

ALFRED W. TRENKLER

THE CASE FOR REASONABLE DOUBT

ERRORS IN JUDGMENT BY THE DISTRICT COURT

PREPARED BY: JOHN D. WALLACE

Alfred W. Trenkler
The Case for Reasonable Doubt

The enclosed article appeared in the Boston Herald on Saturday June 19, 1993.

In the article it is stated that Judge Rya Zobel seems hell-bent on keeping Thomas A. Shay from spending the rest of his life behind bars. She has already bent over backwards for Shay. Her special treatment of Shay is not justice.

Enclosed please find Errors in Judgment by Judge Zobel which show how she favored Thomas Shay to the detriment of my stepson, Alfred Trenkler.

Her treatment of Alfred Trenkler is not justice when an innocent man is serving life imprisonment for a crime he did not commit while Thomas Shay is a free man.

The government never proved that Alfred Trenkler entered into a conspiracy with Thomas Shay, built the 1991 bomb, obtained the dynamite, placed the device on Thomas Shay, Sr.'s car or activated the bomb the day of the explosion.

A conviction cannot stand unless the effect of the evidence is "harmless beyond a reasonable doubt." The evidence was not there to support Alfred's guilt and was not harmless beyond a reasonable doubt.

I write all of this in support of Alfred's innocence in this horrible crime for which he was unjustly convicted and sentenced to life imprisonment.

John D. Wallace
Alfred Trenkler's Stepfather

BOSTON HERALD

PATRICK J. PURCELL, Publisher
MARTIN DUNN, Editor

ALAN S. EISNER,
Managing Editor

JEFF JACOBY, Chief Editorial Writer

RACHELLE COHEN,
Editorial Page Editor

Tilting justice's scales

U.S. District Court Judge Rya Zobel seems hell-bent on keeping Thomas A. Shay Jr. from spending the rest of his life behind bars. Shay is the sterling fellow federal officials believe attached a bomb to the underside of his father's car 20 months ago. The bomb, which exploded, killed a Boston police officer, Jeremiah Hurley, and permanently disabled and maimed Officer Francis Foley.

Zobel has already bent over backwards for Shay, allowing him not one, not two, but *three* court-appointed attorneys. Defendants unable to retain counsel are generally assigned one court-appointed lawyer at the standard rate of \$60 per hour for in-court time and \$40 for out-of-court time.

Shay's gaggle of defenders — one of whom costs \$200 per hour for all court time — duns the state a grand total of \$335 an hour. Zobel's coddling of Shay is not just unusual; it's costly.

Federal attorneys have filed a motion challenging Shay's right to three lawyers at taxpayer expense. But Zobel has yet to rule on that.

Instead, this week she further undermined the government's case by ruling inadmissible the testimony of Dwayne Armbrister, a Radio

Shack clerk, who has said that 10 days before the explosion he sold Shay components found in the bomb.

Because of Zobel's ruling, a jury will not hear Armbrister testify that on Oct. 18, 1991, a customer walked into the Radio Shack store across the street from the Christian Science Monitor at 2:30 p.m. and bought a toggle switch, an AA battery holder, and a small lamp capable of testing circuitry.

A jury will not hear Armbrister read the name on the receipt this customer signed: "Sahy" — potentially "Shay" with the two middle letters transposed. Or hear him repeat the last four digits of the customer's phone number — Shay's father's phone number, again with two digits transposed.

A jury will not hear Armbrister explain why he didn't immediately identify Shay when shown his picture by authorities; but how when he did make the identification, he was positive the man he waited on was Shay.

Zobel's exclusion of evidence that a jury should have the right to hear, and her special treatment of Thomas Shay, are not justice.

A courtroom is supposed to be an even playing field. Zobel's courtroom seems rather dangerously tilted.

ERRORS IN JUDGMENT

1. The United States Court of Appeals for the First Circuit ruled that the District Court abused its discretion in admitting the EXIS-derived evidence to prove the identity of the builder of the Roslindale bomb.
2. The United States Court of Appeals for the First Circuit ruled that the District Court erred in not allowing Shay's psychiatrist, Dr. Phillips, to testify that Shay suffered from a mental illness which caused him to tell grandiose, self-incriminating lies.

The Court of Appeals ruled it was a clear error in judgment resulting in a new trial for Shay.

3. The United States Court of Appeals for the First Circuit disagreed with the District Court that the evidence of the 1986 incident did not pose any risk of unfair prejudice to the defendant.

One juror said the evidence about the 1986 incident was "very decisive in the jury finding."

