

## Legally Speaking



### More Lessons From Boston

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A number of lessons can be learned from the Boston Marathon bombings.

1. All families, and all people traveling together, need an emergency plan. After the bombing in Boston, the government stopped cell phone service out of fear that a cell phone could be used to set off another explosion. Stopping service was appropriate, but it left thousands of people isolated from their friends, thereby adding to the anxiety of those who did not know if their loved ones had been hurt.

When you travel with friends, have a plan of what to do if you are separated. Arrange to meet in a designated place, or leave a phone message with a designated person, or leave a written note at a specific

place. It can be as simple as saying: “If we get separated, meet back at the car;” or “If our house catches on fire, meet at Mrs. Murphy’s;” or “If there is an emergency, leave a message with Uncle Joe.” Firefighters have died looking for people in burning buildings when those people had already left the building but did not tell anyone. A rule of emergency evacuation planning for businesses is that upon an evacuation order, all employees will go to a designated evacuation point and stay there until a head count is taken. All people must be accounted for. Your family should have an agreed place to go in an emergency so that others will know they are ok.

The need to be accounted for is also important in natural disasters. Having an agreed place to leave a note saying how you may be contacted, that you have survived, or where you are, can be very important to your family and for rescue teams looking through collapsed buildings. You may not rely upon the telephones working. Leaving a dated note in crayon (or something that will not easily wash away) on your door or on the walk in front of your home will help disaster relief teams as well as family members looking for you.

2. Community safety is increased by public involvement. The hundreds of public safety officials at the Boston Marathon did not discover the plot before the bombs exploded. Any member of the public, however, could have frustrated the bombers by saying, “Hey mister, you forgot

your bag.” The public needs to be aware of the potential danger posed by an abandoned box, bag, or other container. Do not leave bags unattended. If you see someone abandon a container, or you see that one has already been abandoned in a public place, report it to the authorities. It may be a bomb. Be alert to what is going on around you. Boston identified the bombing suspects quickly because thousands of everyday people sent their pictures of the Marathon to authorities.

Involve your children in your emergency planning. Make sure they understand their obligations as a citizen to participate in community security and not be part of the problem.

3. Take a first aid course. Schools should teach first aid to children. If your child’s school does not, see if you can get a first aid course added to the curriculum or perhaps taught as part of a church program. People who had limbs blown off by the explosion in Boston were saved because a bystander properly applied a tourniquet.

4. There is a darker side to law enforcement’s involvement with the Boston Bombing.

a) During the pursuit of the vehicle driven by the Tsarnaev brothers (the suspects in the bombing), police fired over 250 rounds of .223 and 9mm ammunition from those “assault weapons” that the media likes to call “powerful.” The area of the chase is densely populated. Most homes are multi-family, wooden structures. The fact that no civilian bystanders were killed is

a testament to how underpowered most “assault weapon” type guns are.

No one has asked why the police fired so many shots in such a heavily congested area or why so few of those shots hit their target. Indeed, some reports suggest that officers ran out of ammunition.

b) One officer was killed, allegedly by the suspects, before the chase began. The officer had a holster with some kind of locking device that supposedly prevented an unauthorized person from taking the officer’s gun. No one has adequately questioned whether that “safety” device prevented the officer from getting his gun out quickly enough to save his own life.

c) The suspects had one gun. It was not acquired from any legal source because: 1) one suspect was too young to buy a gun legally; 2) the other suspect was disqualified from obtaining a Massachusetts license which was needed to legally own a gun; and 3) the gun is said to have had obliterated serial numbers. You can not legally buy a gun with obliterated numbers. There is no report that the ATF “recovered” the filed off numbers from the suspect’s gun to “trace” the gun. Gun collectors have been “recovering” altered or removed markings on guns for decades. The ATF should be aware of the process. Since the older brother was said to have sold drugs, he may have obtained the gun from the same people who provided him with drugs. That

raises the question of whether this was a “Fast and Furious” gun that the ATF allowed to pass into the hands of organized crime. Numbers on a gun are obliterated to prevent it from being traced back to a registered source. There is no reason to do that on a stolen gun. The crime gun needs to be traced.

d) As the suspects had only one gun, it appears that law enforcement (federal, state and local) needed better firearms training. Not only could they not hit their target, there was a lack of fire control on the street. Law enforcement should never treat our cities as free fire zones.

The suspect Tamerlan Tsarnaev, was killed when he was apparently run over by his brother Dzhokhar in the get-away car. Dzhokhar Tsarnaev, eventually abandoned the car and hid in a boat. He was unarmed but the police had no way of knowing that. When a citizen reported the possibility that the suspect was hiding in a boat, there was a second free fire zone with officers riddling the boat with everything they had. There was no need for that. Either the police did not want to take the suspect alive, or there was insufficient control over the officers present. Clearly there was not enough concern for the safety of the public who lived in the neighborhood. The police had the suspect cornered. They could have waited the suspect out. The argument that they were afraid of more explosions is not an

excuse. If they killed the suspect, they could not question him about other devices or suspects. The police need to develop better operating procedures for multi-department involvement in public safety emergencies. There should be a clear understanding of who is in control of each part of the operation. There needs to be clear “rules of engagement,” that state who can fire a gun and under what circumstances.

