek these two pictured at Boston Marathon.”<sup>10</sup> The two “bag men” turned out to be a seventeen-year-old Moroccan American high school runner, Salah Barhoum, and his friend from a running club. Barhoum told reporters that even after he was cleared, he felt terrified to go outside.<sup>11</sup> Speculation then swirled on Twitter and Reddit that one of the men—the one wearing a “white hat” in images released by the FBI (images released, in part, to try to tamp down internet rumors)<sup>12</sup>—was Sunil Tripathi, a Brown University undergraduate prone to depression who had been missing from his dorm room since March 16, 2013.<sup>13</sup> Reddit later apologized to Tripathi's family for fueling “online ‘witch hunts’” and “dangerous speculation which spiraled into very negative consequences for innocent parties.”<sup>14</sup> Juan Cole posted a blog entry titled “Moroccan, Indian Have Lives Ruined by Old, New Media, Falsely Accused of Boston Bombing.”<sup>15</sup> Sunil Tripathi, however, had no life to ruin, for he was already dead; his body was found in the waters off India Point Park in Providence, Rhode Island, on April 23.<sup>16</sup>

Why these men were identified by the public as potential terrorists can be understood through the lens of September 11, 2001, a historical moment immediately followed by a nationwide wave of hate crimes directed at persons and institutions perceived to be Arab or Muslim. According to Human Rights Watch, this wave was distinguished from previous hate crime waves both by its ferocity and its extent, including several murders.<sup>17</sup>

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9. See Free Britney, *Boston Marathon Bombing Suspect: ID'd By 4Chan Think Tank?*, HOLLYWOOD GOSSIP (Apr. 17, 2013, 11:45 AM), <http://www.thehollywoodgossip.com/2013/04/boston-marathon-bombing-suspect-idd-by-4chan-think-tank/#sthash.9taDTwXb.dpuf>.

10. Katherine Fung & Jack Mirkinson, *New York Post's Boston Bag Men Front Page Called a New Low, Appalling*, HUFFINGTON POST (Apr. 18, 2013, 7:03 PM), [http://www.huffingtonpost.com/2013/04/18/ny-post-boston-suspects-bag-men-front-page\\_n\\_3109052.html](http://www.huffingtonpost.com/2013/04/18/ny-post-boston-suspects-bag-men-front-page_n_3109052.html).

11. Jay Lindsay, *Salah Eddin Barhoum, Boston Teen Stunned To Be Portrayed As Bombing Suspect*, HUFFINGTON POST (Apr. 18, 2013, 11:07 PM), [http://www.huffingtonpost.com/2013/04/18/salah-eddin-barhoum-bosto\\_n\\_3112892.html](http://www.huffingtonpost.com/2013/04/18/salah-eddin-barhoum-bosto_n_3112892.html).

12. Steve Annear, *F.B.I. Releases Photos of Possible Boston Marathon Bombing Suspects*, BOS. DAILY (Apr. 18, 2013, 5:28 PM), <http://www.bostonmagazine.com/news/blog/2013/04/18/fbi-boston-marathon-bombing-suspects-photos/>.

13. Michael Walsh, *Reddit Apologizes for Online 'Witch Hunt' for Boston Marathon Bombers*, N.Y. DAILY NEWS (Apr. 24, 2013, 10:56 AM), <http://www.nydailynews.com/news/national/reddit-apologizes-online-witch-hunt-boston-marathon-bombers-article-1.1326034>.

14. *Id.*

15. Juan Cole, *Moroccan, Indian Have Lives Ruined by Old, New Media, Falsely Accused of Boston Bombing*, INFORMED COMMENT (Apr. 20, 2013), <http://www.juancole.com/2013/04/moroccan-falsely-bombing.html>.

16. Amy Davidson, *Sunil Tripathi, Rest in Peace*, NEW YORKER (Apr. 25, 2013), <http://www.newyorker.com/online/blogs/cloread/2013/04/sunil-tripathi-rest-in-peace.html>.

17. HUMAN RIGHTS WATCH, “WE ARE NOT THE ENEMY”: HATE CRIMES AGAINST ARABS, MUSLIMS, AND THOSE PERCEIVED TO BE ARABS OR MUSLIMS AFTER SEPTEMBER 11, at 14–15

In Boston, following the marathon bombings, the public on Reddit and 4chan engaged themselves, not in hate violence after the fact, but rather in what we must recognize as a new, technologically enabled vigilantism. These were self-appointed avengers of justice, who, in an earlier time, might have resorted to the noose.<sup>18</sup> We also see, as a legacy of September 11, a version of *Minority Report*, with the public fingering suspects based on their propensity to commit a crime—in this case, a propensity indicated by the descriptors “brown,” “Muslim,” or “looks Muslim.”<sup>19</sup>

But now, we come to the two brothers who appear to have been responsible for the bombing: Tamerlan and Dzhokhar Tsarnaev, Chechen immigrants who had been granted legal permanent residence as derivative beneficiaries of their father’s successful 2002 application for asylum.<sup>20</sup>

### I. THE BROTHERS TSARNAEV

The initial reaction concerning their nationality was shock: “Chechens?” The lack of knowledge in the U.S. public about Chechnya, a country at war for independence from Russian federal control since the 1991 dissolution of the Soviet Union, was confirmed by the fact that the Czech Republic felt compelled to release a statement: “The Czech Republic and Chechnya are two very different entities—the Czech Republic is a Central European country; Chechnya is a part of the Russian Federation.”<sup>21</sup> This press release seems ludicrous until one sees the Twitter feeds expressing sentiments like, “I can’t believe that pair in the Boston bombing was NOT towelheads . . . They are Cechoslovakian! [sic] Damn! Fuck Czechoslovakia.”<sup>22</sup>

This shock was followed by intense media scrutiny of the family’s journey to the United States (both parents had studied law before ending up

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(2002), available at <http://www.hrw.org/reports/2002/usahate/usa1102.pdf>. See generally Muneer Ahmad, *A Rage Shared by Law: Post-September 11 Racial Violence As Crimes of Passion*, 92 CALIF. L. REV. 1259 (2004).

