UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
APR 20 4 47 PM '99

ALFRED TRENKLER,	:	
Petitioner,	:	
v.	:	99-CV-10074-RWZ
UNITED STATES OF AMERICA,	:	
Respondent.	:	

GOVERNMENT'S MEMORANDUM OF LAW IN OPPOSITION TO ALFRED TRENKLER'S 28, U.S.C. § 2255 PETITION TO VACATE SENTENCE

INTRODUCTION

The United States of America, by its undersigned counsel, respectfully submits this Memorandum of Law in opposition to petitioner Alfred Trenkler's Motion Pursuant to 28 U.S.C. Section 2255 to Vacate, Set Aside, or Correct Sentence, dated January 5, 1999. In support of his motion to vacate his conviction, Trenkler argues that his trial counsel rendered ineffective assistance by not attempting to introduce expert testimony of Dr. Robert Phillips, who was prepared to testify that certain statements made by Trenkler's co-defendant, Thomas Shay, Jr., tried separately, were consistent with a mental disorder known as "pseudologia fantastica."

As set forth in more detail below, Trenkler's Section 2255 petition is time-barred pursuant to 28, U.S.C. § 2255. Pursuant to

the Antiterrorism and Effective Death Penalty Act of 1986 ("AEDPA "), a defendant must file his 2255 petition within one year after his conviction became final. With respect to convictions that became final prior to the enactment of AEDPA , courts have granted defendants one year from the date of enactment of AEDPA to file their petitions. Trenkler's conviction became final in August 1995, prior to the April 24, 1996 date of enactment of AEDPA. Accordingly, Trenkler was required to file any 2255 petition by April 23, 1997, one year after the date of enactment of AEDPA. Given that Trenkler did not file the instant petition until on or about January 5, 1999, his petition is time-barred.

Secondly, even if Trenkler's petition were timely filed, Trenkler has failed to sustain his heavy burden of establishing that his attorney rendered ineffective assistance by not attempting to introduce expert testimony that certain statements made by Shay were consistent with "pseudologia fantastica." First, Trenkler does not even take the trouble to identify which statements of Shay were introduced against him, nor does even attempt to establish that those particular statements were consistent with "pseudologia fantastica."

In addition, Trenkler fails to establish that his attorney's decision not to offer Dr. Phillip's testimony at Trenkler's trial was not a tactical decision. Indeed, as discussed below, in his

opening statement, before the district court even addressed the question of which of Shay's statements would be introduced at Trenkler's trial, Trenkler's counsel conceded Shay's guilt. Thus, it would have been inconsistent for counsel to attack Shay's statements, through Dr. Phillips testimony, while conceding Shay's guilt.

Finally, Trenkler entirely fails to sustain his burden of establishing that the decision not to offer the testimony of Dr. Phillips, even if error, substantially affected the outcome of the case, particularly given that Shay's statements did not directly implicate Trenkler and given the independent overwhelming evidence of Trenkler's guilt, including his own admissions of responsibility for the bombing.

Accordingly, Trenkler's petition should be denied in its entirety.

PROCEDURAL BACKGROUND

On June 24, 1993, a federal grand jury returned a three-count superseding indictment against Trenkler and Thomas A. Shay ("Shay Jr.") charging them for their respective roles in the bombing death of Boston Police Bomb Squad Officer Jeremiah Hurley and the maiming of his partner, Bomb Squad Officer Francis Foley. Trenkler and Shay Jr. were charged with conspiracy, in violation of 18 U.S.C. § 371 (Count One); with receipt of explosive materials in interstate

commerce with knowledge and intent that the explosive materials would be used to kill, injure and intimidate Thomas L. Shay (Shay Jr.'s father, hereinafter "Shay Sr.") and cause damage and destruction to his real and personal property, including a 1986 Buick, in violation of 18 U.S.C. §§ 844(d) and 2 (Count Two); and with knowingly attempting to maliciously damage and destroy, by means of fire and explosive, a 1986 Buick owned by Shay Sr. and used in interstate commerce and in activities affecting interstate commerce, in violation of 18 U.S.C. §§ 844(I) and 2 (Count Three). The case was severed by the district court prior to trial on Trenkler's motion.[1]

Trenkler's trial began on October 25, 1993 (the Honorable Rya W. Zobel, presiding). After a 17-day trial, the jury convicted Trenkler on all counts. On March 8, 1994, the district court sentenced Trenkler to life imprisonment on Counts Two and Three, and 60 months' imprisonment on Count One, to be served concurrently.

---

[1] The jury convicted Shay Jr. of Counts One and Three. He was sentenced to 188 months' imprisonment on Count One and 60 months' imprisonment on Count Three, to be served concurrently. He appealed his conviction and sentence. United States v. Shay, 57 F.3d 126 (1st Cir. 1995). The First Circuit overturned Shay's conviction. In October 1998, Shay pled guilty to Counts One and Three, pursuant to a plea agreement with the government and was sentenced to twelve years' imprisonment.

Trenkler appealed his conviction. In its opinion dated July 18, 1995, the First Circuit held that the district court did not err in admitting evidence, pursuant to Fed. R. Evid. Rule 404(b), of Trenkler's design, construction and detonation of a similar bomb in 1986. The Court also held that the district court erred in admitting evidence derived from a Bureau of Alcohol, Tobacco and Firearms ("ATF") computer database ("EXIS") concerning the characteristics of other explosive devices and testimony based on that evidence that the 1986 bomb and the Shay bomb had unique, common characteristics to the exclusion of other bombs which made it likely that Trenkler built both bombs. However, the Court further held that this error was harmless in light of all of the other evidence establishing Trenkler's guilt. The Court also rejected Trenkler's claims of prosecutorial misconduct. United States v. Trenkler, 61 F.3d 45 (1st Cir. 1995). Trenkler did not seek a writ of certiorari.

On December 22, 1995, Trenkler filed a motion, pursuant to Fed. R. Crim. P. 33, for a new trial or, in the alternative, for an evidentiary hearing on the grounds of newly-discovered evidence. Trenkler first argued that the expert testimony of Dr. Robert Phillips, who was prepared to opine that Shay Jr. suffered from a mental condition known as "psuedologia fantastica," which allegedly causes a sufferer to engage in pathological lying, including

possibly falsely implicating himself in crimes that he did not commit, was new evidence not available to him at the time of the trial. Trenkler claimed that because the district court had previously excluded the Phillips testimony at the Shay Jr. trial, Trenkler's counsel did not offer it at his trial to undermine the credibility of certain admissions by Shay Jr. regarding his own involvement in the bombing, which were admitted at Trenkler's trial. Trenkler argued that, even though he was aware of the Phillips testimony before trial, it did not become "available" to him until after trial, when the First Circuit issued its opinion in United States v. Thomas Shay, Jr., 57 F.3d 126, 134, 137 (1st Cir. 1995), in which it ruled that the district court erred in excluding the Phillips testimony on the grounds stated and remanded the case for further proceedings, including a determination whether the Phillips testimony was nevertheless still properly excludable on other grounds.[2]

---

[2] The Court held that the Phillips testimony was not excludable on the ground that it was opinion testimony relating to the credibility of Shea's Jr.'s admissions. However, the Court remanded the case, instructing the district court to determine whether the testimony was otherwise admissible under Fed. R. Evid. 702 and whether, if admissible under Rule 702, it was nevertheless inadmissible pursuant to Fed. R. Evid. 403. The district court subsequently held proceedings in accordance with the Court's order and held, in a Memorandum of Decision dated September 24, 1997, that it erred in excluding Dr. Phillips' testimony in the Shay case.

