

1 Chief Justice Vaughn delivered the opinion of the Court, which
2 established the right of jurors to give their verdict according
3 to their convictions.

4 This case, ladies and gentlemen, isn't U.S. versus
5 Thomas Shay, it's United States versus Alfred Trenkler.

6 I just want to leave you with one final thought.
7 There's a saying, in inscription on a building in this country
8 that's very important to the administration of justice. It's
9 the Justice Department building in Washington, D.C.

10 As you come into that building, over the archway
11 there's an inscription and it says, ladies and gentlemen of
12 the Jury: The United States always wins when justice is done
13 to its citizens.

14 I respectfully submit, ladies and gentlemen, when you
15 return a verdict of not guilty in this case, you will be doing
16 justice.

17 Thank you.

18 THE COURT: Let us stretch for a moment and then we
19 will hear the rebuttal.

20 Rebuttal Argument by Mr. Kelly

21 Counsel, ladies and gentlemen, I now have a brief
22 opportunity to respond to certain of the points made by
23 Mr. Segal on behalf of the defense. And my compliments to Mr.
24 Segal, he has complimented us a couple of times, and I
25 compliment him, as well, he's a fine lawyer.

1 stayed home that night. And who, during Mr. Shay's trial in
2 July, recalled the alleged Dorchester dinner party for the
3 first time.

4 And who does he want you to rely upon? This fellow
5 David Millette who came in and fought with me, if you recall,
6 Mr. Cates's former lover from Texas, who comes up from Texas
7 to Massachusetts, and becomes an acquaintance of Mr. Trenkler,
8 although he can't remember his last name. And then who also
9 tells you that he coincidentally remembers the alleged
10 Dorchester dinner party just a few months ago, around the same
11 time that Mr. Cates happens to testify at the Shay trial.

12 Now, did he recall that when he was specifically
13 questioned about this matter by investigators months earlier?
14 He did not.

15 Now it's is up to you to judge a witness's
16 credibility or believability. But I submit to you, ladies and
17 gentlemen, this is precisely the kind of testimony that you
18 should view with a very sceptical eye.

19 Now while we're on subject of credibility, let me
20 respond do Mr. Segal's comments about David Lindholm and Denny
21 Kline.

22 When you judge a witness's credibility, ladies and
23 gentlemen, you look at a number of factors. You look at
24 whether the witness has a motive to testify falsify. You look
25 at whether or not that witness brings any bias or prejudice

1 The bottom line of all that stuff, ladies and gentlemen, it
2 takes something between 18 and 27 minutes to travel from that
3 guy's business over to the Radio Shack store on Mass. Ave. So
4 if you left at 1:45, you'd certainly make it before 2:30. In
5 fact, if you left at 2 o'clock, you'd still make it before
6 2:30. So what does all that mean? Absolutely nothing. Does
7 it provide that defendant with an alibi? It does not.

8 And then he wants to give you an alibi for the
9 evening of Saturday, October 27th, 1991. And why is that
10 important? Because nobody knows when this horrible, horrible
11 dangerous device was stuck on that car.

12 But based on all the evidence, the most reasonable
13 inference is that it was attached sometime between 6 o'clock
14 on Saturday night the 26th and probably 6 o'clock the next
15 morning. So the defendant has to try to account for his
16 whereabouts during that time frame. So what does he present
17 to you? Ah, the Dorchester dinner party. How convenient.

18 And what does he want you to rely upon to believe
19 that he was at the Dorchester dinner party all that night?

20 First, he wants to you rely upon the testimony of
21 John Cates, his former roommate and lover, who previously
22 testified that he would lie for the defendant, who for
23 18 months following the bombing was specifically questioned
24 about his whereabouts that night, Saturday, October 22nd, and
25 told everybody that his memory, that he and the defendant had

1 bought.

2 Now, ladies and gentlemen, this is what we in the
3 business called a smoke screen. It's an effort to deflect
4 your attention away from something that's really important.
5 And it is for a couple of reasons.

6 One, the government never offered any evidence
7 to suggest that he was at the store at 2:36 p.m. on
8 October 18th. I mean, he could well have provided the
9 defendant Mr. Shay, with this list sometime earlier in the day
10 or the previous day. He didn't have to be there.

11 But talk about it for a minute. Does their alleged
12 alibi actually hold any water? I mean, in fact I think their
13 evidence suggests that he could very well have been at the
14 presence of the Radio Shack store at the time.

15 What have you learned about it? Mr. Rombolli, the
16 accountant who's still owed five hundred bucks by the
17 defendant, tells you that he did meet with the defendant on
18 October 18th, but the meeting could have ended as early as
19 1:45. He didn't leave at 2:30. He told you that, contrary to
20 what Mr. Segal said. He said he tacked on an extra hour
21 because he showed up the previous day and they didn't show.
22 Do you remember that?. So he didn't leave at 2:30. He said
23 left as early as 1:45 or 2 o'clock.

