

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
JOHN S. MOAKLEY COURTHOUSE
ONE COURTHOUSE WAY, SUITE 2300
BOSTON, MASSACHUSETTS 02210

RE: DISTRICT COURT CASES: 06-12072-RWZ AND 07-11823-RWZ
ALFRED W. TRENKLER V. UNITED STATES

DEAR CLERK:

PLEASE ENTER THE ENCLOSED LETTER TO CHIEF JUDGE
MARK WOLF, HONORABLE NANCY GERTNER, EDWARD F. HARRINGTON,
DOUGLAS WOODLOCK AND RYA ZOBEL FOR THE UNITED STATES DISTRICT
COURT OF MASSACHUSETTS IN REGARD TO THE ABOVE CASES.

THANK YOU FOR YOUR ATTENTION IN THIS MATTER.

RESPECTFULLY SUBMITTED

BY: Alfred W. Trenkler
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11 AUGUST 2008

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3 May 2008

RE: the Roslindale Bomb cases

1. Tom Shay and *in forma pauperis* app.
2. Fraud on the U.S. District Court
3. Fraud on the 1st Circuit Court of Appeals
4. Other evidentiary problems in the case.

Court of Appeals for the First Circuit
Michael Boudin, Chief Judge
Hon. Frank Coffin (retired)
Hon. Norman Stahl
Hon. Juan Torruella

U.S. District Court for Massachusetts
Hon. Mark Wolf, Chief Judge
Hon. Nancy Gertner
Hon. Edward F. Harrington
Hon. Douglas Woodlock
Hon. Rya Zobel

John J. Moakley Courthouse
One Courthouse Way
Boston, MA 02110

Dear Judges Boudin, Coffin, Stahl, and Torruella, and Judges Wolf, Gertner, Harrington, Woodlock and Zobel:

I am a retired, non-practicing Massachusetts attorney, admitted to the Federal Bar of Massachusetts in 1976. Since learning about the Roslindale Bomb case in 2006 from Alfred W. Trenkler's brother, I've worked for several thousand hours to find and expose the truth in this case. This work includes developing and maintaining the website, www.alfredtrenkler.com and writing the 720 page manuscript of the book, *Perfectly Innocent*.

Last week, I was asked by a friend of the victims' families "What side are you on?" and I responded that I'm on the side of truth and justice. Further, I said that from the beginning, my commitment has been to those goals and that if I found **any** persuasive, credible evidence of **any** involvement of Alfred Trenkler in the building or placement of the Roslindale Bomb, then my *pro bono* work in this case was over. In the more than two years of work, such evidence has yet to

appear. Instead it's become even more clear to me that Alfred Trenkler and Thomas A. Shay are, as the book states, "perfectly innocent."

Unfortunately, there is no single, easy way to explain why the wrongful convictions occurred. It was through a complex accumulation of mistakes, rigid application of otherwise good investigative, trial and judicial rules and some lies. In fact, the book was almost called *Perfect Legal Storm*, and that was before my learning that the 28 October 1991 Roslindale bomb explosion occurred in the same week of the real "Perfect Storm."

There does not appear to be a quick resolution of truth either, which is why the book is so long. I had hoped that DNA would be found between layers of electrical tape, as an expert in the case had told me of seeing fingerprints amidst those layers of tape. However, we learned recently that the Bureau of Alcohol Tobacco and Firearms has destroyed the evidence in the case upon the authorization of the U.S. Attorney's office only 12 years after the 1993 trials and seven years after Thomas A. Shay's guilty plea.

Trained as a lawyer, the writing of a letter to the courts does not come easily, but I saw the effectiveness of Alfred Trenkler's 1 December 2005 letter to Judge Zobel about his illegal sentence. He told her that he was writing as a "last resort," and she read the letter and responded in the interest of justice. I hope this letter also will spur your concern and interest is finally securing justice in the two Roslindale bomb cases for Alfred W. Trenkler and Thomas A. Shay and also for the family of Jeremiah Hurley and for Francis Foley and his family. They all deserve closure, but they deserve justice first. Closure cannot come at the price of wrongful convictions.

1. Tom Shay and *in forma pauperis* application.

The precipitant cause of this letter is the current effort by Thomas A. Shay to proceed *in forma pauperis* before the U.S. District Court and to obtain the assistance of public counsel and to proceed with his claim that his 1998 guilty plea should be withdrawn. It was Thomas A. Shay's idea to challenge his guilty plea, after he learned in April 2007 that Alfred Trenkler's 1994 double life sentence was illegal and that he was resentenced by Judge Zobel to 37 years in prison. Even before then, Thomas A. Shay was coming forward to the media and others and claiming his innocence in the case, and also proclaiming the innocence of Alfred W. Trenkler.

