

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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|---------------------------|---|--------------|
| _____ |) | |
| UNITED STATES OF AMERICA, |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Criminal No. |
| |) | 92-10369-Z |
| |) | |
| THOMAS A. SHAY and |) | |
| ALFRED W. TRENKLER, |) | |
| Defendants. |) | |
| _____ |) | |

AFFIDAVIT OF ALFRED W. TRENKLER IN
SUPPORT OF MOTIONS TO SUPPRESS

I, Alfred W. Trenkler, hereby depose and affirm
the following is true:

1. I am the Defendant in this case.
2. Prior to my arrest in this case, I resided
with John Cates at 133 Atlantic Avenue, Quincy. I had
resided at this address with Mr. Cates for over two
years prior to my arrest. The apartment I shared with
Mr. Cates is a basement apartment in a single family
house. We paid rent in the amount of \$340 per month.
3. This apartment consists of four rooms, a
bedroom/livingroom, a kitchen, a bathroom, and a
storage area in the adjoining basement. It has one
means of entrance, through a locked door located at the
bottom of a back staircase within the house. From the
apartment, one can exit either by going up the

staircase to the first floor of the house, or by exiting directly through the private entrance located off the stairs.

4. On Tuesday, November 5, 1991, at approximately 11:30 p.m., Mr. Cates and myself were awakened by a loud banging on the apartment door. I went to the door, and when I opened it, I saw five or six men standing in the staircase. One asked, "Do you know why we're here?" or "Do you know who we are?"

5. At least six men entered the apartment. As they entered, more men descended the staircase. Approximately 10 men in total were present. After entering the apartment, two of the men identified themselves as agents Leahy and Kerr of the Bureau of Alcohol, Tobacco and Firearms. Peter O'Malley, who later identified himself as a Boston Police Officer, then stated, "You got away with it in 1986; you're not going to get away with it this time. You're an asshole. I know you did this for fucking Shay." Leahy then asked if I would mind if they spoke to me.

6. One of the ATF agents then asked Mr. Cates if they could search the apartment. Cates asked if they had a search warrant. The agent responded that they did not have a warrant.

7. Cates was then escorted outside with an agent so they could "talk to me alone." Two or three agents

took Cates outside. On information and belief, Cates was held in an unmarked cruiser outside. More agents came down the stairs into the apartments as Cates was taken out.

8. A few minutes later, one of the agents who had taken Cates out, returned and said that Cates had given permission to search the apartment. A number of agents then walked past me into the kitchen.

9. Agents then proceeded to search the apartment, which included taking apart a sectional couch. Under a cushion, they found a plastic baggie containing a small amount of marijuana. One of the agents held up the bag, saying, "We don't care about this," and took the bag outside.

10. On information and belief (**See**, Affidavit of John Cates), the agent took the baggie outside and showed it to Cates who by then had been held in the back of an unmarked cruiser for about five minutes. The officer then asked Cates if he now minded giving permission to search the apartment. Cates said, "I guess so." Cates did not consent before being confronted with the marijuana that had already been found.

11. The agents thoroughly searched the entire apartment, including lifting the ceiling tiles. In the kitchen, they noticed a small, broken radio speaker

lying face down on a shelf. The back of the plastic speaker cabinet was broken off and the back of the speaker was exposed.

12. They also "discovered" a book called "Dirty Tricks" under a pile of clothes in a closet. This book belonged to Michael Green, brother of the landlord, George Green, and had been left in the apartment by him.

13. During the search, Detective Peter O'Malley was visibly hostile and threatening toward me. He used foul language and at times I thought he was going to hit me. Agent Leahy had to stand between O'Malley and myself during much of the search.

14. After the search, at approximately 12:00-12:30 a.m., I was told, "We have to go to your office now." It was late and I was tired. I did not want to go, but was told we had to. Only then was I allowed to dress.

15. As I was escorted up the stairs from the apartment, John Cates was being escorted down the stairs back to the apartment. I was then put in the back seat of an unmarked cruiser. While I was alone in the back seat of the car, on the seat next to me, in plain view, was an open duffel bag containing ammunition, a variety of hand guns, and what appeared

to be a small machine gun. I did not touch these, but I was completely intimidated by their presence.

16. I was then driven to the ARCOMM office, at 82 Broad Street, Weymouth. The agents drove very fast, approximately 80 mph and arrived there in about 5 minutes. Normally the drive takes 15-20 minutes. The contents of the duffle bag, the speed of the car, and the three agents in the car with me completely intimidated me.

