



## Brother Tsarnaev are 'losers,' not 'enemy combatants'

By: Gene Healy – April 22, 2013

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From the Twittersphere to CNN, last week's frenzied theorizing about the Boston Marathon bombing was an object lesson in the dangers of premature speculation.

But there's one assessment of Tamerlan and Dzhokhar Tsarnaev for which we already have enough information. That's the one given by their uncle, Ruslan Tsarni, who, when asked what motivated his nephews to commit the atrocity, replied "being losers, [full of] hatred to those who were able to settle themselves."

Contrast Uncle Reslan's pithy dismissal with the current Republican craze for declaring America a "battlefield" and demanding that Dzhokhar Tsarnaev, a naturalized American citizen, be held as an "enemy combatant."

That proposal, issued by Sens. Lindsey Graham, R-S.C., John McCain, R-Ariz., and Rep. Peter King, R-N.Y., among others, is illegal, unnecessary and unwise.

As Justice Antonin Scalia noted in an earlier enemy combatant case, "where the government accuses a citizen of waging war against it, our constitutional tradition has been to prosecute him in federal court."

And as Brookings' Benjamin Wittes explains, "the public safety exception to Miranda means the FBI has a considerable degree of flexibility" in questioning Tsarnaev to explore any connection to foreign terrorism.

Republican lawmakers' zeal for an "enemy combatant" designation puts them to the right of Justice Scalia and even President Nixon, who, upon signing the Non-Detention Act of 1971 (providing that "no citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress"), emphasized that "our democracy is built upon the constitutional guarantee that every citizen will be afforded due process of law."

We shouldn't allow terrorist tactics to scare us into undermining that guarantee. There's good reason terrorism is so often called the "weapon of the weak." In the 20th century, across the entire world "fewer than 20 terrorist attacks killed more than a hundred people," Dan Gardner observes in "The Science of Fear."

Americans' odds of dying in a terrorist attack stand at roughly 1 in 20 million, which, as Micah Zenko noted recently, means we're as likely to "crushed to death by our televisions or furniture" in any given year.

When we inflate terrorism's risk, we do terrorists' work for them. "To bring down America we need not strike big," al Qaeda's online magazine Inspire noted in 2010, "It is such a good bargain for us to spread fear amongst the enemy and keep him on his toes in exchange of a few months of work and a few thousand bucks."

Instead, we should stiffen our upper lips, "keep calm and carry on" -- all the more so, since we're not facing anything remotely like the Nazi Blitz.

In a similarly anxious time back in 2003, the federal judge who sentenced attempted "shoe bomber" Richard Reid to life in prison, made a statement that deserves to be quoted at length:

"There is all too much war talk here," said Judge William Young, "Here in this court where we deal with individuals as individuals ... . You are not an enemy combatant. You are a terrorist. You are not a soldier in any war ... . To give you that reference, to call you a soldier gives you far too much stature. ... You are a terrorist. A species of criminal guilty of multiple attempted murders.

"In a very real sense Trooper Santiago had it right when first you were taken off that plane and into custody and you wondered where the press and where the TV crews were and you said you're no big deal. You're no big deal."

Uncle Reslan's words struck a chord with Americans, because amid the hysteria, it put terrorists in their proper place: "losers," not "enemy combatants."