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## Newsroom: Goldstein on 'Enemy Combatant' Status

Roger Williams University School of Law

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# Newsroom

## Goldstein on 'Enemy Combatant' Status

With Boston bombings suspect Dzhokhar Tsarnaev in custody, Professor Jared Goldstein joined local legal experts to weigh in on potential next steps.

**From GoLocalProv:** "[Boston Bombings Investigation: RI Legal Experts Weigh In](#)" by Kate Nagle,

GoLocalProv News Contributor



**April 22, 2013:** [...] Following the arrest of Dzhokhar

Tsarnaev, [...] there were calls from some in the political community to try Dzhokhar as an enemy combatant. As such, he could be subject to trial by military tribunal.

[...] **Roger Williams University Professor of Law Jared A. Goldstein**, who was one of the first civilian lawyers allowed into the Guantanamo Bay prison when he represented several families of Kuwaiti detainees, was skeptical of the potential to see Tsarnaev tried under such jurisdiction.

"So far, there is no evidence that has been reported to suggest Mr. Tsarnaev is part of an enemy force at war with the United States. To treat Mr. Tsarnaev as an enemy combatant would expand the category of enemy combatant beyond all recognition," **said Goldstein**. "It would empower the government to treat as enemies, outside the normal criminal processes of American courts, anyone whose crimes can be seen to target the United States."



**Goldstein continued,** "The Supreme Court ruled in a case

called *Hamdi v. Rumsfeld* that U.S. citizens can be detained in wartime as enemy combatant, but there does not appear to be any basis to treat Mr. Tsarnaev as an enemy combatant. The principle the Court established in *Hamdi* is that, when the United States is engaged in warfare, it has authority to detain enemy forces because that is a traditional incident of war, even if it turns out that some of the enemy forces include U.S. citizens. Yaser Hamdi was captured in Afghanistan and was accused of participating in the war against U.S. forces and its allies in Afghanistan."

"Mr. Tsarnaev's case is very different. Not only is he a U.S. citizen, the crimes he is accused of committing took place in the United States. Unlike Hamdi, Mr. Tsarnaev is not accused of participating in a war against U.S. forces. Perhaps under this theory, Tim McVeigh, Jared Loughner (accused of shooting Congressman Giffords), and the Aurora shooting, as well as the Newtown massacre, should be seen as acts of enemy combatants. Yet these acts have been treated as domestic crimes, not international war. It appears that the primary difference between those cases and Mr. Tsarnaev's that leads some to call for treating Mr. Tsarnaev as enemy combatant is that Mr. Tsarnaev is not native-born, while the perpetrators of those other crimes were all native-born white Americans," **said Goldstein.**

*For full story, click [here](http://www.golocalprov.com/news/boston-bombings-investigation-ri-legal-experts-weigh-in/). [http://www.golocalprov.com/news/boston-bombings-investigation-ri-legal-experts-weigh-in/]*