18. On the history of vigilantism, see generally NORTON H. MOSES, *LYNCHING AND VIGILANTISM IN THE UNITED STATES: AN ANNOTATED BIBLIOGRAPHY* (1997).

19. In the film *Minority Report*, precognition on the part of mutants who can see the future is used to punish individuals for crime they would have committed by a “precrime unit.” MINORITY REPORT (20th Century Fox 2002). The film was based on a short story by Philip K. Dick. See PHILIP K. DICK, *The Minority Report*, in *THE MINORITY REPORT AND OTHER CLASSIC SHORT STORIES* 71 (1987). The sleuthing on social media in the case of the Boston bombing is obviously a context of “postcrime,” not “precrime,” with its purpose not preventing crime but punishing its commission. Yet this sleuthing resembles the precrime unit in *Minority Report* in that the internet public identified suspects based upon their criminal propensity from photo images taken before the bombing occurred. After September 11, the person who appears Arab, Muslim, or Middle Eastern is always already prone to being identified as a terrorist.

20. Julia Preston, *F.B.I. Interview Led Homeland Security To Hold up Citizenship for One Brother*, N.Y. TIMES, Apr. 21, 2013, at A15.

21. See Press Release, Petr Gandalovič, Ambassador, Embassy of the Czech in Wash., D.C., Statement of the Ambassador of the Czech Republic on the Boston Terrorist Attack (Apr. 19, 2013), available at [http://www.mzv.cz/washington/en/czech\\_u\\_s\\_relations/news/statement\\_of\\_the\\_ambassador\\_of\\_the\\_czech.html](http://www.mzv.cz/washington/en/czech_u_s_relations/news/statement_of_the_ambassador_of_the_czech.html).

22. Eternal Hope, *Certain People Claim Boston Marathon Bombers Were Czech*, DAILY KOS (Apr. 21, 2013, 6:56 PM), <http://www.dailykos.com/story/2013/04/21/1203819/-Certain-People-Claim-Boston-Marathon-Bombers-were-Czech#>.

working as a car mechanic and a cosmetologist), Anzor Tsarnaev and Zubeidat Tsarnaeva's parenting, and their reverse migration following divorce, as well as Zubeidat Tsarnaeva's arrest in 2012 for shoplifting \$1,600 worth of women's clothing from Lord & Taylor.<sup>23</sup> The media also intensely scrutinized Tamerlan's wife, Katherine—Katie—Russell, described as an "all-American girl," who grew up in suburban Rhode Island, the daughter of an Exeter- and Yale-educated doctor and a nurse.<sup>24</sup> Russell reportedly worked long hours as a home healthcare aide while Tamerlan took care of their three-year-old daughter, Zahara. Russell had converted to Islam after their relationship began,<sup>25</sup> as the *Daily Mail* put it, she had "hidden her tumble of chestnut hair beneath the hijab."<sup>26</sup> Ann Coulter, who declared that Russell "ought to be in prison for wearing a hijab," asked of her, "Did she get a cliterectomy too?"<sup>27</sup>—a question Coulter later explained as a "spontaneous joke."<sup>28</sup> This response to Russell reflects the anxiety surrounding any convert to Islam. In the eyes of Ann Coulter and others, such a convert is unfathomable; the *Daily Mail* reported that Katherine Russell was "brainwashed."<sup>29</sup> While there is still no indication that Russell was involved in the Boston bombing, it is worth noting that the convert raises the specter of an unknowable threat from within the polity. The convert is a homegrown threat, neither identifiable nor quarantinable in the ways that Muslim noncitizens or immigrants appear in the eyes of the "homeland security" state.<sup>30</sup> Such concerns bring to mind the myriad ineffectual and harmful efforts after 9/11 to use immigration law against noncitizens in the name of the War on Terror.<sup>31</sup>

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23. See William Saletan, *The Tortured Tsarnaevs: The Boston Bombers' Family History: Theft, Violence, and Religious Strife*, SLATE (Apr. 29, 2013), [http://www.slate.com/articles/news\\_and\\_politics/frame\\_game/2013/04/tsarnaev\\_family\\_history\\_theft\\_violence\\_isl\\_am\\_and\\_the\\_boston\\_marathon\\_bombings.html](http://www.slate.com/articles/news_and_politics/frame_game/2013/04/tsarnaev_family_history_theft_violence_isl_am_and_the_boston_marathon_bombings.html); see also Karen McVeigh, *Tamerlan Tsarnaev and Radical Islam: Friends and Neighbours Seek Answers*, GUARDIAN (Apr. 27, 2013, 13:38 EDT), <http://www.theguardian.com/world/2013/apr/27/boston-marathon-bombings-tamerlan-tsarnaev-islam/>.

24. Laura Collins, *How Doctor's Daughter Became Muslim Convert Widow of Boston Bomber*, MAILONLINE (Apr. 21, 2013, 4:42 PM), <http://www.dailymail.co.uk/news/article-2312588/Tamerlan-Tsarnaevs-wife-How-Katherine-Russell-Muslim-convert-widow-Boston-bomber.html>.

