

1 change in what was being said, the substance of what was being
2 said?

3 MS. GERTNER: Objection, your Honor.

4 THE COURT: The objection is sustained, and if you
5 get into that, you know she will, too.

6 MR. KELLY: I'll ask no further questions.

7 THE COURT: Thank you, Mr. Burke, you're excused.
8 Who is next?

9 MR. KELLY: Mr. Libby is just making sure our witness
10 is out in the hall. The United States calls Jeff Kerr.

11 Jeff Kerr, sworn

12 Direct Examination by Mr. Kelly

13 Q Mr. Kerr, directing your attention your attention, sir --
14 strike that. Why don't you start by telling us who you are
15 and spell your last name for us, please?

16 A My name is Jeff Kerr, my last name is spelled K E R R.

17 Q How are you employed, Mr. Kerr?

18 A As a special agent with the Bureau of Alcohol, Tobacco
19 and Firearms.

20 Q Have you been involved in the investigation that's a
21 subject matter of this proceeding?

22 A Yes, sir.

23 Q And when did you first become involved in the matter,
24 sir?

25 A On October 28th, 1991.

1 Q How long have you been a special agent with ATF?

2 A Six years.

3 Q Are you the -- what's known as the lead case agent or the
4 principal case agent on this matter?

5 A Yes, sir.

6 Q You have been assisted by a number of other agencies; is
7 that not fair to say?

8 A That's correct.

9 Q I want to direct your attention to the month of March of
10 1992 and ask you, sir, whether at that time you took a trip in
11 connection with this investigation?

12 A Yes, sir.

13 Q Where did you go?

14 A San Francisco.

15 Q And tell us why you went to that location, Agent Kerr?

16 A We were executing an unlawful flight to avoid prosecution
17 warrant.

18 Q What, if anything, led to you San Francisco, California?

19 A The individual that we were looking for, Mr. Shay, had
20 left the Massachusetts area when we had attempted to serve a
21 subpoena for him and through the course of our --

22 MS. GERTNER: Objection, your Honor.

23 THE COURT: Why do we need all this detail?

24 MR. KELLY: I didn't want all this detail. Excuse
25 me, your Honor.

1 Q Was there some piece or pieces of information that led
2 you to the geographic location of San Francisco?

3 A Yes, there was a telephone call made to a friend of
4 Mr. Shay's as well as a postcard.

5 Q And how long were you in San Francisco for?

6 A Approximately four days.

7 Q And at some point, did you have contact with Mr. Shay?

8 A Yes, sir.

9 Q And did you place Mr. Shay under arrest on this unlawful
10 flight warrant?

11 A Yes, sir.

12 Q And following the placing of Mr. Shay under arrest on
13 this warrant, were any items or materials taken from him?

14 A Yes, sir.

15 MR. KELLY: Your Honor, the United States is going to
16 have the witness describe these, but would like to at this
17 time mark and offer, without objection, Exhibits 43 A, B, C,
18 and D, I believe they're referred to on the exhibit list that
19 was prepared.

20 THE COURT: All right. They're in evidence.

21 **[Government's Exhibits 43A, B, C, D entered into**
22 **evidence.]**

23 Q Agent Kerr, I want to direct your attention to the items
24 that I'm holding in my hand, and ask you, first, sir, are
25 these items that were taken from Mr. Shay in San Francisco

1 after he was arrested?

2 A That's correct.

3 Q Would you describe for us what is reflected in Exhibit 43

4 A, please.

5 A 43 A is a military request and authority for leave form.

6 Q And in what name, if any?

7 A James Keough.

8 Q And what is 43 B?

9 A 43 B is an advertisement for professional masseurs, an
10 escort service.

11 Q Is there a name or person on the name of that proprietor?

12 A Yes, the owner of the business name is James Keough.

13 Q And what is 43 C?

14 A 43 C is a contract for a client through James Keough
15 Massage Services.

16 Q And 43 D, please?

17 A 43 D is a photograph of Mr. Shay in military fatigues
18 with three other individuals taken in San Francisco.

19 Q Is there a name on the military fatigues that Mr. Shay is
20 wearing in that photograph?

21 A Yes, sir.

22 Q And what is that?

23 A Keough.

24 Q And is there any writing on the cover that is holding
25 that photograph -- are there the names of any persons?

1 A Yes, there are.

2 Q What names are indicated?

3 A James, Tony, Tim, and it looks like Kerth.

4 Q And no Thomas or Tommy?

5 A No, sir.

6 MR. KELLY: Request the Court's permission to publish
7 these matters before we continue.

8 THE COURT: All right.

9 Q Agent Kerr, just a few areas, sir, were you among the
10 agents present at 39 Eastbourne on October 29th, 1991, the day
11 after the explosion?