24 And then you heard all this evidence about driving
25 times and traffic lights and all that kind of good stuff.

1 were conducted, the apartment, the garage, or the business.

2 And should the lack of any physical links to this
3 defendant surprise you or slow you down in this case?

4 Absolutely not.

5 Now, Mr. Segal says that with respect to this
6 diagram, it wasn't drawn, it never happened. Ladies and
7 gentlemen, if you believe that, you must believe that two
8 veteran federal agents with better than 15 years experience
9 apiece, knowingly came before you and perjured themselves.

10 Now, you saw and heard Agent Leahy and Agent
11 D'Ambrosio testify.

12 I ask you, based on what they said and how they
13 appeared, whether you believe that that's really what went on
14 in this courtroom, ladies and gentlemen. Or as Agent
15 D'Ambrosio told to you, it was a regrettable, honest oversight
16 on his part.

17 Mr. Segal talks about an alleged alibi for
18 October 18th, and he went in and showed you this ledger from
19 this Mr. Rombolli fellow, and for a long time nobody really
20 knew what all this was all about. Do you remember that?

21 Now, why does he raise this?

22 He raises this because the purchase of that toggle
23 switch which he admits was inside the bomb, occurred on
24 October 18th at 2:36 p.m., and Mr. Trenkler wants to you
25 believe that he wasn't around this store at the time that was

1 Let me begin with Mr. Segal's point about the lack of
2 any physical evidence tying that defendant, Alfred Trenkler,
3 to the bombing.

4 In 1986, the defendant is careful. He builds the
5 bomb in a parking lot. He doesn't build that bomb in his
6 apartment. He doesn't build that bomb at his business. He
7 doesn't build it at his parents' garage or in the trunk of his
8 car. But still he goes gets caught.

9 It's now five years later, it's 1991. He's more
10 clever. He's also building a far more sinister and deadly
11 device, ladies and gentlemen. He's going to be very careful
12 this particular time around.

13 He's not going to walk into the Radio Shack store
14 this time. He's going to let someone else do that for him.
15 He's not going to have other people around when he constructs
16 that device. And he certainly is not going to build that bomb
17 at his apartment or in his business or in his parent's garage
18 or in his car.

19 And what does the defendant say to Agent Leahy on
20 this that one occasion, this defendant, this man who works on
21 radio towers in remote wooded locations, I know you found
22 nothing with the sniffer. Now why does he say that, ladies
23 and gentlemen?

24 I submit he says that because he knows that he didn't
25 build that bomb at any of the locations where the searches

1 with them into the courtroom. Whether they have an interest
2 in the outcome of the lawsuit? Whether they've received
3 anything in exchange for their testimony. You look at their
4 demeanor on the stand, how they appeared to you while they
5 were testifying. You look at whether there's corroboration,
6 support for what they are telling you, from other evidence in
7 the case.

8 And when you are looking at the testimony of experts,
9 you also look at their background, their experience, the
10 specific areas of their expertise. And you look at whether or
11 not their opinions are logical and whether their opinions are
12 based on the factual evidence in the case.

13 Now, Mr. Segal would have you believe that on the one
14 hand, Mr. Lindholm's testimony should be ignored and
15 completely disregarded. And at the same time, he offers
16 Mr. Denny Kline as the guru of bomb experts, whom you should
17 accept entirely simply because at one point in time he worked
18 for the FBI.

19 Now let me start with Mr. Lindholm. The United
20 States didn't pick Mr. David Lindholm. It was the defendant
21 who chose to speak with that gentleman one night in
22 December 1992 at the Plymouth County House of Correction.

23 And what was Mr. Lindholm's demeanor as he appeared
24 before you, ladies and gentlemen? Did he look comfortable?
25 Did he look like he really wanted to be here, that he was

1 anxious to tell his story? This is a guy that goes back to
2 prison for another six years, remember? You know, testifying
3 against somebody else and going back to prison carries with it
4 certain weight. Did he look real comfortable about being
5 here?

6 Ask yourselves about that. Was there any incentive
7 for this fellow to falsify anything he told you?

8 The answer is no.

9 You heard him testify. He's received no promises, no
10 rewards, no inducements for coming forward, and he will not
11 ask for any in the future.

12 And, finally, as you consider his testimony, ladies
13 and gentlemen, take note of the fact that there is
14 corroboration for what he told you from other evidence in the
15 case.

16 For example, he told you about Mr. Trenkler's
17 background, how Trenkler told him he went to Milton Academy
18 and the Park School and Wentworth Institute. Did he know that
19 of his own volition? No, he did not, he learned it from the
20 defendant. You heard it from the mother.

21 He told you about Mr. Shay, how he used to hang
22 around a certain part of the Boston. Did he know that out of
23 thin air? No, he heard it from the defendant. You heard it
24 from other witnesses.