25. *Id.*

26. *Id.*

27. Jeff Poor, *Coulter Puts Focus on Tamerlan Tsarnaev's Wife: "Did She Get a Cliterectomy Too?"*, DAILY CALLER (Apr. 23, 2013, 1:30 AM), <http://dailycaller.com/2013/04/23/coulter-puts-focus-on-tamerlan-tsarnaev-wife-did-she-get-a-cliterectomy-too/>.

28. MFP, *Ann Coulter Said She Was Just Kidding About Putting Tamerlan Tsarnaev's Wife in Jail for Wearing a Hijab*, MOFO POLITICS (Apr. 29, 2013), <http://www.mofopolitics.com/2013/04/29/ann-coulter-says-she-was-just-kidding-about-putting-tamerlan-tsarnaevs-wife-in-jail-for-wearing-a-hijab/>.

29. Collins, *supra* note 24.

30. See Milena Uhlmann, *European Converts to Terrorism*, 15 MIDDLE E.Q. 31, 31 (2008).

31. See, e.g., DAVID COLE, *ENEMY ALIENS: DOUBLE STANDARDS AND CONSTITUTIONAL FREEDOM IN THE WAR ON TERRORISM* (2005); Ahmad, *supra* note 17; Susan M. Akram & Kevin R. Johnson, *Race, Civil Rights, and Immigration Law After September 11, 2001: The Targeting of Arabs and Muslims*, 58 N.Y.U. ANN. SURV. AM. L. 295 (2002); Sameer M. Ashar, *Immigration Enforcement and Subordination: The Consequences of Racial Profiling*

The news media also reported Tamerlan Tsarnaev's Amazon wish list and the brothers' favorite videos on YouTube.<sup>32</sup> The review of both brothers' use of social media sites included *New York Times* literary reviewer Michiko Kakutani's analysis of Dzhokhar's Twitter feeds.<sup>33</sup> This analysis was criticized both for its failure to notice that feeds denoted as "suspicious" were actually popular song lyrics and for its characterization of Dzhokhar's posts on his VKontakte-Russian social networking site as "harsher" when noting that he lists his worldview on that site to be "Islam."<sup>34</sup> As for those favorite YouTube videos, U.S. officials reported that under interrogation, Dzhokhar Tsarnaev said that he and his brother had "studied" the teachings of Anwar al-Awlaki, who was killed, as was his sixteen-year-old son Abdulrahman, by American drone strikes in Yemen.<sup>35</sup>

In previous writings, I have described how, after September 11, the imagined community of the American nation, constituted of loyal citizens, invoked differences from the Muslim terrorist to fuse its citizenry at a moment of crisis.<sup>36</sup> I wrote that such a circling of wagons is an uneven process, that the drawing together of community takes place through the exclusion of others, and that after September 11 those who appeared Middle Eastern, Arab, or Muslim were subjected to a strong racialization process,

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*After September 11*, 34 CONN. L. REV. 1185 (2002); Leti Volpp, *The Citizen and the Terrorist*, 49 UCLA L. REV. 1575 (2002).

32. See, e.g., David Weigel, *Tamerlan Tsarnaev, Dead Bombing Suspect: "I Don't Have a Single American Friend,"* SALON (Apr. 19, 2013, 8:03 AM), [http://www.slate.com/blogs/weigel/2013/04/19/tamerlan\\_tsarnaev\\_dead\\_bombing\\_suspect\\_i\\_don\\_t\\_have\\_a\\_single\\_american\\_friend.html](http://www.slate.com/blogs/weigel/2013/04/19/tamerlan_tsarnaev_dead_bombing_suspect_i_don_t_have_a_single_american_friend.html).

33. Michiko Kakutani, *Unraveling Boston Suspects' Online Lives, Link by Link*, N.Y. TIMES, Apr. 24, 2013, at A1.

34. *Id.* For criticism, see Comments to *Unraveling Boston Suspect's Online Lives, Link by Link*, N.Y. TIMES (Apr. 23, 2013), <http://www.nytimes.com/2013/04/24/us/unraveling-brothers-online-lives-link-by-link.html#comments>.

35. See Margaret Coker, *Cleric Cited by Tsarnaev Lives On—Online*, WALL ST. J. (May 5, 2013, 6:38 PM), <http://online.wsj.com/news/articles/SB10001424127887323687604578465023366949366>. These killings provoke questions about drone strikes on U.S. citizens overseas, and also, for some, about birthright citizenship. Some ask whether the United States should continue to grant birthright citizenship to those whose presence in the United States is "accidental"—in other words, those whose parents are in the United States on nonimmigrant visas. Such was the case for Yaser Hamdi, whose father was working in the oil industry in Louisiana, and Anwar al-Awlaki, whose father, Nasser al-Awlaki, the founder of Ibb University and former president of Sana University, studied in the United States as a Fulbright Scholar and worked as a researcher and assistant professor in Minnesota, Nebraska, and New Mexico, where Anwar al-Awlaki was born. For a discussion of the relationship between birthplace and citizenship, see Mae Ngai, *Birthright Citizenship and the Alien Citizen*, 75 FORDHAM L. REV. 2521 (2007), and Linda Bosniak, *Soil and Citizenship*, 82 FORDHAM L. REV. 2067 (2014). These killings—along with two others that the U.S. government has admitted to—also raise many questions about the protections that one would normally associate with citizenship. In the words of Nasser al-Awlaki, writing in the *New York Times*, "[M]y grandson was killed by his own government . . . . The government has killed a 16-year-old American boy. Shouldn't it at least have to explain why?" See Nasser al-Awlaki, *The Drone That Killed My Grandson*, N.Y. TIMES, July 18, 2013, at A23.

