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U.S. DISTRICT COURT
DISTRICT OF MASS.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

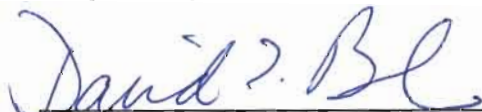
FILED UNDER SEAL

UNITED STATES OF AMERICA)
)
 v.)
)
 DZHOKHAR TSARNAEV)

CRIMINAL NO. 13-10200-GAO

Defendant, Dzhokhar Tsarnaev, by and through counsel, requests that the Court include the attached jury instructions concerning (1) nondiscrimination and (2) victim impact evidence as part of the preliminary penalty phase instructions to the jury at the start of the sentencing phase of this case.

Respectfully submitted,

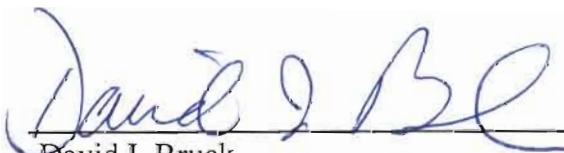


David I. Bruck
Judy Clarke
Miriam Conrad
Timothy Watkins
William Fick

April 13, 2015

Certificate of Service

I certify that the within requested instructions were personally served upon counsel for the government this date.



David I. Bruck

**DEFENDANT’S REQUESTED OPENING INSTRUCTION NO. 1:
JUSTICE WITHOUT DISCRIMINATION**

At the end of this case, along with the other detailed instructions that apply to the sentencing decision, I will include the following instruction:

In your consideration of whether to impose the death sentence or life imprisonment without the possibility of release, you must not consider the race, color, religious beliefs, national origin, or sex of either the defendant or the victims. You are not to return a sentence of death unless you would return a sentence of death for the crime in question without regard to the race, color, religious beliefs, national origin, or sex of either the defendant or any victim.

When it passed the federal death penalty statute, Congress considered the instruction I have just read to you so important that it created a special procedure. When you retire to deliberate at the end of this sentencing hearing, you will be given a form that is unlike anything else federal juries are ever asked to fill out. It is a certificate, to be signed by each one of you, that promises the defendant, the government, me, and the people of the United States that you actually followed the instruction I have just read to you.

Specifically, the certificate states that “consideration of the race, color, religious beliefs, national origin, or sex of the defendant or any victim was not involved in reaching [any juror’s] individual decision.” The certificate also states that “each individual juror would have made the same recommendation regarding a sentence for the crime in question no matter what the race, color, religious beliefs, national origin, or sex of the defendant or any victim might have been.”

As I said, you won’t get to this form until the end of the sentencing process. But you need to know about it now so that you can keep it in mind throughout this hearing

while you listen to the evidence.

This certificate is not to be signed lightly. Congress included it in this process in order to ensure that each of you would stop and think deeply about how you make your sentencing decision. Of course, Congress wanted to make sure that no one is sentenced to death because of actual racial, ethnic, religious or gender bias. But this certificate asks more than that. It also asks you to reflect on how you look at each of the people involved in this case, and on how you respond to what you seen and learn about them.

Human beings have a natural tendency to identify with, and to respond to, people like themselves. It's just the way most people are. But the law requires more of jurors who are entrusted with making a life and death decision. It requires that each of you look deep inside to see if the way you are responding to the evidence and testimony of various witnesses or parties differs depending on the religious beliefs, ethnicity, or national origins of the people involved. And if you are responding differently—more able, for example, to see the point of view or understand the emotions of someone whose background is more like your own---the law requires that you think through your responses again, imagining this time that everyone's backgrounds were reversed from what they actually are.

That is a way of checking yourself, and in that way making sure that your sentencing decision—whatever it may be—is truly free of any influence of religious beliefs, national origin, race, ethnicity or gender. And if in the end you cannot honestly certify that your decision would have been the same regardless of the religious beliefs, national origin, race, ethnicity or gender of either the defendant or any of the victims, you

may not sign the Certificate about which I have instructed you.

18 U.S.C. § 3593(f).

**DEFENDANT’S REQUESTED OPENING INSTRUCTION NO. 2:
VICTIM IMPACT EVIDENCE**

1. During the course of this sentencing proceeding, the government will be introducing what is known as victim impact evidence. Victim impact evidence is evidence about the deceased victims’ personal characteristics and the impact of their deaths upon their families and others. The government has provided that notice that it intends to present such evidence to show the injury, harm and loss caused by each of the victims’ deaths. While you may consider this evidence along with all the other evidence that will be admitted, I want to caution you concerning victim impact evidence.

2. You must be careful not to permit this evidence to cause you to sentence the defendant simply out of sympathy with the victims or with their family members. Such sympathy may be natural, but it cannot be the basis for your sentencing decision. Your decision must be a reasoned moral response to the evidence before you concerning all the circumstances of the offenses and the defendant’s own background, character and record. It cannot be, and it must not be, an emotional response to the victim impact evidence, or a way to express sympathy with, or support for, the victims’ families.

California v. Brown, 479 U.S. 538, 544 (1987) (O’Connor, J., concurring) (“the sentence imposed . . . should reflect a reasoned moral response to the defendant’s background, character and crime rather than mere sympathy or emotion.”).

3. I also caution you that you are not to be influenced by speculation concerning what sentence you think the victims’ families might wish to see imposed on the defendant. There will be no evidence before you concerning what opinions members of the victims’ families might have on what sentence should be imposed. Indeed, there will

be no evidence that family members of the victim have any opinions on this issue at all. Even if they did, you as jurors must not be influenced by the opinions of family members of the deceased victims either for or against the death penalty. The reason you have been selected to decide this case is that you are impartial. It is for you alone, as fair-minded jurors who have no friends to reward and no enemies to punish, to decide the appropriate punishment in this case.

Payne v. Tennessee, 501 U.S. 808, 830, 835 n. 1 (1991) (noting that *Payne* did not implicate or overrule *Booth v. Maryland*'s prohibition of opinions of murder victims' relatives concerning the defendant and the sentence he should receive); *United States v. McVeigh*, 153 F.3d 1166, 1217 (10th Cir.1998) (re-stating rule that victim opinion evidence remains improper after *Payne*).