As a second ground for a new trial, Trenkler contended that the government had failed to disclose the existence of an alleged agreement for leniency in exchange for testimony between the United States and a government witness, David Lindholm.

On February 4, 1997, the district court denied Trenkler's Motion for a New Trial in its entirety without a hearing. The court rejected Trenkler's claim that the Phillips testimony constituted new evidence. The court also rejected Trenkler's contention that Lindholm's post-trial sentence reduction suggested the existence of an undisclosed "deal" with the government at the time of Lindholm's testimony.

On November 19, 1996, Trenkler filed a Motion for Judicial Inquiry into Possible Juror Misconduct and for a New Trial, based upon an allegation that one of the alternate jurors may have been present at a home where drugs were sold in Trenkler's presence twelve years prior to his trial. On May 22, 1997, the district court denied Trenkler's motion in its entirety.

Trenkler appealed the denial of both motions. On January 6, 1998, the First Circuit issued its decision affirming the district court's denial of both of Trenkler's motions for a new trial.

STATEMENT OF FACTS

A. The Trial

1. The Discovery of the Suspicious Device. On October 28, 1991, two members of the Boston Police Department ("BPD") Bomb Squad, Francis Foley and Jeremiah Hurley, were called to the scene of a suspicious object that was found lying in a driveway at 39 Eastbourne Street in Roslindale, Massachusetts. 10/26:42-43; 11/12:8-9.[3] While the officers were conducting a preliminary examination of the object, it suddenly exploded. 11/12:11-18. Officer Hurley, who was closest to the device, died several hours later from massive trauma. 11/12:19-21; Exs. 6, 7. Officer Foley survived, suffering the loss of an eye and severe injuries to his head, face and upper torso. 11/12:20-21.

The suspicious object had first been discovered by Shay Sr. the previous Sunday afternoon, October 27, 1997. 11/1:76. According to the ATF experts and an engineer retained by the government, the device was affixed to the undercarriage of Shay Sr.'s 1986 Buick directly beneath the driver's seat. 10/28:54-56; 11/2:60-71. The bomb became dislodged when it twice made contact with the surface of Shay Sr.'s driveway on Sunday, October 27. Id.

[3] References to the trial record will be to the date of the trial or hearing, followed by a colon, followed by the page number(s) for the applicable pages of the record; i.e., 10/25:3 would designate page three of the transcript of October 25, 1993.

Had the bomb exploded as designed while Shay Sr. was seated in the driver's seat, it almost certainly would have killed him. 11/10:16-17.

The government offered testimony, inter alia, that the device was a high-powered remote controlled bomb which contained the equivalent of two to three sticks of repackaged dynamite, along with a remote control receiver, a power source, two blasting caps, a toggle switch and other necessary electrical components, contained within a well-crafted rectangular wooden box. 10/28:40-53; 10/29:82-130.

2. Evidence of Shay Jr.'s Involvement. The evidence established that Shay Jr. had both a personal and a financial motive to seek his father's death. Shay Jr. was the victim of years of neglect and abandonment by both of his natural parents, Shay Sr. and Nancy Shay, and was estranged from his father at the time of the bombing. 11/1:121; 11/3:67; 11/1:114-116.

One month before the bombing, Shay Jr. learned that his father could receive up to approximately $300,000 or $400,000 if a pending personal injury lawsuit was successful 11/3:136; that the lawsuit would survive even if his father were to die, and that any recovery would go to Shay Sr.'s estate to be divided equally among his four children, including Shay Jr. 11/3:135-136. In the weeks prior to the bombing, Shay Jr. told a friend that he was very angry with his

father, and felt abandoned by him, 11/3:135-136, that his father was terminally ill and was going to die soon, and that he expected to inherit a large amount of money when his father died. 11/5:38-39.

On October 31, Shay Jr. was arrested on an outstanding warrant for an unrelated charge. 11/3:72-73. The next day, during conversation with a fellow detainee, Paul Evans, Shay Jr. asked Evans how much time he would receive for a murder charge in Massachusetts. 11/3:113-116. When Evans responded that Shay Jr. could get 15 to 25 years, Shay Jr. said that he would kill himself or, if released on bail, he would flee. 11/3:117.[4] Shay Jr. also told Evans that his father had "disowned him five years previous." 11/3:118.

In October 1992, a year after the bombing, while being detained on unrelated charges at the Plymouth House of Correction, Shay Jr. befriended a fellow detainee, Lawrence Plant. 11/4:36-38. Shay Jr. told Plant about his role in the Roslindale bombing. 11/4:38-41. He first described his abusive childhood and how he hated his father. 11/4:42. Shay Jr. told Plant that he was involved in the bombing to try to "get even" with his father.

---

[4] The evidence established that Shay Jr. did, in fact, flee Massachusetts shortly after he was released on bail -- as he had told Evans he would. Shay Jr. was apprehended sometime in March 1992 living in San Francisco under a false name. 11/8:74-75.

11/4:42, 44. He described how the bomb functioned, and how it was attached to his father's car with magnets. 11/4:42-43. He said that it was the officer's "own fault" that he had been killed. 11/4:44. He also mentioned that there were monetary considerations involved, specifically "some sort of life insurance policy" worth "around half a million dollars." Id.

Shay Jr. also gave an interview to a local television station (WLVI-TV) on October 17, 1992. 11/10:126, Ex. 37. Shay Jr. made the following incriminating statements on the portion of the videotape that was played at trial:

> I, Tommy Shay, am guilty of something in that case [the Roslindale bombing], but do not know what...
>
> ...The Radio Shack clerk on Mass Ave. recognized me. I don't know really why he recognized me.
>
> [I bought] a toggle switch, AA battery holder, wires, you know, electrical supplies . . . . I didn't buy no explosives.
>
> There's only two things that I purchased that were inside that explosive device that killed Officer Hurley . . . . the toggle switch and the AA battery holder.
>
> My guiltiness is knowing who did it or thinking about who did it after the bomb and then fleeing, not to tell anybody. That's my guiltiness.

The foregoing evidence established that Shay Jr. was a participant in a conspiracy to kill his father, and that he aided and abetted the unlawful plan by purchasing certain essential device components. The evidence also established that Shay Jr. had no electronics background, and that he was not capable of designing

or constructing a sophisticated remote control explosive device. 11/1:131; 11/5:73.