36. See Volpp, *supra* note 31.

whereby members of this group were identified as terrorists and were “disidentified” as citizens.<sup>37</sup>

The tenacity of this racialization, lasting now for more than a decade, is evident in myriad examples. Consider the Saudi student in Michigan who, in May 2013, a month after the Boston bombing, made his friend a home-cooked meal. After walking outside, a neighbor reported him to the FBI, expressing concern about a “bullet-colored” pressure cooker.<sup>38</sup> Consider also the response to the September 2013 news reports that Nina Davuluri, of Syracuse, New York, had won the Miss America Pageant. Davuluri, whose parents migrated from Andhra Pradesh, in India, is Hindu and a U.S. citizen by birth.<sup>39</sup> Nonetheless, her selection sparked the following messages:

9/11 was four days ago and she gets Miss America?

Well they just picked a Muslim for Miss America. That must have made Obama happy.

And the Arab wins Miss America. Classic.

Congratulations Al Qaeda. Our Miss America is one of you.<sup>40</sup>

One could similarly examine the reactions to other events in September 2013, in particular the killing of twelve people at the Washington Navy Yard. For a brief moment, speculation flared that the perpetrator, Aaron Alexis, was Muslim.<sup>41</sup> A satirical newsblog posted a column headlined “Aaron Alexis, registered Democrat and Obama supporter?” that stated that Alexis was “allegedly a Muslim (possibly gay).”<sup>42</sup> While this posting was satirical, it reflected a constellation of issues that many find threatening: President Obama, Islam, and sexual non-normativity.

That “Muslim” and “perverse” are conflated is easily demonstrated by an internet search of the two terms, which yields myriad sites decrying the

37. *Id.*

38. Ali Harb, *In the Hands of Arabs, Pressure-Cookers Raise Fear and Suspicion*, ARAB AM. NEWS (May 17, 2013, 12:03 AM), <http://www.arabamericannews.com/news/index.php?mod=article&cat=Comment&article=6818>; Neetzan Zimmerman, *Saudi Student Visited by FBI After Using Pressure Cooker To Cook Food*, GAWKER (May 13, 2013, 9:18 AM), <http://gawker.com/saudi-student-visited-by-fbi-after-using-pressure-cooke-504443418>.

39. Jeff Yang, *Nina Davuluri's Miss America Win Spurs Racist Tweets*, WALL ST. J. (Sept. 16, 2013, 10:03 AM), <http://blogs.wsj.com/speakeasy/2013/09/16/nin-davaluri-crowned-first-indian-american-miss-america/>.

40. *20 Racist Tweets About the New Miss America*, INDIAN COUNTRY TODAY MEDIA NETWORK.COM (Sept. 16, 2013), <http://indiancountrytodaymedianetwork.com/2013/09/16/20-racist-tweets-about-new-miss-america-151294>.

41. Sheila Musaji, *The Islamophobes Discover Aaron Alexis' "Webpage Jihad,"* AM. MUSLIM (Sept. 20, 2013), <http://theamericanmuslim.org/tam.php/features/articles/aaron-alexis-webpage>.

42. See Chase Logan, *BREAKING: Alleged Navy Yard Shooter, Aaron Alexis, Registered Democrat and Obama Supporter?*, NAT'L REP. (Sept. 16, 2013), <http://nationalreport.net/breaking-aaron-alexis-navy-yard-shooter-allegedly-registered-democrat-obama-supporter/>. Some Twitter feeds suggested that if President Obama had a son, he would look like Aaron Alexis. See David Weigel, *If Obama Had a Son He Would Look Like Aaron Alexis*, SLATE (Sept. 16, 2013, 5:47 PM), [http://www.slate.com/blogs/weigel/2013/09/16/navy\\_yard\\_shooting\\_suspect\\_aaron\\_alexis\\_is\\_black\\_so\\_obviously\\_twitt\\_er\\_jerks.html](http://www.slate.com/blogs/weigel/2013/09/16/navy_yard_shooting_suspect_aaron_alexis_is_black_so_obviously_twitt_er_jerks.html).

perversity of Islam.<sup>43</sup> In the same vein, Muneer Ahmad has pointed out the posters circulating in New York after September 11 depicting Osama Bin Laden being sodomized by the World Trade Center.<sup>44</sup> One might also consider the imputed parallelism between the “perversity” of John Walker Lindh’s attachment to Islam to the “perversity” of his father’s being gay,<sup>45</sup> or the verbal interchange during a rally for then presidential candidate John McCain. McCain, responding to a woman expressing fear of Barack Obama because she thought he was “an Arab,” stated: “No ma’am, he’s a decent family man,”<sup>46</sup> suggesting an oxymoronic relation between the terms “Arab” and “decent family man.” But, back to Aaron Alexis. Since it turned out that he was not a Muslim (but in fact practiced Buddhism), he is not called a terrorist but was simply labeled “the shooter.”<sup>47</sup>

These discursive examples suggest that whatever a Muslim person does will potentially be perceived as a terrorist act; a person who appears Arab, Muslim, or Middle Eastern is presumptively a terrorist; mass killing is presumptively an act of Muslim terrorists. It thus seems sadly uncontroversial today that those who appear Middle Eastern, Arab, or Muslim are identified as terrorists and disidentified as citizens.

## II. THE CITIZEN AND THE TERRORIST

But what to make of the Tsarnaev brothers? Reflecting on the diverse reactions to the Boston bombing, it appears that, while both brothers are generally held to have been responsible, Dzhokhar is perceived as the citizen and Tamerlan as the terrorist. It is quite literally true that Dzhokhar Tsarnaev, currently in custody at a Federal Medical Center, had successfully naturalized as a U.S. citizen in 2012, and that his brother had not. At the time of his death, Tamerlan Tsarnaev’s naturalization application was still pending.<sup>48</sup> It was initially reported that the application

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43. See, e.g., M.A. Khan, *Sexual Perversity of the Muslim Mind*, FAITHFREEDOM.ORG (June 19, 2010), <http://www.faithfreedom.org/articles/free-thought/sexual-perversity-of-the-muslim-mind/>. To understand how the War on Terror perceives racially perverse terrorist bodies, see JASBIR PUAR, *TERRORIST ASSEMBLAGES: HOMONATIONALISM IN QUEER TIMES* (2007).

