ARTHUR TRENKLER

CHARGE CONFERENCE AND CHARGE TO THE JURY

1) Discussion on 1986 and 1991 Devices

2) Discussion on Missing Witnesses

3) Discussion on Shay Jr. and First Trial

4) Discussion on Trenkler Statements made to others, Audiotape Recording in First Trial, Flight and Consciousness of Guilt By Means of a False Name

5) Judge Zobel's Proposal on How to Deal with 1986 Device

6) Charge to the Jury

1 **P R O C E E D I N G S**

2 **Charge Conference**

3 THE COURT: Mr. Segal, I have just received some
4 proposed instructions from you, which I have not had an
5 opportunity to read.
6 Tell me what they say.
7 MR. SEGAL: With your permission, I'd like to have
8 Mr. Lopez address that, your Honor.
9 MR. LOPEZ: Good morning, your Honor.
10 THE COURT: Just one second.
11 The defendant isn't here, I assume because the
12 Marshals don't want to bring him down while jurors are
13 arriving.
14 Do you care?
15 MR. SEGAL: We'll waive his presence in connection
16 with these instructions, your Honor.
17 THE COURT: All right.
18 MR. LOPEZ: Your Honor, specifically, there are four
19 requests. The first request is with respect to the '86
20 incident. And it's our position, your Honor, that this prior
21 act is -- the jury should be instructed that it's relevant or
22 that it goes to the issue of identity only. And that is what
23 this instruction is.
24 THE COURT: Well, that's not true. I mean, that
25 evidence goes to more than identity, it goes to modus

1 operandi, it goes to some extent to intent, knowledge,
2 understanding about electronics and how to build a bomb.
3 MR. LOPEZ: Your Honor, with respect to the issue
4 of --
5 THE COURT: I guess partly -- excuse me -- what
6 concerns me is that if the jury believes Mr. Waskom and does
7 not believe Mr. Kline, then that evidence in a sense is even
8 more than 404(b) evidence. It's direct evidence that one
9 person -- that this defendant who had admitted building the
10 '86 bomb, also built the '91 bomb. That's the import of that
11 testimony.
12 MR. LOPEZ: That's exactly our point. Exactly our
13 point.
14 If the jury decides that the identity of the 1991
15 bomb maker is Mr. Trenkler, then, yes, this evidence will be
16 used against him --
17 THE COURT: Appropriately.
18 MR. LOPEZ: -- and the jury will so conclude.
19 However, if the jury does not conclude identity, then
20 with respect to the other issues in this case, it shouldn't be
21 used by them.
22 THE COURT: Well, even if it's not identity, can't
23 they use -- can't they use the evidence, for example, as to
24 show -- because as I understand the evidence, Mr. Trenkler
25 admitted building the 1986 bomb. That's the evidence in the

1 case. Can't they then use it to show that he knew how to
2 build a bomb?
3 MR. LOPEZ: Your Honor, it is our position that the
4 jury will be confused by an instruction that on the one hand
5 they should use it for identity but if they don't find
6 identity, then they can also use it for knowledge and intent,
7 if they find identity some other way.
8 Your Honor, there's no question in this case, and our
9 prior submissions on this, knowledge has never been raised as
10 an issue by the defense in this case.
11 THE COURT: Yes, but the government has to prove it.
12 MR. LOPEZ: That's correct, your Honor. But with
13 respect to, if you focus on 1986 --
14 THE COURT: Can I tell the jury that you stipulate
15 that this defendant knew how to build a bomb like the one in
16 1991?
17 MR. LOPEZ: Of course not, your Honor.
18 THE COURT: In that case, the government is entitled
19 to prove it.
20 MR. LOPEZ: Well, your Honor, the point is that the
21 fact that he had knowledge to build the 1986 incident does not
22 -- it doesn't follow that he had the knowledge to build the
23 1991 incident.
24 THE COURT: The jury may use the evidence to so
25 find. It could infer from the evidence of '86 that that's the

1 case, can they not?
2 MR. LOPEZ: Your Honor, it is our position that this
3 evidence is relevant and the jury should be instructed
4 appropriately, that they can use it on the issue of identity.
5 Knowledge, intent, has never been made an issue by the defense
6 in this particular case.
7 Yes, it is the government's burden. However, this
8 evidence does little to prove the knowledge and intent of the
9 bomb maker in 1991.
10 The knowledge was different, the intent was
11 different, and 1986, should only be used on the issue of
12 identity. That's our position.
13 THE COURT: Is not there also the issue that the
14 government has raised the 1986 incident, that both 1986 and
15 1991 were -- at least this is the government's position --
16 were instances where the defendant built a bomb in order to
17 help a friend who had a grievance against a third party?
18 MR. LOPEZ: Your Honor, that goes to the modus
19 operandi argument of the government. And as Williams, and as
20 the footnote in Williams makes clear, where identity is
21 disputed, Footnote 5, for conduct to be considered
22 characterizing modus operandi, it generally must be so unusual
23 and distinctive as to be like a signature.
24 Therefore, it gets back to the same argument, this
25 evidence, if the jury decides indicates the identity of the