The ATF chemists identified the specific toggle switch used in the bomb as Model Number 275-602, a toggle switch which was custom manufactured for Radio Shack. 10/28:47-48. During the investigation, agents found a receipt for an October 18, 1991 purchase of the toggle switch at Radio Shack on Massachusetts Avenue in Boston. Ex. 33. The receipt showed that the toggle switch was purchased only 10 days before the bombing; the customer name on the receipt was "SAHY JYT," a possible transposition of the letters in the name "SHAY;" and the "ID" number, which reflected the last four digits of the customer's telephone number, was "3780." Shay Sr.'s home and business telephone ended with "7380," suggesting another transposition of digits. 11/1:48-49; Ex. 26.

The receipt reflected the purchase of several other components which, according to an ATF bomb expert, would be consistent with items used to check an electrical circuit, such as the one used in the Roslindale bomb. 11/10:23. Finally, the purchase was made at a Radio Shack store at 197 Massachusetts Avenue in Boston, located directly across the street from the Christian Science Church, where Trenkler was installing a rooftop satellite dish for the church during the same time period. 11/4:146-148.

3. Trenkler's Relationship With Shay Jr. and His Bomb-<u>Making Expertise</u>.

The jury also heard evidence concerning a 1986 remote-control bomb that Trenkler had previously admitted constructing on September 1, 1986. 11/10:72. The device was placed under a truck belonging to the Capeway Fish Market causing it to sustain minor damage to its undercarriage. 11/10:74. Trenkler confessed to building the explosive device, and further admitted that he had constructed the device for a friend as a favor. 11/8:118-120.

When first questioned about his relationship with Shay Jr., Trenkler falsely claimed that he had known Shay Jr. for only six months, that he had only been with him on two occasions and that Shay Jr. had never been to his apartment. 11/5:144; 11/8:50. The evidence established that Shay Jr. and Trenkler were acquaintances dating back at least two years; that they were both homosexual; that Shay Jr. had in fact visited Trenkler's apartment; and that they had been in contact with one another on multiple occasions in the days and weeks prior to the bombing on October 28, 1991. 11/4:152-157; 11/5:31-37; 11/5-93. Shay Jr.'s address book had an entry which read "Al Trenkler, BPR #553-0778." Ex. 32. Trenkler's roommate, John Cates, confirmed that the number 553-0778 was the pager number used by Trenkler in the fall of 1991. 11/4:105. Mr. Cates also testified that Shay Jr. was paging Trenkler and leaving

voice mail messages in September and October 1991, right up until the few days prior to the explosion in Roslindale. Id.

The government offered evidence as to motive from which the jury could infer that Trenkler was willing to design and construct the explosive device to induce and cultivate a relationship with a younger male such as Shay Jr. 11/8:12-15. As stated, there was evidence of insurance money that may have become available upon Shay Sr.'s death. 11/3:136. There was also evidence that Trenkler had a very poor financial condition in the fall of 1991 and that he had invested in a string of failed businesses in the 1980s. 11/4:62-71; 144-150.

Trenkler had extensive training and experience in electronics, including satellite and microwave communications, 11/4:59-60; 71-72; 141-143, and there was also evidence that Trenkler had a long-standing interest in remote control vehicles and toys. 11/8:21; 11/4:72. Trenkler's latest electronic business, ARCOMM, was performing work for the aforementioned Christian Science Church located across from the Radio Shack store in October, 1991. 11/4:73. In fact, the Radio Shack clerk who handled the transaction in which the toggle switch had been purchased under the name "SAHY JYT" also testified to seeing Trenkler inside the store on two or three occasions in late September and October, 1991. 11/3:97; Ex. 34.

Trenkler later admitted that he had "forgotten" to tell the agents certain things about his relationship with Shay Jr. 11/8:63. He mentioned that he had given Shay Jr. rides on occasion, including to Shay Jr.'s father's house, and that he was aware that Shay Jr. hated his father. Id. Trenkler also acknowledged having visited the Radio Shack store near the Christian Science Church. Id. During one discussion, Trenkler said to an ATF agent, with an "arrogant" demeanor, "if we did it, then (sic) only we know about it ... how will you ever find out and (sic) if neither one of us talked (sic)?" 11/8:73.

There were several factual and circumstantial similarities between the 1986 and 1991 bombings. As with the 1991 incident, the 1986 incident was the product of a conspiracy wherein Trenkler agreed to assist a friend, Donna Shea, in an effort to take revenge against others. 11/8:137; 145-146. In 1986, Trenkler used a young male friend, Todd Leach, to acquire electrical components for him. 11/8:144-145; 11/9:27-28, just as the government suggested had occurred with Shay Jr. in 1991. There was also testimony that Trenkler tested the 1986 device before using it, utilizing two plastic boxes and a test lamp. 11/9:33-34.[5]

---

[5] This fact was important since there was evidence, in the form of the Radio Shack receipt, Ex. 33, that Shay Jr. purchased two small plastic project boxes and a test lamp along with the toggle switch in October 1991.

Once all the forensic and factual evidence from the 1986 and 1991 incidents was admitted, the government called ATF Explosives Enforcement Officer Thomas Waskom to testify. 11/9:127. Mr. Waskom made a detailed "signature analysis" of the 1986 and 1991 devices and of the circumstances surrounding the two incidents. 11/9:127-129. He opined that "the person who designed and constructed the `86 device was the same person who designed and constructed the 1991 device." 11/10:19-26.[6]

4. Lindholm Testimony. David Lindholm, who was detained with Trenkler for three days in December 1992 at the Plymouth County Jail, testified to additional incriminating statements made by Trenkler. 11/10:83-86. Lindholm and Trenkler shared certain common life experiences, including the fact that they had both lived on Whitelawn Avenue in Milton. 11/10:88-89. They became familiar with each other and bonded together while in jail. Id. Thereafter, they talked privately about their present

---

[6] The government also called ATF Intelligence Research Specialist Stephen Scheid to testify. 11/9:52. Mr. Scheid maintained a computer database of all bombings and arsons in the United States dating back to 1975 (known as "EXIS"). 11/9:54-56. Mr. Scheid queried over 14,000 explosive incidents in the United States for a 12-year period (1979-1991) for bombings or attempted bombings involving certain common features. Scheid testified that this computer analysis produced two incidents bearing these common features: the 1991 Roslindale bombing and the 1986 Quincy bombing. 11/9:84. The First Circuit held that the admission of this testimony was error but that the error was harmless in view of all of the other evidence establishing Trenkler's guilt.

circumstances. Trenkler talked emotionally about his relationship with Shay Jr. 11/10:98. He also mentioned Shay Jr.'s lack of technical ability. Id. Lindholm also testified that, during their conversation, Trenkler made the following admissions: "well, even if I did build a bomb, I did not place it on the car;" "so, I built the bomb. I built the bomb. I don't deserve to die or spend the rest of my life in prison for building this device." According to Lindholm, Trenkler also stated that the two bomb squad officers were foolish and negligent for not wearing body armor at the time that they were examining this device; that it served them right for what happened to them; and that it was not his fault. 11/10:96-97.[7]

Based on the evidence at trial, the jury found Trenkler guilty of all three counts.