44. Muneer Ahmad, *Homeland Insecurities: Racial Profiling the Day After September 11th*, 20 SOC. TEXT 101, 109 (2002).

45. See, e.g., Debbie Schlusssel, *American Taliban’s Gay Dad Applauds Son’s Absurd Lawsuit for Islam, Terrorist Mtgs in Prison*, DEBBIE SCHLUSSEL (Sept. 5, 2012, 3:45 PM), <http://www.debbieschlusssel.com/54020/american-talibans-gay-dad-applauds-sons-absurd-lawsuit-for-islam-terrorist-mtgs-in-prison/>.

46. John Bentley, *McCain Boomed for Telling Audience To Be Respectful of Obama*, CBS NEWS (Oct. 10, 2008, 7:27 PM), <http://www.cbsnews.com/news/mccain-boomed-for-telling-audience-to-be-respectful-of-obama/>.

47. Peter Hermann & Ann E. Marimow, *Navy Yard Shooter Aaron Alexis Driven By Delusions*, WASH. POST, Sept. 25, 2013, at A1; see also *Who Was Aaron Alexis? He Was Not a Muslim, So Obviously Not a Terrorist*, NVO NEWS (Sept. 18, 2013), <http://nvonews.com/2013/09/18/who-was-aaron-alexis-he-was-not-a-muslim-so-obviously-not-a-terrorist/>.

48. Brian Bennett & Richard Serrano, *Tamerlan Tsarnaev’s Citizenship Application Was Pending*, L.A. TIMES (Apr. 21, 2013), <http://articles.latimes.com/2013/apr/21/nation/la-na-nn-citizenship-ice-boston-20130421>; see also Preston, *supra* note 20.



was forestalled because of a domestic violence incident involving a former girlfriend, for which he was arrested but never convicted; it was later reported, however, that the application was forestalled because of an FBI hold.<sup>49</sup>

Tamerlan, the terrorist brother, was so monstrous that in death he could scarcely be buried, given popular resistance to the idea that he could share the same soil as his victims. Since he was already dead, vengeance was left to “exhaust itself on his corpse.”<sup>50</sup> As Chris Haddix writes about this impasse, the act of burial “is a practice of communion with the dead, a reassertion of the connection between the departed and the living.”<sup>51</sup> To deny Tamerlan Tsarnaev an eternal home in a Massachusetts cemetery was to “deny him posthumous membership in the community,” a membership he himself had repudiated.<sup>52</sup> As Daniel Mendelsohn pointed out in the *New Yorker*, this was reminiscent of Creon in Sophocles’s classical Greek tragedy *Antigone* denying Polyneices burial as a traitor.<sup>53</sup> “Bury this terrorist on U.S. soil and we will unbury him,” read the sign outside the funeral home in Worcester, Massachusetts, that had agreed to receive his body.<sup>54</sup> There Tsarnaev’s body stayed until a woman named Martha Mullen in Virginia took it upon herself to find him a burial spot since, Mullen pointed out, “Jesus said love our enemies.”<sup>55</sup>

The younger brother, Dzhokhar, appeared fully assimilated into U.S. life as a Cambridge Rindge and Latin high school student and talented wrestler. He was described by friends as “sweet,” “lovely,” “wonderful,” and “a total pothead.”<sup>56</sup>

As for mens rea, we have Dzhokhar’s non-Mirandized statement, made while in custody, that the brothers were motivated by the U.S. wars in Iraq and Afghanistan.<sup>57</sup> Some commentators suggest that we need to think

49. See Preston, *supra* note 20. One is left to wonder whether the FBI hold was connected to the covert program Controlled Application Review and Resolution Program (CARRP), whose existence was publicized in fall 2013 by the ACLU. CARRP was a secret program that has, for years and without notice, blacklisted applicants for naturalization based upon religious activity, national origin, and innocuous associations. See Jennie Pasquarella, *Muslims Need Not Apply*, ACLU S. CAL. (Aug. 21, 2013), <http://www.aclusocal.org/muslims-need-not-apply>.

50. Chris Haddix, *Burying Tsarnaev*, MANTLE (May 12, 2013), <http://mantlethought.org/content/burying-dead>.

51. *Id.*

52. *Id.*

53. Daniel Mendelsohn, *Unburied: Tamerlan Tsarnaev and the Lessons of Greek Tragedy*, NEW YORKER (May 14, 2013), <http://www.newyorker.com/online/blogs/books/2013/05/unburied-tamerlan-tsarnaev-and-the-lessons-of-greek-tragedy.html>.

54. *Id.*

55. *Id.*; see also *Woman Has No Regrets over Role in Tsarnaev Burial*, USA TODAY (May 11, 2013, 8:09 PM), <http://www.usatoday.com/story/news/nation/2013/05/11/woman-tsarnaev-burial/2152931/>.

56. Matt Williams, *Dzhokhar Tsarnaev: Boston Bombing Suspect Was “a Lovely, Lovely Kid,”* GUARDIAN (Apr. 19, 2013), <http://www.theguardian.com/world/2013/apr/19/boston-suspect-dzhokhar-tsarnaev-school>.