In 1998 Thomas A. Shay pled guilty in the Roslindale Bomb case upon the recommendations of his attorneys at that time, but against the advice of his mother and siblings and against the advice of his former attorney, Jefferson Boone. The result of his guilty plea was a slight reduction of his 1993 sentence of 15 1/2 years to 12 years. That agreement led to his continued imprisonment for four more years until his release from prison in 2002. He claims that he

accepted such an agreement because he was threatened by the prosecutors with the life sentences which Alfred Trenkler received if there was a retrial and if he was found guilty. The problem with that claim, as was pointed out to Thomas A. Shay at the time by Mr. Boone, was that the U.S. Supreme Court case of Pierce v. North Carolina prohibited a longer sentence after a retrial than was given at an initial trial. Faced with such a threat, Thomas A. Shay felt that freedom in four years was better than the risk of never seeing freedom again.

When he learned in 2007 that Alfred Trenkler's double life sentence was itself illegal, he had renewed reason to seek to challenge the threat in 1998 that he would be sentenced to what Alfred Trenkler had been sentenced.

I haven't seen Thomas A. Shay's financial filings with the District Court and the Court of Appeals, but I have seen the Orders of both courts denying him the ability to proceed *in forma pauperis* on the grounds that his prison commissary account showed enough income or wealth for him to pay the \$450 filing fee. I hoped that the District Court and the Court of Appeals would see that he was truly impoverished and truly deserving of the ability to proceed *in forma pauperis*, but as I watched the opinions issue, it became clear that he would lose that ability unless either court reconsiders his application either at his request or on a court's own motion. Thus arose the determination to write this letter, as a "last resort."

To my knowledge and belief, Thomas A. Shay has no assets and no income. The only money he has received while in prison has been in the form of loans and gifts from several friends, including me. At the time of the revocation of his probation by Judge Zobel in July 2007, I believed him to be perfectly innocent of any involvement in the Roslindale Bomb, and therefore believed that all of his imprisonment between 1992 and 2002 was wrongful. Similarly, his current incarceration is also wrongful because it is for revocation of probation that arose from that 1993 or 1998 wrongful conviction. While Thomas A. Shay is not a model citizen, I also believed that many of his difficulties after his 2002 release were the result of the stigma of being labeled as one of the men responsible for the death of Boston Bomb Squad policeman Jeremiah Hurley and the maiming of Officer Francis Foley. As Judge Zobel stated at his July probation revocation hearing, Thomas A. Shay is a "very sick man," but he had no role in the making or placing the Roslindale bomb.

While in prison since July 2007, Thomas A. Shay has read the manuscript of *Perfectly Innocent* and contributed several corrections and also Appendix B, which is his putative "testimony," as if he had testified at his own trial or at the trial of Alfred Trenkler. (Alfred Trenkler's "testimony" is Exhibit A.) Thomas A. Shay has mailed many, many copies of the enclosed form letter to the media and to people he has known and heard of, in order to communicate the truth about his wrongful conviction and that of Alfred Trenkler. In January 2008, after seeing that he needed a consistent source of petty cash to pay for stamps and

hygiene necessities I began a regular schedule of loaning him \$60.00 per month, until his scheduled release in December 2009, according to the enclosed budget. In addition, he received gifts of money from others to pay for phone calls to friends and family. One such gift was money to pay for sneakers, so he could safely exercise. Acceptance of these gifts and loans did not diminish his complete impoverishment and inability to pay court fees for his appeals. I have copies of statements of his indebtedness for taxes and fines and bank overdrafts which total more than \$1,000.

It would be a great injustice if Thomas A. Shay were denied his application to proceed *in forma pauperis* because of his receipt of charity loans and gifts. Respectfully, I hope that the District Court or the Appeals court will, in the interest of justice, appoint counsel to assist Thomas A. Shay in his appeal and to assist him in preparing a complete statement of his financial condition. Such a statement will show both courts that Thomas A. Shay's financial condition merits certification of his poverty. His apparent inability to properly prepare such statements without such counsel should not block the courts' accurate understanding of his true financial condition.

2. Fraud on the U.S. District Court

The book, *Perfectly Innocent*, describes how dozens of mistakes and assumptions and some lies led to the wrongful convictions of Alfred Trenkler and Thomas A. Shay. In my research and writing there were just a few instances where from a distance it appeared that a major wrong had been committed in the trial and subsequent appeals, but which were not identified as such at the time. Here, I must present to you one of the most egregious aspects of the case which I label a fraud on the Court of Appeals. If there are facts known to the Office of the U.S. Attorney or to others which negate what is presented here, I hope that those facts will be presented openly.