---

[7] Trenkler called witnesses to establish that he was a hard-working and highly skilled electrical engineer whose business was doing reasonably well in the fall of 1991 (see, for example, testimony on 11/12) and to establish that he was working at another location away from the Christian Science Church on October 18, 1991, the day that the toggle switch was purchased at Radio Shack by Shay Jr. 11/12:76-89; 11/12:167-171).

POINT ONE

TRENKLER'S 2255 PETITION IS TIME-BARRED

AEDPA was passed on April 24, 1996. AEDPA amended 28 U.S.C. §2255 to include a one-year time limit for collateral appeals under that section. The time limits are triggered by one of four events:

> (1) the date on which the judgement of conviction becomes final;
>
> (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
>
> (3) the date on which the right asserted was initially recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
>
> (4) the date on which the fact supporting the claim or claims presented could have been discovered through the exercise of due diligence.

28 U.S.C. §2255

Trenkler's claim is time-barred pursuant to subsection (1), given that he did not file his 2255 petition within one year of the date his conviction became final.[8] Although there is a split between two circuits as to when a conviction becomes final for purposes of commencing the one-year limitations period under AEDPA, Trenkler's petition is time-barred under either test.

---

[8] Trenkler does not advance any claim that would warrant using any of the dates set forth in subsections (2), (3), or (4) to commence the one-year period.

In Gendron v. United States, 154 F.3d 672, 674 (7th Cir. 1998)), the Seventh Circuit held that where a defendant did not file a petition for certiorari, his conviction became final, for purposes of AEDPA, on the date the court issued the mandate in the direct criminal appeal. In contrast, in Kapral v. United States, 166 F.3d 565, 577 (3rd Cir. 1999), the Third Circuit held that a defendant's conviction did not become final until: "the later of (1) the date on which the Supreme Court affirms the conviction and sentence on the merits or denies the defendant's timely filed petition for certiorari; or (2) the date on which the defendant's time for filing a timely petition for certiorari review expires." The First Circuit does not appear to have addressed this question yet.

Under the Gendron test, Trenkler's conviction became final on August 8, 1995, when mandate issued in connection with his direct appeal.[9] Under the Kapral test, Trenkler's conviction became final when the period for filing for certiorari expired, namely ninety days from the date mandate issued on August 8, 1995, i.e., on or about November 6, 1995. U.S.Sup.Ct. Rule 13. Under either

---

[9] Mandate issues 7 days after expiration of the time to file for rehearing. FRAP 41. A petition for rehearing must be filed within 14 days after entry of judgement. FRAP 40. Trenkler's judgement was entered on July 18, 1995 when his direct appeal was denied. Accordingly, mandate issued twenty-one days later, on August 8, 1995.

of these tests, Trenkler's conviction became final no later than November 6, 1995.

Given that Trenkler's sentence was final at the time of passage of AEDPA, he had one year from AEDPA's effective date to file any collateral claims under 28 U.S.C. §2255. See, e.g., Mickens v. United States, 148 F.3d 145, 146 (2nd Cir. 1998); Brown v Agelone, 150 F.3d 370, 375 (4th 1998); Flanagan v. Johnson, 154 F.3d 196, 200 (5th Cir. 1998); Goodman v. United States, 151 F.3d 1335, 1337 (11th Cir. 1998); Burns v. Morton, 134 F.3d 109, 111 (3rd Cir. 1997); Calderon v United States District Court for the Central District of California, 112 F.3d 386, 390 (9th Cir. 1997); United States v. Simmonds, 111 F.3d 737, 746 (10th Cir. 1997) .

Therefore, given that Trenkler's conviction became final before the enactment of AEDPA, the final date for Trenkler to file a §2255 petition was April 24, 1997. Trenkler filed his current §2255 petition on January 5, 1999, approximately twenty-one months after the expiration of this grace period. Accordingly, Trenkler's petition is time-barred.

Trenkler's conclusory claim that he was "barred from alleging ineffective assistance of counsel prior to this juncture as a record had not been made in the District Court regarding the facts" (Trenkler Statement of Facts at 2) is baseless. First, Trenkler does not explain what record had to be made in the district court

"regarding the facts" prior to his filing of the instant petition. As even Trenkler himself argued in his motion for a new trial, he was aware of his counsel's alleged error in not introducing Dr. Phillips's testimony, at the latest, when the First Circuit issued its opinion in the Shay case in 1995, holding that the district court had excluded Dr. Phillips' testimony on an erroneous ground.

Moreover, even if Trenkler were to argue that the record was not fully developed until the district court conducted its hearings on remand, the district court issued its decision holding that it had erred in excluding Dr. Philips testimony on September 24, 1997, more than one year prior to the date Trenkler filed the instant petition.

Most importantly, the First Circuit has explicitly rejected Trenkler's claim that this alleged error was newly discovered evidence even as of the date of the First Circuit's 1995 opinion in Shay, stating: "Under no interpretation of the standard was Dr. Phillips's testimony unknown or unavailable at the time of defendant's trial." Trenkler, supra, 134 F.3d 361, 1998 WL 10265, **3). Thus, nothing barred, or excused, Trenkler from raising this 2255 claim immediately after his direct appeal was denied in 1995.

The cases cited by Trenkler are also unavailing. In both United States v. Martinez-Martinez, 69 F.3d 1215, 1225 (1st Cir. 1995) and United States v. Mala, 7 F.3d 1058, 1063 (1st Cir. 1993),

the First Circuit held only that it would not ordinarily entertain claims of ineffective assistance of counsel on direct appeal. Neither case provides authority excusing Trenkler's failure to file his 2255 claim of ineffective assistance of counsel following the denial of his direct appeal in July 1995.

Finally, Trenkler fails to cite any legal authority or case law that would toll the one-year AEDPA grace period during the pendency of motions for a new trial and the government is unaware of any such authority. Accordingly, Trenkler's petition should be dismissed as time-barred without a hearing.

POINT TWO

TRENKLER HAS FAILED TO SUSTAIN HIS BURDEN OF ESTABLISHING THAT HIS ATTORNEY RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL

Trenkler conclusorily contends that the failure of his trial counsel to attempt to introduce the testimony of Dr. Phillips was ineffective assistance of counsel which "prejudiced Trenkler as the jury may well have been influenced to reject the statements of SHAY if they would have known of the mental disorder from which SHAY suffered and the effects of that disorder upon his statements." Trenkler Statement of Facts at 2.[10]

---

[10]In a letter dated July 19, 1993, Attachment A hereto, Dr. Phillips opined that Shay suffered from factitious disorder - pseudologia fantastica, a significant symptom of which "is an uncontrollable urge to spin out webs of lies which are ordinarily self-aggrandizing and serve to place him in the center of

However, even assuming, arguendo, that Trenkler's petition is not time-barred, it fails on the merits given that Trenkler fails to even attempt to sustain his heavy burden of showing: a) that his counsel's decision not to attempt to introduce Dr. Phillips's testimony was outside the wide-range of professionally competent assistance; and b) even if it was ineffective assistance, that there was a reasonable probability that, but for counsel's error, the outcome of the trial would be different.