12 A Yes, I was.

13 Q Briefly describe what your role was, sir, on that day?

14 A The day after the incident I was a case agent and
15 basically I was assigned to help assist the National Response
16 Team in any way possible. Also to have agents, ATF agents
17 respond to interviews that we deemed were necessary and
18 basically to be there and troubleshoot anything possible.

19 Q And were you involved in any respect in the search of the
20 house, the home at 39 Eastbourne Street on that particular
21 day?

22 A On the 29th.

23 Q On the 29th or in the afternoon of the 28th?

24 A On the 28th, I was involved.

25 Q And what did you do in the afternoon of the 28th in that

1 regard, sir?

2 A Do a consent search for Mr. Shay, Sr., I along with
3 another agent and other Boston police officers did a complete
4 search for 39 Eastbourne Street.

5 Q And what rooms in the home did you have an opportunity to
6 go into in that regard?

7 A Every room.

8 Q And did you check the child's room, Crysten Flanagan?

9 A Yes, sir.

10 Q And what, if anything, were you looking for at the time?

11 A Anything consistent with componentry for a bomb.

12 Q In connection with that review, did you find any toys
13 belonging to that child which appeared to you to be remote
14 control operated toys?

15 A No, sir.

16 Q Now, were you also involved, as the investigation
17 progressed, in pursuing other investigative courses of action?

18 A Yes, sir.

19 Q How, if at all, were you involved in the security of what
20 are known as mail covers?

21 A I was the agent who actually did the paperwork and
22 applied for the mail cover.

23 Q And would you tell us the names of the persons for whom
24 you got mail covers, if you recall?

25 A To the best of my recollection is Thomas Shay, Sr., Mary

1 Flanagan, who is the live in mate of Thomas Shay, Sr., Nancy
2 Shay, the mother of Tommy Shay, David Shay, who was the
3 boyfriend of Nancy Shay, something Jeffrey Berry, Louis
4 Giamarco, the owners of the gas station. That's all I recall.

5 Q Finally, sir, were you here during the testimony of Agent
6 Leahy this morning, as the case agent on the case?

7 A Yes, I was.

8 Q For what period of time, sir, was Thomas Shay, Sr. the
9 prime suspect in the investigation?

10 A The prime suspect, I'd say a week to ten days.

11 Q And with the Court's permission, if I could just ask one
12 or two leading questions to avoid issues.

13 Is it fair to state that information came to the
14 attention of the investigators on or about the 5th of November
15 which changed the direction of the investigation?

16 A Yes.

17 Q Is it also fair to state, sir, that that investigation,
18 that that new information involved an individual by the name
19 of Alfred Trenkler?

20 A Yes, sir.

21 Q And when that information came to your attention, it was
22 the first time that you had heard the name Alfred Trenkler,
23 was it not?

24 A That's correct.

25 Q And after coming into possession of this information, you

1 and other investigators checked to see if there was any links
2 between this name Alfred Trenkler and any other items in your
3 possession at the time?

4 A Yes, sir.

5 Q And did you find any such links?

6 MS. GERTNER: Objection, your Honor.

7 THE COURT: What's the objection?

8 MS. GERTNER: I think the question is improper. It
9 calls for improper inferences. It is irrelevant. I think
10 it's essentially, it has nothing to do with the case that
11 we're trying now.

12 THE COURT: Well, one of the issues is the
13 investigation, is it not?

14 MS. GERTNER: It is, but the basis for this
15 particular one is going to call for speculation which is
16 completely uncalled for.

17 MR. KELLY: I think I can rephrase the question to
18 avoid that.

19 Q Following October 31st, 1991, investigators were in
20 possession of a Xerox copy of an address book belonging to Mr.
21 Thomas Shay, Jr., were they not?

22 A True.

23 Q And it had a series of names it?

24 A Yes, sir.

25 Q One of those names was Alfred Trenkler, was it not?

1 A That's correct.

2 Q However, immediately following October 31st, no
3 investigative significance was placed upon that particular
4 name, correct, sir?

5 A That's correct.

6 Q At some point thereafter on or about November 5th, that
7 changed, did it not?

8 A Yes, sir.

9 MR. KELLY: No further questions.

10 THE COURT: Ms. Gertner.

11 Cross-examination by Ms. Gertner

12 Q The search that you conducted at Shay, Sr.'s house on
13 October 29th, did that include a search for dynamite blasting
14 caps, magnets, batteries, radio control devices, washers black
15 electrical tape silver duct tape, wood or wood paneling,
16 one-inch finishing nails, black spray paint, glues, copper
17 wire or magazines?

18 A The search which I participated in was October 28th.

19 Q Sorry. Did it include any of those materials?

20 A It would have included anything that would have been
21 consistent with the manufacture and construction of the bomb.

