

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY

)  
)  
) CRIMINAL NO. 92-10369-Z  
)  
)  
)

MOTION TO PRECLUDE USE OF  
SHAY JR.'S SOCIAL AND PSYCHOLOGICAL HISTORY

Defendant Thomas A. Shay ("Shay Jr.") hereby moves that this Court prohibit the introduction of his social and psychological history records and any testimony based thereon, which the government has informed him it may seek to introduce at trial, as an exception to Rule 404(b)'s prohibition against character evidence. Shay Jr. objects to the introduction of his social and psychological history for the following reasons:

1. Use of a person's social and psychological history is classic character evidence of the worst kind, sought to be used by the government in this case to show propensity. As such, it is absolutely forbidden by Rule 404(b) of the Federal Rules of Evidence and the Due Process Clause. See e.g., United States v. Philibert, 947 F.2d 1467, 1471 (11th Cir. 1991) ('[w]hile the evidence concerning firearms purchases may have constituted additional evidence of appellant's paranoid schizophrenia, 'evidence of other crimes, wrongs or acts is not admissible to prove the character of a person to show action in conformity therewith').

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(c), Shay requests that the Court schedule a hearing on this motion on the ground that oral argument will be of assistance to the court.

Respectfully submitted,

THOMAS A. SHAY  
By his attorneys

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Dated: June 24, 1993

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the attorney or record for each other party by mail (by hand) on 6/24/93

Amy Baron-Evans