This allegation of fraud concerns the jailhouse snitch testimony of William David Lindholm at the trial of Alfred Trenkler. There, Lindholm claimed that Alfred Trenkler admitted to him his involvement in making and/or placing the Roslindale bomb and Lindholm stated that he had received no incentive from the Government to give such testimony and that he would not ask for any after the trial. However, only a few weeks after Trenkler's March 1994 sentencing, and unbeknownst to Trenkler or his attorneys, Lindholm did exactly what he said he would not do: he sought a reduction of his 97 month sentence, given to him in August, 1991 by Judge Woodlock for marijuana trafficking. One aspect of the alleged fraud is that I have been unable to detect any evidence that Judge Woodlock was told by the Assistant U.S. Attorneys of Lindholm's promise to the court and jury in Trenkler's trial not to seek such a reduction. Such a promise surely had the desired effect on the jury of enhancing its view of Lindholm's credibility. Similarly, it is unknown whether Judge Zobel, who also heard Lindholm's promise under oath, knew of Assistant U.S. Attorneys Paul Kelly's and Frank Libby's motion to Judge Woodlock. There appears to be no explicit rule requiring that prosecutors in one case must notify defense counsel and

judges in related cases about such Motions for reductions of sentencing, but the failure to do so here constituted a fraud on the U.S. District Court.

Assistant U.S. Attorney Paul Kelley asked for a reduction of at least 24 months in the sentence for William David Lindholm. Inexplicably, Judge Woodlock more than doubled that request, by reducing William David Lindholm's sentence by 55 months in September 1994. Lindholm was quietly released later that month. Again, I have found no indication that Judge Rya Zobel knew of such early release at that time, nor even of the Government's efforts to secure such early release; and I am certain that Alfred Trenkler and his appellate defense attorneys did not know. If they did, they would have sought to intervene in Lindholm's case and ensure that Judge Woodlock was aware of the entire circumstances of Lindholm's request.

3. Fraud on the 1st Circuit Court of Appeals

In December, 1994 the three judge panel of Judges Frank Coffin and Norman Stahl and Chief Judge Juan Torruella, heard the oral arguments by Morris Goldings and the Office of the U.S. Attorney in the appeal by Alfred Trenkler. No transcript of that hearing was prepared and the original tape recording was destroyed according to normal practice after several months, in the absence of a request for a transcript. However, as both the majority and minority opinions of 18 July 1995 examined carefully the question of the credibility of William David Lindholm, it seems probable that the importance of his testimony was argued to the court.

The majority relied heavily on Lindholm's credibility and Chief Judge Torruella questioned it strongly.

The allegation of fraud on the court is made here because at the time of the December 1994 oral argument, the Assistant U.S. Attorneys knew what the appellate defense attorneys and the three judges did not know - which was that William David Lindholm was already a free man thanks to the 55 month reduction in his sentence. He had been quietly released from prison more than three months prior to the First Circuit hearing. One cannot read the majority opinion in that decision and not wonder if either or both of the majority Judges Coffin and Stahl would have had a different view of Lindholm's credibility if they had known of Lindholm's release.

The release was not made public until two weeks after the issuance of the Court's opinion in the middle of a 1 August 1995 *Boston Globe* article about Whitey Bulger, against whom Lindholm was ready to testify. Mr. Goldings tried to bring the matter of the non-disclosure of Lindholm's release to the Court of Appeals, but the forest was missed for the trees amidst other claims.

4. Other evidentiary problems in the case

Again, the case was a long one, and the book, *Perfectly Innocent*, is 720 pages long. What is presented here are only a few of the egregious of problems with the case.

At the trial of Alfred Trenkler, Assistant U.S. Attorneys Paul Kelly and Frank Libby successfully presented to the jury statements by Thomas A. Shay made to

television journalist Karen Marinella and to several jailhouse snitches. The problem with this effort was that the prosecutors knew that Thomas A. Shay told many false stories to many people and that he had lied consistently to the prosecutors themselves. The most glaring evidence of this knowledge was Paul Kelly's 10 November 1992 "memo to the file," enclosed, where he noted 10 aspects of Thomas A. Shay's previous statements which were untrue; and then he noted 17 new allegations by Thomas A. Shay. This memo was known to the defense and judge at Alfred Trenkler's trial, but its importance was dismissed on the narrow grounds that it could not be admitted as evidence. However, what was missed was the larger problem that the Assistant U.S. Attorneys were presenting other statements to the jury as if they believed them to be true, when, in fact, the prosecutors knew that Thomas A. Shay was a fabricator of stories and often an outright liar. The subsequent reversal of Thomas A. Shay's 1993 conviction was directly about the issue of his propensity to lie.

Incidentally, because of the dynamics of litigation, the prosecutors never asked for Alfred Trenkler's view of those 17 allegations. In the enclosed copy, you can see Alfred Trenkler's, post-trial hand notation that every single one was false and I have uncovered no evidence that Trenkler's assessments are incorrect.

