

FAL
Ex. "B"

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs.

CRIMINAL ACTION NO. 92-10369-RWZ
(Appeal on Remand, No. 93-2141)

THOMAS A. SHAY

DOCKETED

PROCEDURAL ORDER

October 31, 1995

ZOBEL, D.J.

The Court of Appeals in its opinion dated June 22, 1995, held that this Court had erred in excluding, under Fed. R. Evid. 702, the testimony of Dr. Robert Phillips, a psychiatrist, proffered by defendant. It remanded for further findings. The parties disagree about both the scope of the issue on remand, and whether resolution requires a further evidentiary hearing.

The Court held that to be admissible under Rule 702 the evidence must meet three requirements:

1. the witness must be qualified as an expert;
2. the witness' testimony must concern "scientific, technical or other specialized knowledge"; and
3. the testimony must assist the trier of fact to understand the evidence or to determine a fact in issue.

As the Court noted, this Court had excluded the proffered evidence on the third ground, namely, that the jury did not need the evidence to determine the sole point on which it was offered, the defendant's credibility. The Court of Appeals also said that "the district court did not question Dr. Phillip's qualifications or the specialized nature of his opinions" As the record shows,

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