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Tsarnaev's Defense Will Likely Focus on His Youth

By The Moscow Times

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Tamerlan Tsarnaev, second from left, and Dzhokhar Tsarnaev, third from left, in an image taken 10-20 minutes before the April 15 blasts. **Bob Leonard**

NEW YORK — Lawyers for the surviving Boston Marathon bombing suspect will likely accentuate his youth and mental state in fighting charges expected against him in civilian court, possibly including a death penalty request, legal experts said.

Dzhokhar Tsarnaev, 19, was arrested late Friday after an extensive manhunt and remains hospitalized under guard. He and his brother, Tamerlan, 26, are suspected of setting off bombs at the crowded finish line of the marathon on Monday, killing three people and injuring 176.

Tamerlan died early Friday after a shootout with police. His brother has not yet been charged.

Some congressional Republicans, including Senators Lindsey Graham of South Carolina

and John McCain of Arizona, urged Democratic President Barack Obama to hold Tsarnaev under the law of war as an "enemy combatant," like detainees at the Guantanamo Bay Naval Base in Cuba.

Such a designation would severely limit his legal protections and potentially allow him to be tried by a military commission instead of a civilian court.

Given the brutality and high-profile nature of the bombings, the death penalty probably will be sought.

But defense attorneys said this was political grandstanding and would be extraordinary treatment for a U.S. citizen arrested on U.S. soil. Tsarnaev, an ethnic Chechen who emigrated from Russia as a boy, is a naturalized U.S. citizen.

"Our federal courts have proven to be more effective in dispensing speedy justice in terrorism cases than secret tribunals," said Robert Gottlieb, a New York criminal defense attorney.

"There's absolutely no need or justification to declare him an enemy combatant and to deprive our justice system of the opportunity to render a fair verdict."

The U.S. Federal Public Defender Office in Boston said Saturday that it will represent Tsarnaev, once charges are filed.

A first step in the case will be for federal prosecutors to decide what charges to bring, which could open the door to seeking the death penalty, lawyers said.

Given the brutality and high-profile nature of the bombings, there is a strong likelihood the death penalty will be sought, said Edward MacMahon, a Virginia defense attorney who represented Zacarias Moussaoui in connection with the Sept. 11, 2001, conspiracy.

The U.S. attorney general must authorize the decision to seek the death penalty.

Possible factors in Tsarnaev's favor may be "whether or not he played a major or minor role," MacMahon said.

For instance, proof that someone else took the lead in the plot, like his older brother, might mitigate against a death penalty request.

Another factor could be Tsarnaev's age. The U.S. Supreme Court has ruled that individuals under the age of 18 at the time of their crimes cannot be executed, and at 19 years old, Tsarnaev is just one year above that cut-off.

From a defense perspective, "you have to develop a case where the jury might spare his life," MacMahon said.

Prosecutors might be more lenient if Tsarnaev had valuable information and was willing to share it with the government, said attorney Donald Stern, a former U.S. attorney for Boston.

"That would depend on whether he has any information that the government couldn't get on its own," Stern said. "If his cooperation is, 'I did it, nobody else helped me,' that's not much."

Experts said Tsarnaev's attorneys probably will ask the court to consider moving the trial out of Boston, given how extensively the crime resonated there.

"It's going to be a tremendous challenge to select an impartial jury," said Jamie Sultan, criminal defense attorney in Boston.

It is also possible state prosecutors will bring charges of their own, even though Massachusetts does not have the death penalty, Sultan said.

"It's very rare, but it does happen. Given the rather unique nature of the case and the incredible notoriety, and the politics involved, state prosecutors might feel they want to vindicate state law," Sultan said. "It's going to be very complicated and go on for a long time."

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