57. On the delay to Mirandize Tsarnaev because of the “public safety exception,” see Glenn Greenwald, *Report: Dzhokhar Tsarnaev’s Repeated Requests for a Lawyer Were*

seriously about political motivations for attacks on U.S. soil rather than blame Islam.<sup>58</sup> But what I find also interesting is how the public response to Dzhokhar suggests a close attention to individual psychological factors—that is, a willingness to think about Dzhokhar’s subjectivity. He has been described as brainwashed by his older brother—falling under the malicious influence of a father figure in the absence of his parents.<sup>59</sup>

One of the victims of the Boston bombing, Michelle L’Heureux, who lost most of her left knee in the blasts and 30 percent of her hearing in her left ear, said, “I don’t know any other religion that kills for their religion and think they are going to heaven . . . . That part’s tough to understand.”<sup>60</sup> Still, L’Heureux says she felt mostly pity for Dzhokhar Tsarnaev.<sup>61</sup> “I’m not mad at him. It’s more pity. . . . He’s a child. You’re not born with that much hate. You’re indoctrinated into that,” she said.<sup>62</sup>

Indeed, Dzhokhar has been the subject of a striking amount of sympathy. There are several “Free Jahar” websites with thousands of members who believe he was set up and framed via Photoshop imagery.<sup>63</sup> As Hanna Rosin notes, these sites feature teenage girl crushes, fan girl fantasies, and what she calls a “deep maternal strain.”<sup>64</sup> Rosin writes, “In the past week and a half I have not been to a school pickup, birthday, book party, or dinner where one of my mom friends has not said some version of ‘I feel

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*Ignored*, GUARDIAN (Apr. 29, 2013, 2:43 PM), <http://www.theguardian.com/commentisfree/2013/apr/29/tsarnaev-right-to-counsel-denied>.

58. As Glenn Greenwald writes:

In the last several years, there have been four other serious attempted or successful attacks on US soil by Muslims, and in every case, they emphatically all say the same thing: that they were motivated by the continuous, horrific violence brought by the US and its allies to the Muslim world—violence which routinely kills and oppresses innocent men, women and children . . . .

It should go without saying that the issue here is causation, not justification or even fault. It is inherently unjustifiable to target innocent civilians with violence, no matter the cause (just as it is unjustifiable to recklessly kill civilians with violence). But it is nonetheless vital to understand why there are so many people who want to attack the US as opposed to, say, Peru, or South Africa, or Brazil, or Mexico, or Japan, or Portugal.

Glenn Greenwald, *The Same Motive for Anti-US ‘Terrorism’ Is Cited Over and Over*, GUARDIAN (Apr. 24, 2013, 11:27 AM), <http://www.theguardian.com/commentisfree/2013/apr/24/boston-terrorism-motives-us-violence>.

59. See, e.g., Miranda Leitsinger, *Classmates of Suspected Bomber Dzhokhar Tsarnaev Suggest “Brainwashing” by Older Brother*, NBC NEWS (Apr. 21, 2013, 3:18 PM), [http://usnews.nbcnews.com/\\_news/2013/04/21/17851546-classmates-of-suspected-bomber-dzhokhar-tsarnaev-suggest-brainwashing-by-older-brother?lite](http://usnews.nbcnews.com/_news/2013/04/21/17851546-classmates-of-suspected-bomber-dzhokhar-tsarnaev-suggest-brainwashing-by-older-brother?lite).

60. Christine McConville, *Bombing Victim Calls Suspects’ Mom Vile*, BOS. HERALD (June 19, 2013), [http://bostonherald.com/news\\_opinion/local\\_coverage/2011/04/bombing\\_victim\\_calls\\_suspects\\_mom\\_vile](http://bostonherald.com/news_opinion/local_coverage/2011/04/bombing_victim_calls_suspects_mom_vile) (play video).

61. See *id.*

62. *Id.*

63. See FREE JAHAR, <http://www.freejahar.net> (last visited Mar. 25, 2014); FREE JAHAR RES. PORTAL, <http://www.free-jahar.org> (last visited Mar. 25, 2014); FREE JAHAR, <http://free-jahar.tumblr.com> (last visited Mar. 25, 2014).

64. Hanna Rosin, *Why All This Maternal Sympathy for Dzhokhar?*, SLATE (Apr. 29, 2013, 11:32 AM), [http://www.slate.com/blogs/xx\\_factor/2013/04/29/maternal\\_sympathy\\_for\\_dzhokhar\\_tsarnaev\\_what\\_s\\_it\\_about.html](http://www.slate.com/blogs/xx_factor/2013/04/29/maternal_sympathy_for_dzhokhar_tsarnaev_what_s_it_about.html).

sorry for that poor kid.”<sup>65</sup> On the website D.C. Urban Mom, a query asking, “Why do I feel sympathetic towards the [sic] Dzhokhar Tsarnaev?” elicited twenty-one pages of postings in response.<sup>66</sup> There is also a backlash against the notion that Dzhokhar’s female supporters are “fangirls.” Some have argued that male conspiracy theorists, Tsarnaev sympathizers, and antigovernment dissenters are not described as engaging in “hybristophilia”—the experience of sexual attraction to criminals—and that dismissing the support as the product of aberrant female sexuality requires us to dismiss the supporters’ claim that they believe him to be innocent.<sup>67</sup>

The perception of sympathy for Dzhokhar also led to the outrage over the *Rolling Stone* issue in which Dzhokhar was featured on the cover. The magazine was “accused of glamorizing the 19-year-old suspected terrorist by presenting him as a tousled haired, brooding heartthrob,” analogizing him to Jim Morrison and Bob Dylan.<sup>68</sup>