The book, *Perfectly Innocent*, is able to do what was not possible in the trials and dozens of pre-trial and appellate hearings and documents and briefs, which is to present a thorough explanation about how it all added up to two wrongful convictions. Below are some of the facts presented in the book with a short explanation of why they were not persuasive at the time they were presented to the courts.

1. William David Lindholm's statements to the jury that his father went to Milton Academy and Thayer Academy were false. These statements could have led the jury to believe that Lindholm did, indeed, have a common bond with Alfred Trenkler and that he was telling the truth in his testimony.

Explanation. It was only after the trial that letters were obtained from both schools that they had no record of Lindholm's father's attendance.

2. William David Lindholm claimed that Alfred Trenkler admitted to him his role in the Roslindale bomb. In 1998 another inmate, John Bowden, came forward with an affidavit, enclosed, that William David Lindholm admitted to him in 1994 that he lied about Alfred Trenkler in order to obtain a reduced sentence.

Explanation. Bowden's affidavit should have been given the same weight as Lindholm's testimony, especially as Bowden had nothing to gain from such statements. In fact, it violated his Charlestown "Code of Silence," but as he told me, such a Code does not apply when the truth affects a man wrongly convicted. Bowden's affidavit seems to have been mentioned but mistakenly omitted from an appellate brief; and thus was ignored by the courts. I understand that Lindholm testified at a trial and Bowden's affidavit is a subsequent affidavit, but in the interest of justice, is it too much to ask that

Bowden be questioned by an Assistant U.S. Attorney or other Federal investigator about his allegations? Bowden is presently in Federal custody in Cumberland, Maryland.

3. The Boston Police Department found 17 fingerprints on the car of the apparently intended victim of the Roslindale bomb, Thomas L. Shay, but its report on the identities of the owners of those fingerprints was never presented to the court. Five of those fingerprints were underneath Mr. Shay's car, where the bomb was allegedly placed.

Explanation. Although requested by the defense, the Boston Police Department was never required to furnish such report. In 2008, my Freedom of Information request to the Boston Police Department for a copy of that report has failed, so far. It seems obvious that the fingerprints of Alfred Trenkler and/or Thomas A. Shay were not among the 17, but the jury was never told that, and the jury was never told whose fingerprints, if any, were actually identified.

The list of such evidentiary problems in these two cases could go on for pages, and that's what the book, *Perfectly Innocent*, does. I understand that the justice system does not convict or exonerate citizens on the basis of books, alone; but there must be some way, in the interest of justice, that the entire case can be examined by a specially appointed master or other person. Such a comprehensive view by a neutral observer can give you a fair view of the case. It may be that Alfred Trenkler's current appeal of his resentencing, or his 2255 Motion will lead to such a comprehensive review, but they are both narrowly focused efforts.

I understand the need for finality, but as John Adams said, "facts are stubborn things," and finality should not be prized at the cost of two wrongful convictions.

The first version of my manuscript was completed in April of 2007. Since then, copies of that version and subsequent versions have been sent to U.S. Attorney Michael J. Sullivan and to Assistant U.S. Attorneys on his staff and to the former Assistant U.S. Attorneys Paul Kelly and Frank Libby and former U.S. Attorneys. With each copy I've asked for comments, corrections and criticisms of the manuscript, but there has been no response. I've asked to meet with Mr. Sullivan and/or a delegate but there has been no response to that request. At one point, I was told that a letter would be sent to me, but none has been received.

Other copies were sent to Thomas A. Shay's and Alfred Trenkler's former attorneys and their requests for corrections have been incorporated into what is now Version 9 of the manuscript, which is available on the website,

It is true, as noted in the beginning of this letter, that my interest in this case began with a call from Alfred Trenkler's brother. However, I have received

absolutely no compensation or other benefit for my work on these cases. Alfred Trenkler's parents have paid only for the costs of printing 100 copies of the manuscript of *Perfectly Innocent* and for the invoiced costs of the Internet Service Provider for the website.

If you were in my position, as a retired member of the bar utterly convinced of the innocence of two men convicted in the U.S. District Court, what would you do?

Finally, I return to the precipitant reason for this letter: the effort by Thomas A. Shay to have his claim of innocence, and his claim that his 1998 guilty plea was wrongfully obtained, fairly heard in your courts. Please allow him, through a court-appointed counsel, to present those claims. His inability to complete the proper documentation of his poverty should not block his right to be heard in this case.

Thank you for your consideration.

Very sincerely,

A handwritten signature in black ink that reads "Norman Baypass". The signature is written in a cursive, flowing style.

CC: Michael J. Sullivan, U.S. Attorney for Massachusetts
Timothy Q. Feeley, Asst. U.S. Attorney
Thomas A. Shay
Alfred W. Trenkler