22 Q But at that point October 28th, you didn't know what the
23 components of this particular bomb was, right?

24 A That's correct.

25 Q So did you see duct tape in the rooms that you had

1 searched?

2 A Not to my recollection.

3 Q Did you take any duct tape anywhere?

4 A No, ma'am.

5 Q Did you see batteries in any of the rooms that you
6 searched?

7 A Yes.

8 Q Did you take any of them?

9 A Photographed them.

10 Q Did you take any -- did you see any one-inch finishing
11 nails?

12 A Not to my recollection.

13 Q Or black spray paint?

14 A Not my recollection.

15 Q Copper wire?

16 A Not to my recollection.

17 Q Glue, Superglue, did you see Superglue in the house?

18 A I don't recall.

19 Q I mean it's fair to say that on October 28th, when you
20 searched the house, you only had the vaguest notion of what
21 the bomb that actually went off consisted of, right?

22 A All as I know at that point there was a bomb, it could
23 have been any type of manufacture.

24 Q And you submitted the -- the ATF submitted the components
25 of the bomb that they found on this site to Cindy Wallace,

1 right?

2 A That's correct.

3 Q And afterwards you go back to people to try and find out
4 if they have any of the components that she identified as
5 being in the bomb, right?

6 A Yes.

7 Q Is it fair to say that you don't attach any particular
8 significance to tapes or wires or any of those things until
9 she said, Hey, they were part of this bomb, right?

10 A No, I wouldn't say that's correct.

11 Q Well, you didn't know the particulars of what was in the
12 bomb on the 28th?

13 A I personally didn't know the explosive background. They
14 would be looking for any components, or anything consistent
15 with the bomb, whether it be a pipe bomb or remote control
16 bomb.

17 Q This was a bomb later found that was made of ordinary
18 stuff, except for the dynamite, really ordinary materials that
19 you would find in everyday life?

20 A I don't consider them ordinary material.

21 Q Duct tape?

22 A Duct tape is an ordinary material.

23 Q Superglue?

24 A Common.

25 Q Plywood?

- 1 A I don't have it around my house, but yes.
- 2 Q Batteries?
- 3 A Common.
- 4 Q Paint?
- 5 A Some houses it's common.
- 6 Q After the components were identified or at least some
7 conclusions were made about the components, you, for example,
8 after that searched Al Trenkler's house for the particular
9 list of things that the chemist had identified are likely to
10 be in this bomb?
- 11 A I wasn't involved in that particular search. It would
12 have been Special Agent Leahy.
- 13 Q Suffice it to say when you went to 39 Eastbourne Street,
14 you didn't have the benefit of Cindy Wallace's conclusions,
15 right?
- 16 A No, we didn't.
- 17 Q You testified today that you looked in Crysten Flanagan's
18 house?
- 19 A Every room in the house, I'm not sure at this point which
20 room was whose room but every room was looked into.
- 21 Q You have been sitting throughout this trial, have you
22 not?
- 23 A Yes, I have.
- 24 Q You've been attending every day?
- 25 A Yes, I have.

1 Q And did you do any report on what you found on
2 39 Eastbourne Street?

3 A On that particular day, no.

4 Q And did you do any report concerning the search of remote
5 control toys of Crysten Flanagan?

6 A No.

7 Q You also testified that you, you went to San Francisco on
8 or about March 1992; is that right?

9 A That's correct.

10 Q And you had done that in part because you had seen a
11 postcard that had been sent from San Francisco?

12 A That is why, that's how we knew that the individual we
13 were looking for was from San Francisco.

14 Q The postcard was from whom to whom?

15 A It was from Mr. Shay to Russell Bonnano.

16 Q And the postcard indicated that he was in San Francisco?

17 A I believe it was the postmark.

18 Q And the telephone call was the telephone call that
19 Mr. Bonnano testified about?

20 A Yes, ma'am.

21 Q And you said that you did mail covers of various people,
22 Flanagan, Nancy Shay, Shilallis, Berry and Giamarco?

23 A Yes, ma'am.

24 Q And did you search their homes to the same extent that
25 you searched Trenkler's home?

1 A No, ma'am.

2 Q You also looked at Tom Shay's address book; is that
3 right?

4 A That's correct.

5 Q And did you do a check do to see if anyone -- did you do
6 a check of the individuals in the address book, go through the
7 individuals in the address book?