4. The District Court admitted the signature issue in Alfred's trial but specifically found in the Shay trial that the 1986 device was "not so unusual and distinctive as to be like a signature."

The Court of Appeals opinion was that the evidence could have been more compelling.

In effect, admission of the 1986 evidence on the signature issue permitted the jury to draw the improper propensity inference, and resulted in the deprivation of defendant's constitutional right to a fair trial.

During the trial the District Court stated "the standard for admissibility is not as Mr. Kline, (Alfred's bomb expert) suggested, that the evidence must show beyond a reasonable doubt that the same person made both devices."

The District Court in its Charge by the Court instructed the jury as follows:

"If you determine beyond a reasonable doubt that the two bombings were sufficiently unusual and distinctive so as to constitute the handiwork of one, and only one person, you may, but you do not have to, infer that the 1991 bombing is the defendant's handiwork.

What is the difference between what Denny Kline said and what the District Court instructed the jury as to "beyond a reasonable doubt"?

5. On June 22, 1995, the United States Court of Appeals for the First Circuit remanded Shay's case to the district court for further proceedings.

On September 14, 1997, two years and several months later, Judge Zobel ruled that she should have allowed testimony from psychiatrist, Dr. Phillips, who believes Shay may have lied about his role in the bombing.

On October 27, 1998, prior to trial, Shay entered a change of plea when he pled guilty resulting in a reduction in his sentence from 15 years and 8 months to 12 years with credit for time served.

On August 30, 2002, Shay was released from prison. He tells everyone including several government agents, that Alfred is innocent of the crime he was accused of.

This was reported to Alfred's Appeal Attorney, Morris Goldings, by David Apfel, Assistant U.S. Attorney, who handled Shay's plea bargain hearing.

6. "It was all circumstantial evidence and very hard to come to a decision," said one juror who spoke on condition of anonymity. We took many votes. In spite of the fact that the District Court instructed the jury not to use the evidence of the Quincy incident to infer Trenkler's guilt, it is obvious that they did.
7. Judge Zobel's clerk, Lisa Urso, mislead me on the time I had to file an appeal on the Judge's denial of Alfred's motion. I say this is a conflict of interest. It was

extremely unfair in lieu of Morris Goldings, Alfred's Appeal Attorney, unfortunate situation.

8. Judge Zobel ruled that Shay did not intend to kill his father, and yet his alleged co-defendant, co-conspirator, Alfred, did.
9. Judge Zobel appointed Nancy Gertner as Shay's defense attorney and favored her over Terry Segal, Alfred's trial attorney.

During or shortly after Shay's trial the U.S. Attorney, A. John Pappalardo, resigned, and joined Nancy Gertner's former law firm, Dwyer & Collora.

10. Prior to trial, Terry Segal, Alfred's attorney, filed a motion for a hearing on whether David Lindholm was acting as a government agent at Plymouth, based on the suspicious circumstances that Lindholm was sent to Plymouth after "missing the bus" and just happened to be where Trenkler was detained at just the right time. The motion was denied summarily.

In addition, Segal's subpoena to the U.S. Marshal for information regarding Lindholm's transfer was quashed summarily.

11. In the charge by the Court on November 22, 1993 Judge Zobel informed the jury "In reaching your verdict, do not consider what the punishment might be, if you find the defendant (Alfred Trenkler) guilty. I will need to deal with that if you do find him guilty. Your only job is to determine whether the government has proven him guilty or not."

In the absence of a recommendation from the jury, the District Judge clearly erred under the language of the pre-1994 statutes in imposing two life sentences without first submitting the sentencing issue to the jury.

The sentence was illegal as a matter of law at the time of its imposition on March 8, 1994.

By making that finding and imposing a life sentence in the absence of the necessary finding by the jury, the Trial Court exceeded its authority in violation of the defendant's right under the Sixth Amendment.

Through no fault of his own, Alfred Trenkler is now serving an illegal life sentence.

On August 24, 2004, Alfred's attorney, Dana Curhan, filed a Writ of Mandamus with the U.S. Court of Appeals for the First Circuit.

On February 16, 2005 the petition was denied; the Court of Appeals did not address the merits of the sentencing issue, which we claim was illegal.

In its denial the Court referred to 28 U.S.C. 2255 and 28 U.S.C. 2244 (time barred because it was not filed within one year of the effective date of the anti-terrorism and Effective Death Penalty Act (AEDPA)).

Alfred's attorney, Morris Goldings, should have been fully aware of the deadline on filing a 2255. Alfred has a strong case for ineffective counsel as we committed \$150,000 to Mr. Goldings for his legal expertise.