In addition to a boycott of *Rolling Stone*, we now see, as a criticism of the magazine, a coloring book launched to help children “understand terrorism” with a graphic rendition of the *Rolling Stone* picture titled, “Rock Him and Stone Him.”<sup>69</sup> Inside the book, children are told, “This is what happened to Osama bin Laden,” along with a picture children can color of sea creatures refusing to eat bin Laden’s fragmented body parts.<sup>70</sup>

Whether the sympathy toward Dzhokhar is explained as romantic, sexual, maternal, or political, it did not appear to the same degree in the case of Lee Boyd Malvo, the teenage sniper who terrorized Washington, D.C., in 2002 along with John Allen Muhammed. Muhammed and Malvo, African American and Jamaican, eluded capture for a long time because the search

65. *Id.*

66. *Why Do I Feel Sympathetic Towards the Dzhokhar Tsarnaev?*, D.C. URB. MOMS & DADS (Apr. 20, 2013, 1:16 PM), <http://www.dcurbanmom.com/jforum/posts/list/302220.page>; see also Amanda Marcotte, *Why Does Dzhokhar Tsarnaev Have So Many Female Fans?*, SLATE (July 12, 2013, 10:51 AM), [http://www.slate.com/blogs/xx\\_factor/2013/07/12/free\\_jahar\\_why\\_does\\_boston\\_bomber\\_dzhokhar\\_tsarnaev\\_have\\_so\\_many\\_female.html](http://www.slate.com/blogs/xx_factor/2013/07/12/free_jahar_why_does_boston_bomber_dzhokhar_tsarnaev_have_so_many_female.html). Marcotte suggests that this fan support is the product of a fantasy many women have “of loving a dangerous man.” *Id.*

67. Elizabeth Stoker, *Dzhokhar Tsarnaev’s Female Supporters Are Not “Fangirls,”* ATLANTIC (July 12, 2013, 4:07 PM), <http://www.theatlantic.com/sexes/archive/2013/07/dzhokhar-tsarnaevs-female-supporters-are-not-fangirls/277762/>. On claims of innocence, see David Abel, *Doubts and Disbeliefs: Conspiracy Theories, Claims of Marathon Bombing Suspect’s Innocence Find Devout Audience on Social Media Sites*, BOS. GLOBE, July 27, 2013, at B1.

68. David McCormack & Snezana Farberov, “*I Guess We Should Have Drawn a D\*\*\* on His Face or Something*”: Rolling Stone Editor Forced To Apologize After Bitter and Flippant Tweet Amid Boston Bomber Cover Scandal, MAIL ONLINE (July 20, 2013, 6:48 PM), <http://www.dailymail.co.uk/news/article-2372009/Rolling-Stone-editor-forced-apologize-bitter-flippant-tweet-amid-Boston-bomber-cover-scandal.html>.

69. Stuart Woledge, *Rock Him and Stone Him*, MAIL ONLINE (Aug. 28, 2013, 7:29 AM), <http://www.dailymail.co.uk/news/article-2403939/Rock-Him-Stone-Him-Controversial-childrens-colouring-book-spoofs-Rolling-Stone-Boston-Bomber-page.html>.

70. *Id.* On a page titled, “Tell the Truth—Tell it Often—Tell the Children,” Bradley Manning is described as having “leaked classified U.S. cables . . . as a love letter to Julian Assange. Sentenced to 35 years for his crimes, now he wants to be a woman.” *Id.*

for the Washington sniper was shaped by the presumption that the perpetrator was a white, middle-aged gun nut with a military background. The relationship between Malvo and Muhammed has been analogized to that between Dzhokhar and Tamerlan as a relationship between a teenager and a powerful negative mentor.<sup>71</sup>

I have to wonder if some of this sympathy for Dzhokhar is related to the articles I have seen titled, “Do White People Really Come From the Caucasus?” and “Are the Tsarnaev Brothers White?” In these articles, writers explain the history of the equation of the term “Caucasian” and “white,” the legal splitting of these terms, and the capacious U.S. Census definition of white today.<sup>72</sup>

The day after the Boston bombings, *Salon* columnist David Sirota asserted, “Let’s hope the Boston Marathon bomber is a white American.”<sup>73</sup> He argued that this would be preferable because white terrorists are perceived as “lone wolves,” and their identification does not lead to the collective blaming of groups, resulting in systemic and usually regrettable excessive responses such as wars, foreign policy shifts, crackdowns on immigration, or reductions in civil liberties.<sup>74</sup> After the Tsarnaevs were identified, Peter Wehner of *Commentary* responded that, despite Sirota’s “fervent hopes,” the perpetrators were “Islamists,” not “white Americans.”<sup>75</sup> Peter Beinart then rebutted this assertion, writing in the *Daily Beast* that the Tsarnaevs were white Americans, stating: “The Tsarnaev brothers had lived in the United States for more than a decade. Dzhokhar was a U.S. citizen. Tamerlan was a legal permanent resident in the process of applying for citizenship . . . [They] hail from the Caucasus, and are therefore, literally, ‘Caucasian.’ You can’t get whiter than that.”<sup>76</sup> As Beinart noted, “in public conversation in America today, ‘Islam’ is a

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71. Deborah Kotz, *Behind Plot, Several Potential Psychological Explanations*, BOS. GLOBE, Apr. 29, 2013, at A1. On the relative lack of sympathy towards Malvo, see Rosin, *supra* note 64 (“I don’t recall any grown-ups I know feeling sorry for Lee Boyd Malvo, the teenage half of the D.C. sniper duo . . .”).