25 He told you about what he knew about the 1986 bomb,

1 about what it involved and things like that. Did he just
2 happen to know, did it just kind of enter his head? No, he
3 heard it from the defendant.

4 He repeated it to you, and you know from other
5 evidence in the case that he did it pretty accurately.

6 In short, ladies and gentlemen, you are not being
7 asked to accept the testimony of this Mr. David Lindholm in a
8 vacuum. The reliability of Mr. Lindholm's statements to you
9 may be considered in light of other corroborative evidence in
10 the case, evidence that strongly suggests that he was
11 attempting to accurately restate what had been told to him by
12 that defendant, including the comment, I made the bomb. I
13 made the bomb, but I don't deserve to die or spend the rest of
14 my life in prison for that.

15 And now you have Denny Kline, a man who was trained
16 and acquired his experience at the expense of the United
17 States taxpayers' while on the government payroll at the FBI
18 for 20 years, who despite this 20 years of public service, and
19 contrary to various government regulations, demonstrated a
20 willingness to disseminate official FBI records while serving
21 as a private consultant, a man whose experience is not in
22 homemade bombs, bombs made by the occasional bomber, the
23 loaner, but rather with terrorist bombings.

24 And notwithstanding Mr. Segal's comment, a bomb is a
25 bomb is a bomb, you know that's not the case. With terrorist

1 bombings like the Omega 7 group, they mass produce bombs in a
2 short time frame. They want the authorities to identify their
3 group with the bomb. They often call or write to take
4 credit. And of course if they're mass producing bombs and you
5 happen to find that place with a search, of course you're
6 going to find physical evidence.

7 Now how about the occasional bomber? He doesn't want
8 to take credit. He doesn't want to be identified with the
9 bomb. He certainly doesn't want to get caught. He uses
10 available materials that happens to be around him at the
11 time. But notwithstanding his effort to avoid the detection,
12 he still uses certain distinctive touches in what he selects,
13 in how he combines those things.

14 My point is, ladies and gentlemen, that Mr. Kline's
15 experience with this idea of signature is very different from
16 what we have in this case. And of course the defendant -- I
17 mean Mr. Kline never spoke to the defendant. Not only did he
18 never talk to the defendant, he wanted nothing to do with
19 him. He wouldn't even acknowledge that he was his client.

20 And finally, when you think about Denny Kline, think
21 about the fact that he has been paid \$200 an hour and nearly
22 \$15,000 as a private consultant by the defense.

23 And having accepted that money, ladies and gentlemen,
24 ask yourselves two things, one, does that guy have an interest
25 in the outcome of this case? And, two, what would you expect

1 him to say?

2 My last point. In his opening statement, Mr. Segal
3 repeatedly described this case as a case of guilt by
4 association. He implored you to hold the government to its
5 burden of proof, and he's repeated that phrase ad nauseam here
6 today, guilt by association, guilt by association.

7 Now that this is over, ladies and gentlemen, what
8 associations of the defendant have we learned about?

9 One, the defendant's close association with Thomas
10 Shay, Jr., which dates, not to June of 1991, but all the way
11 to the spring of 1982 -- 1989, excuse me.

12 Two, the defendant's association with electronics and
13 with woodworking. Mr. Segal said no evidence, but of course
14 you heard Rich Brown, the business partner, come in and say he
15 worked with wood all the time. His association with
16 electronics, with woodworking, with soldering, with circuitry
17 work and with remote control.

18 The defendant's association with his wiring diagram
19 that the defense would just as soon have evaporate, which
20 shows the two blasting caps or this very distinctive touch
21 called a dual priming.

22 The defendant's association with the 1986 bomb, which
23 he designed, which he constructed, and which he then detonated
24 as a favor for a friend.

25 The defendant's association with the purchase of a

1 four or \$5,000 automobile for a young male friend, also
2 provided as a favor for that person.

3 The defendant's association with the Radio Shack
4 store on Mass. Ave. on or about October 18th, that he was not
5 only working across the Street on that day, but had been in
6 the store countless times in the same time frame, according to
7 the clerk.

8 And, finally, the defendant's association, one I am
9 sure that he regrets, but the defendant's association with
10 David Lindholm in December of 1992 at the Plymouth House of
11 Correction, in which he admitted that it was he who made this
12 bomb that took the life of Officer Jeremiah Hurley and
13 severely and permanently maimed Officer Frank Foley.

14 Now, Mr. Segal, he can come before you, he can scoff
15 and he can call this a case of guilt by association, ladies
16 and gentlemen; however, you should call it a case of guilt
17 beyond a reasonable doubt on each and every charge of this
18 indictment.

19 And on behalf of the United States America, I again
20 thank you for your patience and attention.

21 THE COURT: Members of the jury, we will now take the
22 morning recess. I will thereafter instruct you in the law.

23 Court is in recess.

24 [Whereupon, the jury left the courtroom.]

25 [Recess.]