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Judge's Decision in the Tsarnaev Case Sets a Precedent

David Lind is a lawyer in private practice. In 2002, in Federal District Court in Manhattan, he sought a change of venue for a suspected aide to Osama bin Laden who had been charged with stabbing a jail guard.

Dokhtar Tsarnaev's motion to change the location of his trial to outside Massachusetts, U.S. Judge George A. O'Toole Jr. relied heavily on [Skilling v. United States](#), the 2010 Supreme Court decision that identified several factors to be considered in whether a venue transfer was appropriate. The factors included: 1) the size and diversity of the community from which the jury pool would be drawn; 2) the nature and quality of news media coverage; and 3) the passage of time between the crime and trial.

Judge O'Toole gave short shrift to the 1996 decision by a federal court in [United States v. McVeigh](#), in which the trial judge denied a motion for change of venue for two defendants facing the death penalty for their alleged involvement in the 1995 bombing of the Murrah Federal Building and U.S. Courthouse in Oklahoma City in which 168 men, women and children were killed. Judge O'Toole described the McVeigh

The McVeigh opinion, which allowed for a change of venue for two defendants in the

decision as “not pertinent.”

In fact, the McVeigh opinion is far more pertinent than Skilling for a number of reasons. First, as in McVeigh, Tsarnaev is accused of domestic terrorism involving the premeditated killing and maiming of individuals, including children, which resulted in three deaths and hundreds of permanent injuries; Skilling involved corporate fraud.

Second, Tsarnaev faces the death penalty in 17 of the 30 counts in which he is charged – a penalty to be decided by the same jury; Skilling faced a term of imprisonment to be imposed by a judge.

Third, Tsarnaev’s alleged crimes are tied to an iconic day in Boston’s history -- Patriot’s Day -- and as with the World Trade Center attack on 9/11, the passage of time has done little to assuage the horrific connection.

Unfortunately, Judge O'Toole appears to have ignored these important factors in determining whether to grant a change of venue for Tsarnaev’s case. As a consequence, if upheld, the court’s opinions may make change-of-venue motions impossible for defendants to win in the future.

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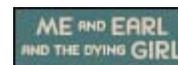
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REALITY-CHECK: Because of the notoriety of this case, it makes little difference where this trial is held, and really, the same was true for the OK-City case as well.

In my view, anybody who isn't aware of the basic, well-established facts in this case,

Oklahoma City bombing, is far more pertinent than the Skilling case, which involved corporate fraud.

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. . . is too clueless to be sitting on ANY jury.

This is a really sad case because THIS kid, was apparently not a jihadist or anything like that- apparently he was a 'seemingly' normal, happy-go-lucky kid. That is, until family. cultural, and religious loyalty persuaded him to take part in something stupid and completely out of his character. Nonetheless, he did willingly participate, and should be punished appropriately.

The saddest aspect of this is that in an open-&-shut case like this, the only way to prevent a death sentence should be an honest and sincere confession and apology to the community. It is a horrible testimony of the legal profession, that in cases of obvious guilt, there should be any incentive to attempt to 'get someone off' for anybody for whom their culpability is already well established far beyond any reasonable doubt.

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RICHARD LIND, LAWYER



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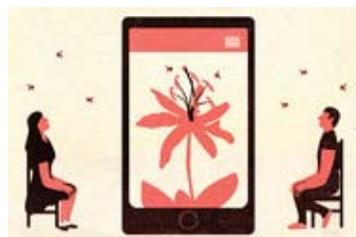
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