A. Standard of Review for Ineffective Assistance of Counsel

To prevail on his claim of ineffective assistance of counsel, the "very heavy burden" is on Trenkler to prove by a preponderance of the evidence that, in consideration of his counsel's perspective at the time, and absent the "distorting effects of hindsight," the totality of the circumstances supports a finding that the counsel's performance was so deficient, and so prejudicial, as to deprive Trenkler of his constitutionally-guaranteed right to a fair trial. Lema v. United States, 987 F.2d 48, 51 (1st Cir. 1993)(affirming district court's dismissal of Section 2255 ineffective assistance of counsel claim on grounds that none of defense counsel's alleged deficiencies deprived petitioner of fair trial).

---

attention."

The touchstone for analysis of ineffective assistance of counsel claims is Strickland v. Washington, 466 U.S. 668 (1984), in which the Supreme Court formulated a two-part test for determining when such a claim is sufficient to overturn a conviction. First, a defendant must show that "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." 466 U.S. at 687. Second, a defendant must show that "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." 466 U.S. at 693. When a defendant challenges a conviction, the question is "whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." 466 U.S. at 695.

The two-pronged Strickland test applies "in federal collateral proceedings as [it does] on direct appeal or in motions for a new trial." 466 U.S. at 697. In Strickland, the Supreme Court stated that "[t]he object of an ineffectiveness claim is not to grade counsel's performance." 466 U.S. at 668. Accordingly, "if it is easier to dispose of an ineffective assistance claim on the ground of lack of sufficient prejudice," then "a court need not determine whether counsel's performance was deficient." Id.

As Trenkler acknowledges, the Court must not only find that the outcome of the trial would have been different but for his

counsel's error, but the Court must also consider "whether the result of the proceeding was fundamentally unfair or unreliable." Trenkler Statement of Facts at 5, quoting Scarpa v. DuBois, 38 F.3d 1, 16 (1st Cir. 1994).

Petitioner, like any criminal defendant, was entitled to "reasonably effective assistance," Strickland v. Washington, 466 U.S. at 687, "under prevailing professional norms." 466 U.S. at 688. Courts are to "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Id. at 689. "Judicial scrutiny of counsel's performance must be highly deferential." Id. Finally, in reviewing counsel's performance, a court should "assess counsel's overall performance throughout the case in order to determine whether 'the identified acts or omissions' overcome the presumption that counsel rendered professional assistance." Kimmelman v. Morrison, 477 U.S. 365, 386 (1986), quoting Strickland, 466 U.S. at 690 (emphasis added).

Here, Trenkler has failed to demonstrate that his counsels' conduct fell below "an objective standard of reasonableness," and that, even if it had, the result "would have been any different absent such representation."

B. Trial Counsel's Decision Not to Offer Dr. Phillips's Testimony Was Not Ineffective Assistance of Counsel

As Trenkler himself acknowledges, the court must review trial counsel's action with the strong presumption that, under the circumstances, the challenged action might be considered sound trial strategy. Trenkler Statement of Facts at 4, citing Strickland.

A review of the trial record makes clear that Trenkler's counsel's trial strategy was to acknowledge that Shay was involved in the bomb-plot but to deny that there was any evidence linking Trenkler to the bomb. Consistent with this strategy, Trenkler's counsel acknowledged, in his opening statement, essentially all of the key facts contained in Shay Jr.'s statements, when counsel conceded that Shay Jr. had been found guilty of participating in the bombing:

> .... It [the evidence] will show Alfred Trenkler knew Thomas Shay, Jr. a bizarre, gay, male who had a love-hate relationship with his father, Thomas Shay, Sr. (10/26:27);
>
> There'll be evidence about Thomas Shay, Jr., Mr. Kelly referred to him often in this opening. It's clear that he wanted to kill his father. He was convicted of doing that. An (sic) it's also clear that he knew Alfred Trenkler. That's not in dispute in this case, ladies and gentlemen, but I submit to you, there will be no, and I repeat the word, no evidence that Alfred Trenkler was involved in any way, shape or manner with any scheme of Thomas Shay to get rid of his father. (11/10:35).

Shay may now argue that his attorney's decision not to attempt to introduce Dr. Phillips testimony was based on the fact that the trial court had excluded the testimony from Shay's trial, based on Terry Segal's post-trial affidavit to that effect in support of Trenkler's motion for a new trial. However, Segal made these concessions regarding Shay's guilt in his opening statement even before the court ruled on the admissibility of any of Shay Jr.'s statements in Trenkler's case, thereby indicating that, from the outset and regardless of the admissibility of any particular statement of Shay, counsel had chosen the well-defined trial tactic of not contesting Shay Jr.'s responsibility for the bombing. [11]

As the First Circuit noted in denying Trenkler's motion for a new trial:

> The decision of defendant's trial counsel in this case not to offer the testimony may have been part of his reasonable trial strategy: although some of Shay Jr.'s statements were not favorable to Trenkler, some of his admissions supported Trenkler's defense. Thus, trial counsel may have determined that it would be unwise to risk discrediting Shay Jr.'s admissions, even for the sake of discrediting his statements about the

---

[11] Trenkler fails to even identify the particular statements of Shay introduced at his trial. They are summarized in Attachment B. The district court did not rule on the admissibility of these statements until after extensive argument and briefing throughout trial. See, e.g., 11/2:100-134; 11/3:101-108; 11/4:2-3, 16-27; 11/8:76; 11/10:2.

> existence of a co-conspiracy between Shay Jr. and defendant.

Trenkler, supra, 134 F.3d 361, 1998 WL 10265 at **3(1st Cir. 1998).

However, the court need not even reach this issue given that Trenkler fails to satisfy his burden of establishing that the outcome of the case would have been any different had Dr. Phillips testimony been offered at his trial.

C. Dr. Phillips's Testimony Was Irrelevant to the Outcome of the Case Given the Overwhelming Evidence of Trenkler's Guilt Independent of Shay's Statements

Trial counsel's decision to concede Shay's guilt and not to attack Shay's statements through Dr. Phillips' testimony is clearly a defensible, indeed intelligent, tactic given that Shay Jr.'s statements did not directly implicate Trenkler in the bombing and given that extensive evidence at trial, independent of these statements, linked Trenkler to Shay Jr. and established Trenkler's bomb-making expertise.

Indeed, in denying Trenkler's direct appeal, the First Circuit also held that the district court error in admitting the "EXIS evidence" was harmless beyond a reasonable doubt in view of the other evidence of Trenkler's guilt. The Court noted:

> Initially we note that substantial evidence, beyond Trenkler's participation in the Quincy bombing, supported a finding that he had built the Roslindale bomb. Principally, David

Lindholm convincingly testified that, in fact, Trenkler had actually admitted building the Roslindale bomb. Other admissions by Trenkler made to various law enforcement officers inferentially corroborated Lindholm's testimony, specifically Trenkler's sketch of the Roslindale bomb, drawn shortly after the explosion and conspicuously featuring two electrical blasting caps. Moreover, Trenkler's arrogant assertion to Agent Leahy that, "if we did it, then only we know about it . . .how will you ever find out . . .if neither one of us talk[?]" provided further corroboration. Additional support could be inferred from the ample evidence the government adduced establishing Trenkler's relationship with Shay Jr. and his knowledge of both electronics and explosives.

