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## The Judge Should Rethink His Decision to Try Tsarnaev

*deus Hoffmeister*, a professor at the University of Dayton School of Law, is the author of *"Social Media in the Courtroom"* and the author of *Juries*.

2015, 10:24 PM

The judge in the death penalty trial of Dzhokhar Tsarnaev do not believe that the court will find 12 impartial jurors in New England and want the case moved to Washington, D.C. But the judge in the case has consistently ruled against the defense and denied repeated requests to move the trial, saying that it "stretches the imagination to suggest that an impartial jury cannot be successfully selected from this large pool of potential jurors."

The judge could change his mind prior to the start of trial; however, this is an unlikely scenario. It is unfortunate for the defendant and those interested in safeguarding the rights of anyone accused of a crime.

To serve on a criminal trial, a juror need not be ignorant of the underlying facts surrounding the case. This is as true today as in 1807 when Vice President Aaron Burr was acquitted of treason. However, jurors, even those with knowledge of the facts, must be able to lay aside their opinions and render a verdict based on the evidence presented in court -- a close to impossible task for this highly publicized case that hits so close to home and personally touches so many from Massachusetts, especially those in Boston. One has to look no further than the online comments section of any local newspaper to gauge the feelings of Massachusetts' residents on the defendant's guilt or innocence. Lastly, even if the judge could find 12 impartial jurors, which one would feel comfortable or have the courage to acquit knowing that he or she has to return to a community where this bombing has caused so much pain?

*It will be hard to find a juror with the courage to acquit knowing that he or she has to return to a community where this bombing has caused so much pain.*

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sean hellier • 13 January 2015

Tsarnaev declared war on the citizens of Boston. They have the right to defend themselves, and exact revenge, yes revenge, upon a barbarian who attacked a civilized society.

We are at war with radical Islam. The kind of people who want to drag all of us into the prison of their religion. We are not going to allow that to happen.

Tsarnaev is part of a movement that sends 12 year old children strapped with explosives into crowded markets, that murders cartoonists, that bombs a foot race, that lines freeways with decapitated heads on pikes.

We are at war with a ruthless barbarism called radical Islam. I trust the people of Boston to give Tsarnaev the fair trial he deserves, and the punishment he deserves.

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Brooklyn Traveler Brooklyn • 9 January 2015

His peers are in Boston. And he is entitled to be judged by them in an open court of law after the presentation of the evidence.

It's ridiculous to think that someone who commits a crime targeting hundreds and perhaps thousands of people should benefit because the scale of the crime he chose to commit.

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Bates MA • 8 January 2015

"It will be hard to find a juror with the courage to acquit..." -- well if acquittal is your goal Chechnya is were you want the trial.

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argus Pennsylvania • 9 January 2015

I regret that the judge did not grant a change of venue. Nevertheless, I must accede to the judge's premise that a juror from Boston who has thoroughly and thoughtfully considered the evidence presented may vote for acquittal.

Still, many of us fear what is reflected in the following exchange from "Alice in Wonderland":

Fury said to a mouse,  
That he met in the house,  
"Let us both go to law:  
I will prosecute YOU.

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--Come, I'll take no denial;  
We must have a trial:  
For really this morning I've  
nothing to do."  
Said the mouse to the cur,  
"Such a trial, dear Sir,  
With no jury or judge,  
would be wasting our breath."  
"I'll be judge, I'll be jury,"  
Said cunning old Fury:  
"I'll try the whole cause,  
and condemn you to death."

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**Matt** NYC • 8 January 2015

The jury system extends beyond the accused and goes to the legitimacy of the justice system itself. The idea is that a community has some control over the justice system as opposed to a disinterested party or legal professionals. Otherwise, we could just have a group of professional jurors who simply rotate through all trials around the country. Such a jury would detract from the legitimacy of any verdict rendered. Thus, there is a fine line between a fair jury and a disconnected one. Can harm or communal impact be accurately judged by a layperson who is not a part of the region in which a crime took place? In any case, the fact that the courts are separated into districts and circuits is a testament to the fact that notions and standards of justice change from one area to the next. While there are (and should be) base standards, a defendant is not free to simply demand the jury they believe will be most sympathetic.

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**riggs** boston • 8 January 2015

The repugnant, uncivilized comments section of [Boston.com](#) and the Herald are not an accurate sample of the greater Boston area.

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**N** Michigan • 8 January 2015

I would judge nothing from online comments, which, mine included are mostly blather and draw from a limited slice of society.. the judge should try to seat a jury first. Then it can be ascertained if it is possible.

blather about the specialness of the wrong is unconvincing. there is a duty to provide a fair trial that should not be avoided. There are a lot of people in the Boston area. Surely 12 that can do the job can be located.

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**aburt** Amherst, MA • 8 January 2015

"Close to home" is no reason to disqualify a community that has been attacked from trying the accused. It is an abstract and shifting standard straight out of cloud-cuckoo land that can exclude whomever the speaker wishes: under it, who would qualify as a juror in the case of a crime against humanity? Would the 9/11 bombers have to be tried outside the U.S.? Before a jury of their "peers" perhaps, in Iran? What about this week's murderous attack in Paris that is still shocking the civilized world? Is France too "close to home" to handle the case?

All seem to agree that impartiality does not require recluses or ignoramuses who have never heard of a widely publicized event. All persons with good enough judgment to sit on a jury, must have formed opinions about other matters in the course of their lives. All we can ask for is a group of people who have agreed they can and will follow the rules: to consider only such evidence as the judge deems admissible, and to follow that judge's instructions how to reach a verdict on the basis of it. That's our system.

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**argus** Pennsylvania • 9 January 2015

The accused has the right to request a change of venue. It is the judge who decides whether to grant that petition and not laypeople who may have no axe to grind, but who are nevertheless ignorant of the law. Though it sometimes turns out otherwise, in the US we try to have a government of laws, and not of [wo]men.

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JEFFREY ABRAMSON, AUTHOR, "WE, THE JURY"



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RICHARD LIND, LAWYER



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