e) Once the suspect was in custody, the FBI wanted to throw away the Bill of Rights. They questioned the suspect Dzhokhar without giving him his Miranda rights or allowing him to have an attorney present. By doing that, they jeopardized the prosecution of Dzhokhar. They also gave aid and comfort to those who claim 1) this is all a government plot 2) that everything the FBI claims Dzhokhar said, is a lie, 3) and/or any statement made was coerced. For a country that values human and civil rights, the FBI’s violating the spirit of our Constitution is wrong. They have done more violence to the United States, and have more endangered the American public, than did their suspect. By the time the questioning began, there was no longer an immediate need to obtain information for public safety. Given the man’s injuries, the questioning could easily be characterized as coerced.

f) Then there is the strange story of Ibragim Todashev. I am not a big fan

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of conspiracy theories. Having spent 28 years in the National Guard, I have no sympathy for terrorists. I am a passionate believer in the Constitution and Bill of Rights. Those accused of the Marathon bombing should have a fair trial and be granted every civil right set out in the Constitution. The purpose of a trial is to determine if the person charged is really guilty. The gravity of the crime is not relevant to identifying who committed it. If, after a proper trial, someone is found guilty of planting a bomb on a crowded Boston street, then I have no problem with a public execution on Boston Common where all the people can chant, "God is good and justice has been done." Before that, however, the Constitution must rule.

The President does not have the

right to order the death of anyone who has not been convicted and sentenced by a court. The police do not have the right to kill people no matter how much they might think a person needs killing.

Other than a court imposing a sentence after a trial, the only justification for taking a life is self defense in the case of a direct confrontation or by a soldier against an armed enemy during combat. Even in war you do not shoot unarmed soldiers who are not engaged in fighting. You take them prisoner.

So who is Ibragim Todashev? We are told he was an acquaintance of the Boston bombing suspects. He lived in Florida where he was questioned by the FBI and two Massachusetts State Police Officers. Massachusetts police officers have no law enforcement powers in Florida. There has been no adequate explanation of why the local police were not present.

What is strange about the Todashev story? After being questioned in his own home for apparently more than 5 hours, he was shot dead by the FBI. Reports say there were six shots to the body and one to the head.

The FBI's first story was that Ibragim was armed; then it was that he was not armed but charged the agent; then it was that he did not have a weapon but he was trying to get a weapon; then it was he was about to sign a confession to a triple murder. Whatever. Surrounded by three law enforcement officers in the confines of a room in a private house, it is hard to imagine that the agent needed to discharge 6 shots to the body and one to the head in self-defense. If you tried to convince a judge that you went to visit a neighbor and ended up shooting him six or seven

times in self defense, you would be told that your story did not pass the "giggle test." You would be arrested and charged with murder.

Russia, Todashev's country of nationality, is asking for an investigation. It is a sad day when Russia is concerned that the United States has murdered a witness to a political crime.

Why was Todashev being questioned for so long a time? The questioning was a thorough grilling. Why were agents at his home rather than an FBI office where the environment could be controlled, the suspect searched, and the questioning video taped? Perhaps the agent did not want his actions recorded. More directly, if Ibragim had been at an FBI office, he could have asked for a lawyer and the questioning would have had to stop. Because the questioning was at Ibragim's home, the officers were not obliged to read him his Miranda Rights nor did Todashev have a right to have a lawyer present. Courts would not consider such questioning "custodial" so Miranda did not apply. All Todashev could do is to ask the officers to leave his home. If they refused, it was three big guys with guns, all of whom had training in hand to hand fighting, against one.

Unless there is an emergency, such as a fire or someone is hurt or likely to be hurt, or you are reporting a crime or you are at the scene of a crime, you should never talk to the police without your lawyer being present. That is, you can say: the injured person is over there (or not here); the injured person was hit by a black truck; the man ran up Adams Street; I have not seen anyone in a pink hat; I have a picture in my phone of the man running out

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of the bank; or such. If the police come to your door, however, and say they want to talk to you about something that you did in the past, then you want to ask them what they are investigating and tell them your lawyer has to be present.

The Todashev incident has all the earmarks of officers trying to circumvent the Constitution. That is consistent with the FBI's treatment of the suspect Dzhokhar Tsarnaev who, while in a hospital intensive care unit, was questioned for 16 hours without being allowed to speak to an attorney. The Justice Department saw nothing wrong with that. Their apologists even suggested that the suspect should not be entitled to any of the Bill of Rights, including a trial.

As there was no warrant, officers had no right to be in Ibragim's

home without his permission. Ibragim had the legal right to evict the officers, if they refused to leave upon being asked. Trying to manhandle an officer is never a smart thing to do even if it would be justified by the law under the circumstances. Ibragim's death is suspicious. As the justice department is implicated, the President should appoint the Attorney General of Florida as a special federal prosecutor to investigate what happened.

The fact there might be a threat, the fact law enforcement is investigating a crime, is not justification for suspending the Bill of Rights.

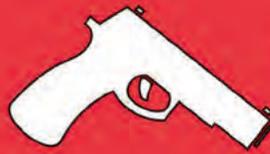
If we give up our basic values, the terrorists win. The people at the Boston Marathon were innocent of any conduct justifying someone

trying to kill them. They were helpless in the face of those determined to blow them up. Being innocent and helpless is not a protection from bad things happening.

The answer to evil is public vigilance. Not only vigilance as to those who would do physical violence to our communities, but also as to those who would do violence to our Constitutional Rights. To say that the motives of those in government are good, is no different from the terrorists saying they are killing people for God. Serious erosion of our civil rights and the growing "police state" culture among law enforcement was encouraged by Bush but has expanded under Obama. Congress needs to put a stop to it.

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