. . . Moreover, as discussed supra at 54-56, other circumstantial evidence tending to show that the maker of each bomb used a similar modus operandi, (e.g., both bombs built for a friend, both bomb makers used third party to acquire components) independently supported the inference that the same person built both bombs.(footnote omitted) Finally, even putting aside whether the jury would have found the two incidents sufficiently similar to prove identity without the EXIS-derived evidence, the jury nonetheless would have been able to consider the fact that Trenkler had designed and built the Quincy bomb to prove Trenkler's knowledge and skill.

In sum, while the admission of the EXIS-derived evidence would not have been harmless error if the only other evidence consisted of the expert's testimony of signature and the evidence establishing Trenkler's relationship with Shay Jr. and his electrical and explosive skills, the additional presence of several different strong sources of testimony relating Trenkler's admissions, convinces us that no rational jury could have entertained a

> reasonable doubt of Trenkler's guilt even in the absence of the EXIS-derived evidence.

Trenkler, supra, 61 F.3d at 60-61.

Obviously, the most damaging evidence introduced against Trenkler was his own admission of guilt, as testified to by Lindholm. Dr. Phillips testimony would have had no relevance whatsoever to this evidence which alone could be sufficient to convict Trenkler under federal law. In addition, there was ample evidence from Trenkler's own admissions and the testimony of other witnesses, such as Trenkler's roommate John Cates, that Trenkler was well-acquainted with Shay. Trenkler himself admitted that he knew Shay and was aware of Shay's hatred of his father. Trenkler's initial statements to investigators falsely minimizing the extent of his relationship with Shay was further evidence of his guilty state of mind. All of this evidence, as well as the extensive forensic evidence discussed above which tied Trenkler to the bombing, and the pre-bombing evidence regarding Shay's motives to kill his father, more than amply established Trenkler's guilt beyond a reasonable doubt, independent of any of Shay's statements that might even arguably have been challenged through Dr. Phillips testimony.[12]

---

[12] Given that Trenkler has: a) not even attempted to support the admissibility of Dr. Phillips testimony in his case; b) not even attempted to explain how that testimony would have been relevant to any particular statement of Shay; and c) not even attempted to

Thus, Shay Jr.'s statements played a far less important role in Trenkler's case than they did in Shay's case. Accordingly, even assuming that Trenkler had sustained his burden of showing that Dr. Phillips testimony would have been admissible in Trenkler's case under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), a showing that Trenkler has not even attempted to make, he has grossly failed to sustain his burden of establishing that Dr. Phillips testimony would have resulted in a different verdict.

Finally, given that the court can make its finding that Trenkler has failed to satisfy his burden of demonstrating prejudice on the instant record, no hearing is necessary.

---

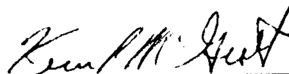
explain how an attack on the credibility of any such statements would have resulted in a different verdict, the government will not further address these issues except to note that the majority of Shay's most relevant statements were not the type of grandiose or obviously incriminating statements as to which Dr. Phillips's testimony would have been particularly relevant or persuasive. The government respectfully requests permission to reserve its right to more fully develop its argument as to the irrelevance of Dr. Phillips testimony to the verdict in Trenkler's case should the court decide that further inquiry is appropriate despite Trenkler's failure to properly address these questions in his petition.

CONCLUSION

For the foregoing reasons, Trenkler's 2255 petition should be denied in its entirety without a hearing.

Respectfully submitted,

DONALD K. STERN
UNITED STATES ATTORNEY



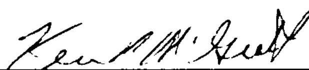
KEVIN P. MCGRATH
ASSISTANT U.S. ATTORNEY
United States Courthouse
Suite 9200
1 Courthouse Way
Boston, MA 02210

CERTIFICATE OF SERVICE

This is to certify that I have this day served upon the person listed below a copy of the foregoing document by depositing in the United States mail a copy of same in an envelope bearing sufficient postage for delivery:

ALFRED W. TRENKLER, PRO SE
Prisoner number 19377-038
U.S.P. Allenwood
Box 3000
White Deer, PA 17887

This 20th day of April 1999.



KEVIN P. MCGRATH
ASSISTANT UNITED STATES

ATTACHMENT A

ROBERT T. M. PHILLIPS, M.D., PH.D.
11 BLUE ORCHARD DRIVE
MIDDLETOWN, CONNECTICUT 06457
TELEPHONE/FACSIMILE (203) 346-0112

19 July 1993

Nancy Gertner Esq.
Dwyer, Collora and Gertner
400 Atlantic Avenue
Boston, MA 02110

Re: Neuropsychiatric Evaluation, Thomas A. Shay

Dear Attorney Gertner:

At your request, I have examined Mr. Thomas A. Shay, a 21-year old single white male who stands accused of having received explosives in interstate commerce with the intent to kill, injure or intimidate another person, having attempted to destroy a vehicle by means of explosives, and conspiring to do the foregoing, for which he is being tried in the U.S. District Court, District of Massachusetts. My examination of Mr. Shay was conducted at the Essex County Correctional Facility in Middleton, Mass., on April 9, 1993, for a period of approximately 6 hours and June 11, 1993 for a period of approximately 5 hours. I have also conducted a general physical, and neurological examination of Mr. Shay. Additionally I have reviewed Mr. Shay's life history as reported in voluminous medical, social, judicial and educational documents provided to me by your office. Included among these documents are:

1. Department of Social Services report to the Honorable George Criss, Quincy District Court, October 4, 1982, signed by Joanne I. Harris, MSW.

2. Service plan, Shay family.

3. Social Service staffing, Baird Center, 9/21/87.

4. Residential staffing, Baird Center, 9/21/87.

5. Educational report, Baird Center, 9/21/87.

6. Clinical staffing, Baird Center, 3/16/87.

7. Residential staffing, Baird Center, 3/16/87.

ASSISTANT CLINICAL PROFESSOR OF PSYCHIATRY
YALE UNIVERSITY SCHOOL OF MEDICINE

28. Bridgewater State Hospital Records, 1991.

29. Alcohol, Tobacco and Firearms Reports, U.S. v. Thomas A. Shay.

30. Statements of Thomas A. Shay to law enforcement officials: 10/28/91, 10/29/91, 10/31/91, 11/1/91, 3/24/92, 4/1/92, 5/1/92, 6/4/92, and 6/11/92.

31. Correspondence of Thomas A. Shay: Press release to San Francisco news editors; Letter to Frank Armstrong; Letter to Russ Bonanno; Letter to Officer in Charge; Letter to Thomas A. Shay Sr.; Note from Tom Jr. to Tom Sr.