17. On the way to ARCOMM, one of the agents said that when they were done at the office, they would have to go to my parents' house. I told them that they couldn't do that.

18. When we arrived at ARCOMM, I was told to unlock the door, which I did. Three agents and myself entered. I was instructed to show them where the back room was located, which I did. I was then told me to stay in the front area with Agent Leahy. The other agents then proceeded to search the entire premises. Thereafter, approximately 10 more officers/agents arrived at ARCOMM and assisted in the search.

19. During this search, Leahy asked me what type of business ARCOMM was in and I told him microwave communications, two way radio, and pager leasing. I also told him I was working on a job erecting a communications tower for the Christian Science Center.

20. Two tool boxes were on the floor, one belonging to me and one belonging to my partner, Richard Brown. I was asked if I minded if they looked through the boxes. I said no. The agents then took two wire strippers, three wire cutters, and two needlenose pliers. Someone said, "These will be on a plane to Florida before we get to your parents' house." I told them they could not take them, that I needed them for a job, and that some weren't mine. Leahy then gave me a "receipt" he drew up on lined paper. These tools have not been returned.

21. At some point Leahy sat at my desk and asked me about the 1986 incident.

22. He asked me to draw a diagram of what I had built in 1986, which I did. To my knowledge, this diagram was thereafter destroyed.

23. Leahy then asked me whether, based on my knowledge of electrical engineering, I could draw a diagram of the bomb that went off in Roslindale. I said, "No." Leahy then asked what I knew about dynamite and blasting caps and I said, "Absolutely nothing." Leahy then said, "Oh well. Just asking." At no time did I draw a diagram of the bomb that exploded in Roslindale, as has been alleged.

24. Finally, during the search of ARCOMM, I noticed that the agents took samples of wire from a spool I had used to wire an alarm system.

25. At approximately 1:15-1:30 a.m. we left ARCOMM. I was told we were going to my parents' house in Milton. I told them they couldn't go there; that they would wake my parents up. An agent then told me that if your parents wake up, not to worry about it; that the agents would say they worked for me, and that they were just looking for parts.

26. When we arrived, the agents searched my parents' garage, which was loaded with junk and electrical equipment. The agents took two pieces of wire.

27. Following this search the agents drove me home. I arrived home at about 2:30 a.m.

28. At no time on the night of November 5-6, 1991 did any law enforcement officer ask me to sign a consent to search form. Throughout that night I was intimidated by the display of police force and weaponry, and was told I had no choice but to cooperate.

29. At some time during the evening of November 5-6, I am not sure exactly when, Mr. O'Malley asked me if I would be willing to submit to a polygraph examination. I said that I had no problem with that.

He gave me a card with his telephone number on it and asked me to give him a call at any time to arrange for such a polygraph to be administered.

30. The next day at some time on the 6th, after speaking to Richard Brown, my business associate, I called an attorney in Quincy, Martin Cosgrove. Mr. Cosgrove already represented Mr. Brown and myself in regard to an automobile accident. After talking with Mr. Cosgrove on the telephone for a few moments, we arranged a meeting. I do not recall the exact date of the meeting, but it was either the 7th or 8th of November.

31. At our office conference, I discussed the events of the evening of November 5th and 6th with Mr. Cosgrove. He advised me that he would be willing to represent me. He also advised me in no uncertain terms not to talk to any police officer or agent at any time. He also advised me not to discuss this matter with any one but him. At this same conference, he explained to me why I should not submit to a polygraph. He told me that the results of such a test were inadmissible in a trial.

32. At that same meeting, he took the telephone number that Mr. O'Malley had given me and promised me that he would call O'Malley and explain the situation to him. He also promised me that he would advise

O'Malley not only that I would not submit to a polygraph, but that the police were not to talk to me under any circumstances.

THE EVENTS OF JANUARY 31ST

33. On the morning of January 31st, I left my Quincy apartment in the company of John Cates and drove him to work. When I returned to the apartment that morning, I drove down the block to obtain a telephone number from a "for lease" sign on a building nearby, turned around and returned to the apartment at about 8:00 a.m. When I got out of the car, I was carrying a briefcase. I walked to the back entrance to the apartment, went in and saw a number of federal agents already inside on the stairs and in the apartment. When I got inside the apartment, I put the briefcase down. I was shown a search warrant. I was asked what I was carrying. I told them it was my briefcase. I was told that they had a search warrant to search and take anything in my briefcase and asked me to open it. I did. They emptied the contents and took all of the contents with them.

