What next for Boston bombing suspect?

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NEW YORK (Reuters) - A decision to charge the Boston Marathon bombing suspect in a civilian rather than a military court means he will face the same legal process as other federal criminal defendants in U.S. courts.

Dzhokhar Tsarnaev, 19, was charged on Monday with using a weapon of mass destruction and malicious destruction of property resulting in death.

The White House said earlier that Tsarnaev, an ethnic Chechen who is a naturalized U.S. citizen, would not be treated as an enemy combatant for his alleged role in last week's bomb attacks, which killed three people and wounded more than 200.

These are the likely next steps in his case, legal experts said.

INDICTMENT, PLEA NEGOTIATIONS

After a defendant is charged by a complaint, prosecutors then typically take their evidence to a grand jury and seek a formal indictment.

If the grand jury returns an indictment on the weapons-of-mass-destruction charge, which can carry the death penalty, the court will appoint lawyers with experience in death penalty cases, said Kelly Currie, a former federal prosecutor in New York who oversaw violent crime and terrorism cases.

Plea negotiations are likely to begin almost immediately, given the apparent evidence against Tsarnaev.

"If defense counsel is convinced the case against her client is exceptionally strong, speaking about a plea or possible cooperation is something defense counsel will be considering," said Michael Rosensaft, another former federal prosecutor from New York.

Prosecutors also will be deciding whether or not to seek the death penalty. That decision is expected within weeks, and the prosecution and defense will be given an opportunity to weigh in on any mitigating or aggravating factors. The ultimate determination will be made by the U.S. attorney general.

Prosecutors will move quickly to make that assessment, since "that obviously changes the tone of the case," Rosensaft said. Tsarnaev's attorney also may use a guilty plea as leverage to ask the government to take the death penalty off the table.

Three attorneys from the Massachusetts federal public defenders office - Miriam Conrad, Timothy Watkins and William Fick - were listed as representing Tsarnaev in court filings. The office did not immediately return a call for comment Monday evening.

Conrad filed a motion late Monday seeking the appointment of at least two attorneys with experience in death-penalty cases. U.S. law requires that at least one experienced attorney be appointed in every potential capital case. "Given the magnitude of this case," Conrad said it would be appropriate to appoint at least two additional lawyers with death penalty experience, in addition to his federal defenders, according to the motion.

Tsarnaev's attorneys also may use access to their client as a bargaining chip. If prosecutors want to find out if he has any valuable information to offer, defense attorneys may be able to leverage that during plea negotiations, Currie said.

"It's a delicate discussion and it goes back and forth," he said.

DISCOVERY

Both sides will begin the discovery process, meaning they will start compiling evidence. If the case against Tsarnaev includes any potentially classified information that could impact national security, then prosecutors could ask a judge to keep that under seal.

Prosecutors also will have to disclose any evidence that might exonerate or mitigate the case against Tsarnaev to defense counsel.

Since law enforcement officials sought the public's help during the investigation, they have likely received thousands of tips that will need to be examined to see if any of them could suggest Tsarnaev is innocent, or that others were involved, Currie said. If so, prosecutors will have to turn that over to the defense.

"There's a huge amount of information that the government is going to have to sort through and provide to the defense," Currie said. "It's a huge challenge for both prosecution and defense teams."

CIVILIAN COURTS MORE TRANSPARENT

Some Republican lawmakers had called on the Obama administration to designate Tsarnaev as an enemy combatant, which would have restricted his rights. The enemy combatant status arose in the aftermath of the September 11, 2001, attacks, and some suspects so-designated have been detained at a U.S. military prison at Guantanamo Bay in [Cuba](http://www.reuters.com/places/cuba).

But White House spokesman Jay Carney said that was off the table. "Under U.S. law, United States citizens cannot be tried in military commissions," Carney said.

The biggest difference between a trial in civilian court and before a military commission is transparency, Rosensaft said.

"With this case, there's so much evidence that's publicly available, that the public already knows, that I don't think airing that evidence against him in federal court would implicate any national security concerns," Rosensaft said.

If Tsarnaev pleads guilty and eschews a trial, it is possible much of prosecutors' evidence against him may never become public, beyond the massive amount of photo, video and other evidence that has already circulated publicly.

By charging him in federal court, prosecutors may also open themselves open to a motion from the defense to suppress any statements made to law enforcement after his arrest.

This is because officials did not read him his Miranda rights immediately. A transcript of the bedside hearing in the hospital on Monday showed he was read his rights then.

Tsarnaev was captured last Friday after a massive manhunt and was taken to a hospital in Boston with gunshot wounds following gunfights with police.

The Miranda issue would mostly impact any statements made by Tsarnaev to police after his arrest, but not the photos, video and other evidence linking him to the crime that has already been compiled, legal experts said.

Enemy combatants do not typically need to be read their Miranda rights - but even in civilian cases, Miranda warnings can be waived for a limited window of time under the so-called public safety exception. The U.S. Supreme Court has held that law enforcement officials can engage in a limited and focused interrogation without warning the suspect, if they believe public safety is at stake.

Judges likely will be sympathetic to the exception invoked by authorities, given the fear at the time that other attacks may have been planned. It also is unclear what statements, if any, Tsarnaev, who was badly wounded, made to law enforcement before his attorney came into the case.

His injuries included throat wounds and it was not clear how much he communicated with anyone before the complaint was filed.

But "if there's any statement they want to use against him," the Miranda issue is "something defense counsel will be fixated on," Rosensaft said.

The case is U.S. v. Tsarnaev, U.S. District Court for the District of Massachusetts, No. 13-2106.

(Reporting by Jessica Dye; Editing by Bill Trott)