72. See Gene Demby, *Ethnicity, Religion and the Tsarnaev Brothers*, NPR (Apr. 22, 2013, 4:39 PM), <http://www.npr.org/blogs/codeswitch/2013/04/22/178461447/ethnicity-religion-and-the-tsarnaev-brothers>; Derek Thompson, *Do White People Really Come from the Caucasus?*, SLATE (Aug. 19, 2008, 7:22 PM), [http://www.slate.com/articles/news\\_and\\_politics/explainer/2008/08/do\\_white\\_people\\_really\\_come\\_from\\_the\\_caucasus.html](http://www.slate.com/articles/news_and_politics/explainer/2008/08/do_white_people_really_come_from_the_caucasus.html); Joan Walsh, *Are the Tsarnaev Brothers White?*, SALON (Apr. 22, 2013, 7:45 AM), [http://www.salon.com/2013/04/22/are\\_the\\_tsarnaev\\_brothers\\_white](http://www.salon.com/2013/04/22/are_the_tsarnaev_brothers_white).

73. David Sirota, *Let’s Hope the Boston Bomber Is a White American*, SALON (Apr. 16, 2013, 7:24 PM), [http://www.salon.com/2013/04/16/lets\\_hope\\_the\\_boston\\_marathon\\_bomber\\_is\\_a\\_white\\_american/](http://www.salon.com/2013/04/16/lets_hope_the_boston_marathon_bomber_is_a_white_american/).

74. *Id.* Sirota quotes this excerpt from antiracist educator Tim Wise: “White privilege is knowing that even if the bomber turns out to be white, no one will call for whites to be profiled as terrorists as a result, subjected to special screening, or threatened with deportation.” Tim Wise, *Terrorism and Privilege: Understanding the Power of Whiteness*, TIMWISE (Apr. 16, 2013), <http://www.timwise.org/2013/04/terrorism-and-privilege-understanding-the-power-of-whiteness/>.

75. Peter Wehner, *The War Goes On*, COMMENTARY (Apr. 23, 2013, 9:30 AM), <http://www.commentarymagazine.com/2013/04/23/the-war-goes-on/>.

76. Peter Beinart, *Are the Tsarnaevs White?*, DAILY BEAST (Apr. 24, 2013), <http://www.thedailybeast.com/articles/2013/04/24/are-the-tsarnaevs-white.html>.

racial term. Being Muslim doesn't just mean not being Christian or Jewish. It means not being white."<sup>77</sup>

Put slightly differently, I wonder if some of the sympathy for Dzhokhar, the antipathy for his brother, and the willingness to think about psychological causes for Dzhokhar's participation reflects not only a belief that the older brother brainwashed the younger, but also the line between the "white ethnic" and "Islamic terrorist" that the two brothers differently straddle—a gray area that many others who are pushed into the racial grouping of "appearing Muslim" or "brown" cannot inhabit. Dzhokhar is considered a citizen not only as a matter of formal legal status, but also as a matter of identity; for many Americans, he is one of "us."<sup>78</sup> Can we attribute the differing reactions to Dzhokhar and Tamerlan to the fact that Dzhokhar was considered a "white American" while Tamerlan was an "Islamic alien"? Dzhokhar thus appears as the white American victim of his nonwhite—Muslim and alien—brother.<sup>79</sup> Dzhokhar was, in the words of his friends, "just a normal American kid,"<sup>80</sup> and, as such, he resists being cast as a monster, the monster that we assume to be the terrorist.<sup>81</sup>

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77. *Id.* For a discussion of how "Muslim" and "white" have been constructed as historically oppositional, see Moustafa Bayoumi, *Racing Religion*, 6 *NEW CENTENNIAL REV.* 267 (2006) (describing attempts of Muslim immigrants to naturalize as "white"). As Beinart points out, this historical opposition between "white" and "Muslim" has widened since September 11: "Since America's founding, being white has meant, both culturally and legally, being 'one of us.' And since 9/11, in particular, being Muslim has meant the opposite." Beinart, *supra* note 76.

78. Citizenship as a formal legal matter does not necessarily produce citizenship as identity; naturalization does not always lead to the affective ties of kinship or solidarity necessary to produce a perception of national belonging. See Leti Volpp, "Obnoxious to Their Very Nature": *Asian Americans and Constitutional Citizenship*, 5 *CITIZENSHIP STUD.* 57 (2001).

79. For a contrasting view, see Josie Jammet, *The Fall of the House of Tsarnaev*, *BOS. GLOBE* (Dec. 15, 2013), <http://www.bostonglobe.com/Page/Boston/2011-2020/WebGraphics/Metro/BostonGlobe.com/2013/12/15tsarnaev/tsarnaev.html>. Jammet's piece rattles what had been to that point a stark dyad of public portrayal of Tamerlan as terrorist and Dzhokhar as one of us. It suggests that both brothers may have been motivated less by "Islamist ideology" and more by their "own personal failings and inner demons." The article cites acquaintances who believed Tamerlan suffered from schizophrenia, and it portrays Dzhokhar as both deceptive (lying about failing college courses) and a high-level pot dealer. The article is particularly unusual in that both brothers' actions are ascribed to psychological causes. In earlier reporting, Tamerlan was generally portrayed as a cipher motivated by "radical Islam," with any attempt at understanding his psychological motivations focused upon what would make him turn to this radicalization. See, e.g., Deborah Sontag, David Herszenhorn & Serge F. Kovaleski, *A Battered Dream, Then a Violent Path*, *N.Y. TIMES*, Apr. 28, 2013, at A1 (noting that the 2010 decision to bar non-U.S. citizens from USA Boxing's National Golden Gloves Tournament of Champions resulted in a "blow the immigrant boxer could not withstand").

80. Janet Reitman, *Jahar's World*, *ROLLING STONE*, August 1, 2013, at 46, 46.

81. See Jasbir K. Puar & Amit S. Rai, *Monster, Terrorist, Fag: The War on Terrorism and the Production of Docile Patriots*, 20 *SOC. TEXT* 117 (2002).