32. Report of Law Enforcement Investigators: Interviews of Douglas Critcher, Randy Stoerer, Fred Burke, Ed Carrion, Shelly Murphy.

33. South Shore Mental Health Center records, September 1978.

34. Metropolitan State Hospital Gabler's Children's Center records, March 3, 1977 through September 8, 1977 and July 1986.

35. Medfield State Hospital records, May 13, 1984 through May 15, 1984.

36. Nazareth Family Center records, October 2, 1982.

37. Bournewood Hospital, May 15, 1984.

38. Spaulding Youth Center records, October 1984 through 1986.

39. Baird School records, October 1986.

40. Compass Program records, 1987.

In addition to the above-referenced materials I have reviewed the following videotapes:

41. People Are Talking, WBZTV, "Gay Teenagers," Thomas Shay, 6/18/90.

42. Arrival of Thomas A. Shay at Greyhound Bus Station (Press Conference), 10/31/91.

43. Arrival of Thomas A. Shay at Logan Airport, 4/1/92.

44. Attempted Hypnosis of Thomas A. Shay, 7/29/92.

45. WLVI Interview Excerpts 10/17/92.

46. WLVI TV Channel 56 News Report including interview with Thomas Shay 11/13/92.

I have also conducted the following collateral family interviews:

47. Nancy Shay (mother), at her home in Quincy, Massachusetts, 6/11/93, for a period of approximately 2 1/2 hours.

48. Amy Lenar, at her mother's home in Quincy, Massachusetts, 6/11/93, for a period of approximately 1 hour.

49. Nancy Shay (sister), at her home in Somerville, 6/11/93, for a period of approximately 2 hours.

50. Jean McGuire, at her home in Quincy, Massachusetts, for a period of approximately 2 hours, 6/26/93.

I have also reviewed the family interviews conducted by members of the defense investigatory team of:

51. Interview of Thomas Shay, Sr., April 17, 1993.

52. Interview of Nancy Shay (mother), April 23, 1993.

53. Interview of Amy Lenar, May 4, 1993.

54. Interview of Thomas Shay, May 6, 1993.

55. Interview of Jimmy Jay and family, May 7, 1993.

56. Interview of Jeanie McGuire, May 12, 1993.

57. Interview of Jeanie McGuire, May 18, 1993.

58. Interview of Brian Stratton, May 20, 1993.

59. Interview of Paula Shay, May 25, 1993.

60. Interview of Mrs. Nancy Shay, May 25, 1993.

61. Interview of Mrs. Rose Shay (Tom Sr.'s mother), May 25, 1993.

62. Competency to stand trial evaluations of Thomas A. Shay, Jr., related to the instant offense.

It was my intention to interview Thomas Shay, Sr., on June 26, 1993. However, Mr. Shay declined my interview.

I have also consulted with Ronald A. Cohen, Ph.D., a licensed clinical psychologist in the Commonwealth of Massachusetts and have reviewed the raw data from his neuropsychological testing of Thomas A. Shay, Jr.

Based upon my examination, my consultation with attorneys Gertner and Baron-Evans, and my detailed review of the documented life history, reports, and materials provided to me as described herein, it is my professional medical opinion that:

1. Thomas A. Shay, Jr., is a young adult of low average to subaverage intellectual functioning who possesses concurrent deficits in adaptive functioning that render him less effective in meeting the standards expected for his age range in such areas as social skills and responsibilities, daily living skills, personal independence and self-sufficiency.

2. Further, it is my professional medical opinion that Thomas A. Shay, Jr., has identifiable deficits in intellectual functioning consistent with those individuals who are diagnosed as having a learning disability.

3. Supportive clinical evidence exists that Mr. Shay exhibits certain personality traits that are inflexible and maladaptive and cause significant functional impairment and subjective distress that appear to rise to a level of diagnosable personality disorder. The manifestation of Mr. Shay's personality disorder historically is recognizable in early childhood and has continued to manifest itself throughout his adolescence and early adult life.

4. Additionally, it is my professional medical opinion, within a reasonable degree of medical certainty, that Mr. Thomas A. Shay, Jr., has in the past, and episodically at present continues to suffer from generalized symptoms of anxiety and depression that appear to be situational in nature and attributable moreso to his inherent maladaptive ability to cope with such circumstance as a result of his personality organization rather than the inherent nature of the circumstance itself.

Psychodynamic Formulation:

It is my professional medical judgment, based on the aforementioned clinical findings, Thomas A. Shay Jr. is a dysfunctional individual whose dysfunction is in large part attributable to a longstanding underlying personality disorder which has contributed substantively to his psychic dysphoria and feelings of personal inadequacy. Mr. Shay's longstanding behavioral and emotional problems beginning in early childhood and continuing at present are pervasive and

contributory to his developmental maladjustment which has caused him both unfortunate emotional and sociological sequelae.

I am also of the opinion, within a reasonable degree of medical certainty, that Mr. Shay harbors several unresolved internal conflicts central to the issues of his ineffective parenting by mother and father and protracted institutionalization as a young child and adolescent. Because of his personality organization, Mr. Shay is incapable of moving forward in an effective fashion that would integrate his inner feelings with the reality of his external world. The failure to successfully integrate such process and come away with the satisfaction of having either succeeded or minimally putting forth one's best effort is one of the fundamental building blocks of an integrally solid self-esteem. Mr. Shay is clearly at a deficit in this area of personality structure in large measure because of his inherent characterological organization, the traits which are unique to his personality, and the maladaptive behavioral patterns through which these egodystonic experiences are grounded.

A significant symptom of all of the above is an uncontrollable urge to spin out webs of lies which are ordinarily self-aggrandizing and serve to place him in the center of attention. Put otherwise, coping for Mr. Shay, given his personality structure, entails seeking attention, tailoring his words to the audience, creating fantasies in which he is the central figure and through which he attempts to enlist his audience--this is known as pseudologia fantastica. See attached bibliography. Mr. Shay's stories are an attempt to draw others into his fantasy world in order to meet the interpersonal needs which were not met during his childhood.

Finally, it should be noted that Mr. Shay has a genetic chromosomal disorder, seminiferous tubular dysgenesis, resulting in his having 47 rather than 46 chromosomes. Persons who suffer from this genetic abnormality are known to be at risk of exhibiting various degrees of mental deficiencies. Talkativeness with little substance to the content of speech is an outstanding behavioral trait of those individuals who suffer from this genetic disease. Clearly, this medical condition only further exacerbates if not etiologically explains the character pathology we see in this individual.

Diagnoses:

Axis I - Identity Disorder.

Rule out Bipolar Disorder not otherwise specified.

Axis II - Personality disorder not otherwise specified with dependent, narcissistic, immature and self-defeating features

Factitious Disorder-Pseudologia fantastica.

Rule out Borderline personality disorder.

Axis III - Klinefelter's syndrome (seminiferous tubular dysgenesis).