34. After a few minutes, Agent Kerr requested that I leave the apartment and suggested that I go to my parents' home on Whitelawn Avenue in Milton because they were also searching my parents' garage. He said

that my parents had advised the police that they had to leave and would I be willing to go to Whitelawn Avenue to observe the search warrant. As instructed, I left my apartment and went to the Whitelawn Avenue home of my parents. When I arrived at Whitelawn Avenue I saw a yellow van on the street with two police cars in the driveway (Crown Victorias, unmarked). Both doors of the garage were open. Everything was being taken out of my parents' garage and being inspected and then placed in the yellow van.

35. At Whitelawn Avenue I was instructed to stay away from the agents as they worked and was asked to sit or stand near my car which was parked on the street.

36. After about ten minutes, I observed a police car pull up in the driveway. Peter O'Malley and other policemen were in the car. I observed a conversation with O'Malley and other policemen who were outside of the car. I overheard agents telling O'Malley to leave the scene and then I observed O'Malley in the car, and leave the general vicinity of my parents' house.

37. While I was standing watching the scene, I used my cellular phone to return a call that had come in on my beeper. However, my cellular phone was not working and I asked Agent Leahy if I could borrow his cellular phone. He permitted me to use his cellular

phone. He then asked if I minded if my car was searched and if I would sign a consent form to do so. I said I had nothing to hide; they gave me a form and I signed it. I opened the trunk of my car for them. They had a handheld electronic device with two probes on the end that they moved around the seam of the trunk. I then opened the driver's door at their request and they used the same instrument, moving it around the sides of the door. The same thing was done to the latch and body of the car. They did not search the car itself and did not take anything from the car. After the car was searched, one of the police officers told me that the device that they were using was used to detect tiny particles of dynamite. He said if I had ever had dynamite in the car or if the "device" (meaning the Roslindale device) was in the car, they could tell I had it in there from the meter on the device.

38. A few moments after going over my car with this device, either Agent Leahy or another officer asked me to come over to where he was and to look at a box that they had found. I went toward the front of the garage where large amounts of inventory had been piled up. They asked me a number of questions about a number of different items that they had found. As to

each item, I either explained what it was or told them that I was not familiar with it. A number of items were items that belonged to my brother and that I was not particularly familiar with.

39. It is not true that I ever said to Agent Leahy or anyone else that I was willing to talk to them even though my lawyer said not to. I was not willing to talk to them, did not want to talk to them, and did not wish to have anything to do with them. At the same time, I believed that I was required to stay there and observe them as they continued their search.

EVENTS OF FEBRUARY 4, 1992

40. On February 4, 1992 I arrived at the Tip O'Neill Federal Building ATF office to pick up the business records which were taken from my briefcase during the search of 133 Atlantic Avenue on January 31, 1992. Picking up my records was the sole purpose of my visit.

41. It was my understanding that the ATF agents involved in the search had agreed to provide me with a copy of these records and had made arrangements for me to pick them up at 11:00 a.m.

42. When I arrived I informed Leahy, who met me at the door, that I was there for my records. Leahy said, "We'll have your records for your shortly."

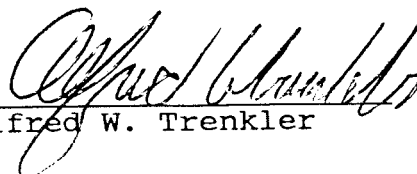
Leahy then escorted me to a conference room and sat me down, at which point Agent LaCourse entered the room

43. Leahy then began to ask me questions about my relationship with Tom Shay, Jr. At no time was any mention of my attorney made as has been alleged in Leahy's investigatory report.

44. During Leahy's questioning, I asked him again for my records, specifically, the records for the jobs I was working on at that time. Leahy responded, "The copies are taking a little longer than I expected." I asked Leahy for my records a third time and received in effect the same response.

45. After waiting for copies of all my records for approximately two hours, I was given copies of only my business phone book which consisted of 30 pages. I did not receive a copy of any other business records, particularly the records I needed for the jobs I was working on at that time.

Signed on pain and penalty of perjury this 12
day of ^{AWT} ~~FEBRUARY~~ FEBRUARY, 1993.


Alfred W. Trenkler