8 A I believe every individual in that address book was
9 contacted or attempt was made to contact them.

10 Q You followed through on even the references to
11 individuals is a very nice boy?

12 A I don't understand the question.

13 Q In other words, if there was an entry in the book, Chris
14 White, very nice boy?

15 A Did I want to find out if he was a very nice boy?

16 Q Did you contact him not whether or not you found out
17 whether he was a very nice boy?

18 A Somebody contacted him, I don't know who it was.

19 Q I'm going to show you, I'm going to show you this address
20 book. Is this the address book that you looked at, Exhibit
21 30?

22 A This is a copy of the copy that I observed.

23 Q Is Ed Carrion in that address book?

24 A No, unless can you fine it, I don't think so.

25 Q Any telephone numbers of Mr. Shay's family in that

1 address book?

2 THE COURT: What else do you want him to look for
3 besides that one?

4 MS. GERTNER: The family.

5 A I think I see Dad Shay, maybe.

6 Q Sisters, any of his sisters?

7 A I don't see any sisters, but I missed the first few
8 pages. I don't see any sisters.

9 Q And in October of 1991, did Mr. Shay represent to you
10 that he was a masseur?

11 A Would you repeat that, please.

12 Q I mangled it. Did he represent to you that he did
13 massage work?

14 A Mr. Shay?

15 Q Yes.

16 A On what day, I didn't catch the date?

17 Q Did you have any contact with him on the fall of '91?

18 A No.

19 Q Did you have information that any of the individuals in
20 this book were individuals that had been customers of his?

21 A Customers, no, I didn't have information to that.

22 MS. GERTNER: Your Honor, I'm about to ask a question
23 for which I know there will be an objection to, so if we can
24 go to the side bar and maybe that will save everybody some
25 time.

1 MR. KELLY: Your Honor, let me speak to her first.

2 MS. GERTNER: There isn't any question.

3 THE COURT: You can stretch.

4 [conference at the bench, as follows:

5 MS. GERTNER: Since the issue of the extent of the
6 investigation and the pursuit of the investigative needs has
7 been read, one of the individuals in this case, Mr. Giamarco
8 volunteered to take a polygraph in Florida. Now, ordinarily I
9 have some case law, ordinarily some polygraph doesn't come in,
10 but there is different case law with respect to somebody --
11 and I can't say who this is -- but it's the seminal cases.
12 There have been cases offered for somebody who voluntarily
13 does it. I would not hold Mr. Giamarco for this purpose, but
14 if the issue is investigative leads, and they want to suggest
15 to the jury that they followed through everything, I want to
16 bring out that Giamarco took a polygraph and he failed, and
17 they nevertheless did not search or do anything further.

18 THE COURT: That would then require them to explain
19 all of the reasons that they didn't, and we would be here
20 trying the investigation better than they already have. So
21 your objection to you're not getting into it is noted.

22 ... end of conference at the bench.]

23 Q Sir, you testified on November 5th, the investigation
24 changed direction -- changed directions, I believe you said,
25 right?

1 A Yes.

2 Q And at that point, who the prime suspect was and who the
3 secondary suspects were also changed, right?

4 A I don't know if I would classify personally as a prime or
5 secondary suspects, but the individual that I was most
6 concerne3d about changed.

7 Q And thereafter you followed along, your investigation
8 focused on the people which you thought would be the prime
9 suspects?

10 A Focused on that individual, yes.

11 Q And all the things you described that you were doing,
12 it's fair to say that the majority of the resources, the
13 considerable resources of ATF, were directed principally in
14 the new direction, right?

15 A Not entirely, but principally.

16 MS. GERTNER: No further questions.

17 THE COURT: Anything else?

18 MR. KELLY: Just one.

19 Redirect Examination by Mr. Kelly

20 Q Is it fair to say that after November 5th, there
21 continued to be a number of suspects?

22 A Absolutely.

23 Q And that was the case for many months, was it not?

24 A Absolutely.

25 THE COURT: Anything else?

1 MR. KELLY: Nothing further, your Honor.

2 MS. GERTNER: Nothing further, your Honor.

3 THE COURT: Who is next?

4 MR. LIBBY: Your Honor, the United States calls
5 Attorney Alan Pransky.

6 Alan Pransky, sworn

7 Direct Examination by Mr. Libby

8 Q Good afternoon, sir. Would you state your name, spelling
9 your last name for the reporter, please.

10 A My name is Alan Pransky, P R A N S K Y.

11 Q Where do you live, sir?

12 A I live in Needham.

13 Q You are a practicing attorney, sir?

14 A Yes, I am.

15 Q How long have you been admitted to the bar of the
16 Commonwealth of Massachusetts?

17 A I was admitted in 1978.

18 Q Where do you practice, sir?

19 A In Dedham.

20 Q The name of your firm, please?

21 A Devito, Pransky and Stavros, P.A.

22 Q Where in Dedham, sir?

23 A 133 East Street.

24 Q And how long have you been at those offices?

25 A I think five years.