Axis IV - Psychosocial stressors: extreme family discord, history of parental abuse and neglect, severe characterologic dysfunction

Axis V - Global Current Assessment of Functioning - significantly impaired due to life circumstances and diagnoses described herein.

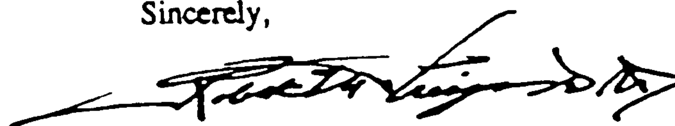
Conclusion:

At present, I am of the opinion, within a reasonable degree of medical certainty, that the nature and scope of Mr. Thomas A. Shay Jr.'s symptoms of mental distress, the effect on Mr. Shay of his mental distress, and the factors substantially contributing to his mental distress are the result of outstanding characterologic emotional dysfunction, the etiology of which is causally related to Mr. Shay's developmental history, inherent psychopathology, and medical condition. A central symptom of Mr. Shay's underlying condition is the uncontrollable urge to spin out webs of lies in an attempt to draw others into his fantasy world and place him in the center of attention.

I would be happy to further substantiate and/or expand upon the opinions contained herein at your request.

Thank you for allowing me the opportunity to provide consultation on this matter.

Sincerely,



Robert T.M. Phillips, M.D., Ph.D.

RTMP/br

BIBLIOGRAPHY

Dithrich, C.W. Pseudologia fantastica, dissociation, and potential space, in child treatment, Int. J. Psychoanal. 72 (Pt. 4) 1991:657-67.

Graham, J.M. Jr., A.S. Bashir, R.E. Stark, A. Silbert, and S. Walzer. Oral and written language abilities of XXY boys: implications for anticipatory guidance, Pediatrics 81 (6) June 1988:795-806.

Harkulich, J.F., T.J. Marchner and E.B. Brown. Neurological, neuropsychological, and behavioral corrrelates of Klinefelter's syndrome, J. Nerv. Ment. Dis. 167 (6) June 1979:359-63.

King, B.H. and C.V. Ford. Pseudologia fantastica, Am. J. Psychiatry 144(7) July 1987:970-1.

King, B.H. and C.V. Ford. Pseudologia fantastica, Acta Psychiatr. Scand 77(1) Jan. 1988:1-6.

Nielsen, J. and B. Pelsen. Follow-up 20 years later of 34 Klinefelter males with karyotype 47,XXY and 16 hypogonadal males with karyotype 46,XY, Hum. Genet. 77 (2) Oct. 1987:188-92.

Pennington, B.F., B. Bender, M. Puck, J. Salbenblatt, and A. Robinson. Learning disabilities in children with sex chromosome anomalies, Child Dev. 53 (5) Oct. 1982:1182-92.

Ratcliffe, S.G., J. Bancroft, D. Axworthy, and W. McLaren. Klinefelter's syndrome in adolescence, Arch. Dis. Child 57 (1) Jan. 1982:6-12.

Sharrock, R. and M. Cresswell. Pseudologia fantastica: a case study of a man charged with murder, Med. Sci. Law 29 (4) Oct. 1989:323-8.

Snyder, S. Pseudologia fantastica in the borderline patient, Am. J. Psychiatry 143 (10) Oct. 1986:1287-9.

Weston, W.A. and J. T. Dalby. A case of pseudologia fantastica with antisocial personality disorder, Can. J. Psychiatry 36 (8) Oct. 1991:612-4.

Yeragani, V.K., and G. Hopkinson. Klinefelter's syndrome with atypical presenting features, Can. J. Psychiatry 26 (8) Dec. 1981:567-8.

Zastowny, T. R., A.F. Lehman, and F. Dickerson. Klinefelter's syndrome and psychopathology: a case study of the combined effects of nature and nurture, Int. J. Psychiatry Med. 17 (2) 1987:155-62.

ATTACHMENT B

EXTRAJUDICIAL STATEMENTS OF SHAY JR.
CHALLENGED BY TRENKLER

1. Thomas testified that he spoke with Shay Jr. on October 29, 1991 and "discussed, generally, Shay Jr.'s upbringing. Shay Jr. mentioned having attended in his early youth boys' schools, and said that "maybe things would have been different had he not gone to boys' schools." R.A. 845-49.

2. Following Shay Jr.'s meeting with the media at the bus station on October 31, 1991, Detective Thomas met with Shay Jr. at the Homicide Unit. The conversation turned to Shay Jr.'s continuing interest in the explosion. Shay Jr. said that he had been making videotapes of various news reports, and that he had been clipping articles from the newspaper relating to the explosion from Boston papers. He said he was doing that because he wanted to go to the scene of the background and see if he could recognize anybody. R.A. 855-57.

3. Shay Jr. told Thomas that he did not want to see his father until this was over. R.A. 858.[21]

4. Robert Evans, an inmate in the cell next to Shay Jr. at Quincy District Court Lockup testified that on November 1, 1991, Shay Jr. asked him how much time he would receive for a murder charge in Massachusetts. Evans told him that for a "first degree murder charge in Massachusetts, life without parole." R.A. 866-67.

5. Evans testified that Shay Jr. said "he couldn't do that time, that he would kill himself" and "that if you can make bail you can flee or take off." R.A. 867.

6. Evans testified that Shay Jr. said "his father had disowned him 5 years previous to the day." Upon being asked by Evans if his father would bail him out, Shay Jr. said, "what are you crazy after what happened." R.A. 868.

7. Lawrence Plant, an inmate with Shay Jr. at the Plymouth House of Correction testified that in mid-October 1992, Shay Jr. approached him and introduced himself as "Boomer...Don't you know who I am?...I'm the one who killed the Boston cop." R.A. 879-80.

8. Plant testified that Shay Jr. wanted Plant to get even with his father. He said he had an abusive relationship with his father. He told Plant that in desiring to get even with his father he was involved in the building of a bomb and that the bomb was brought to his father's house and placed underneath the car using magnets so it would stay in the car and the bomb was designed to work so that it would be initiated by some type of radio frequency. R.A. 883-885.

9. Plant testified that Shay Jr. told him that when the car was being put into the driveway, the device fell onto the ground; that his father noticed the device, picked it up and then eventually called the police; that the bomb blew up killing the one officer and maiming the second. He mentioned that it was possible that the initiation of the bomb may have been due to one of the patrol officers on the scene using a shoulder radio of some kind. His demeanor was angry and excited. He said that the dead officer was his own fault. Shay Jr. said that it was his passion to get even with his father and that he had this intention of getting even with his father that dated back to a time when he was in a facility known as the Beard Center. Plant testified that Shay Jr. told him that there was some sort of life insurance policy worth approximately somewhere around a half a million dollars. He said that some of the materials had been placed in some type of a bag and dumped into the ocean or into the water in some fashion 3 miles out. R.A. 885-87.

10. Channel 56 reporter Karen Marinella interviewed Shay Jr. on October 17, 1992 when he was in custody at the Plymouth House of Corrections. Portions of Shay Jr.'s statements given at the videotaped interview were introduced at trial. R.A. 1540.