1 1991 bomb maker, with an appropriate instruction as to how to
2 reach that conclusion, then the defendant would have no
3 objection.
4 THE COURT: I must --
5 MR. LOPEZ: If, on the other hand, the jury is told,
6 you can use it under one standard to find identity, but if you
7 don't find identity, you can also use it to find knowledge and
8 intent in this particular case. It's our position that that
9 would prejudice the defendant. And it would be an
10 inappropriate instruction under the facts of this case.
11 THE COURT: I must say, that to the extent Williams
12 talks about unusual conduct, it strikes me as somewhat unusual
13 for somebody to build a bomb to cause harm to a third person
14 in order to vindicate the rights of a friend.
15 MR. LOPEZ: Your Honor --
16 THE COURT: That's not what people normally do.
17 MR. LOPEZ: The problem here, your Honor, is that
18 there has been little if any evidence --
19 THE COURT: True.
20 MR. LOPEZ: -- as to the circumstances of 1991.
21 The potential prejudice and the potential confusion
22 to the jury is that they are going to substitute the facts as
23 they existed in 1986 to say, well, if it happened in '86, it
24 happened in 1991. That would mean that the government would
25 not be put to its burden.

1 The point is, this evidence is relevant and crucial
2 with an appropriate instruction on the issue of identity and
3 identity only. If it is then taken to show something else,
4 the jury, I submit, will substitute the facts of 1986 to find
5 the facts in 1991. And that would prejudice the defendant,
6 your Honor.
7 THE COURT: Mr. Libby.
8 MR. LIBBY: Your Honor, this ground has been plowed
9 many times before. We briefed this extensively. We argued it
10 extensively.
11 THE COURT: The question is: What shall I tell
12 jury?
13 MR. LIBBY: Tell them that it's relevant for their
14 consideration on issues of knowledge, experience and skill of
15 the defendant on the issue of identity and also his intent
16 because of our position that there are uncanny similarities
17 between the two scenarios.
18 THE COURT: Well, follow along, Mr. Libby, it is the
19 case that the jury has to make an initial determination as to
20 whether it believes the signature evidence. Correct?
21 MR. LIBBY: Correct.
22 THE COURT: Without the signature evidence, assume
23 for the moment that the jury finds that the two bombs were
24 not --
25 MR. LIBBY: Sufficiently similar.

1 THE COURT: -- in the immortal words of Mr. Kline,
2 single or unique, assume that they find that, that they are
3 not singular or unique, then where is that -- where's the 1986
4 evidence? What can the jury use it for?
5 MR. LIBBY: Well, they can us it for knowledge,
6 experience and skill.
7 THE COURT: What else?
8 MR. LIBBY: That we have to prove that this defendant
9 was prepared to do this.
10 THE COURT: What else?
11 MR. LIBBY: The intent in the '91 charge. We have to
12 show intent.
13 THE COURT: How does it show intent in 1991 that he
14 built a bomb in 1986?
15 MR. LIBBY: First of all, we're breaking down the
16 signature beyond the forensic. You remember Mr. Kline
17 wouldn't talk about beyond forensics, but our expert did, he
18 talked about circumstantial similarities.
19 THE COURT: Just answer my question: If there is no
20 signature, if the jury disbelieves Mr. Waskom, then how can --
21 what should I tell them? I mean, I think it's a two-step
22 process. No. 1, is there signature? If not -- I mean, if
23 yes, it's easy, if not, then how can the jury use the 1986?
24 You say knowledge of electronics and bomb building.
25 What else?

1 MR. LIBBY: Again, your Honor, intent. And that's
2 borne out by --
3 THE COURT: How?
4 MR. LIBBY: The circumstantial similarities. If you
5 call it signature, okay, the handiwork, the actual real
6 evidence, the tie-ins there, the wires twisted and taped and
7 soldered, well, beyond that --
8 THE COURT: I'm hypothesizing they don't believe that
9 it's signature.
10 I mean, first of all, do you agree that it is a
11 two-step analysis for the jury?
12 MR. LIBBY: For them, they have to assess
13 Mr. Waskom's credibility and his --
14 THE COURT: And they find no signature. Just assume
15 that they find no signature. Then what?
16 MR. LIBBY: Well, when you say no signature, then
17 you're saying absolutely no link between this defendant and
18 this bomb. Is that what you're saying?
19 THE COURT: Well, I'm suggesting that they determine
20 that the two are not singularly unique.
21 MR. LIBBY: It doesn't -- it doesn't occupy the
22 waterfront here, your Honor. It's still probative on the
23 defendant's motive here. The very thing that you pointed out
24 here --
25 THE COURT: Well, motive isn't something --

1 MR. LIBBY: It cuts towards intent, your Honor. And,
2 that is, he has a motive similar to the situation in 1986,
3 which Mr. Waskom opined beyond the forensics, beyond the real
4 evidence, the debris.
5 THE COURT: I don't want you to argue the issue. I
6 just want you to tell me what I tell the jury.
7 MR. LIBBY: You may tell the jury on that, your
8 Honor, that they may consider the evidence, the 1986, the
9 circumstances surrounding it, as bearing on this defendant's
10 intent in the '91 bombing insofar as motive is concerned, to
11 assist his friend to target a third party.
12 THE COURT: Even if there was no signature?
13 MR. LIBBY: That's right.
14 THE COURT: What else?
15 MR. LIBBY: I think, knowledge, experience and skill.
16 THE COURT: And intent?
17 MR. LIBBY: And intent.
18 THE COURT: Have you reviewed the defendant's
19 requested additional -- well, I guess requested instructions,
20 period, or to the extent that the defendant has incorporated
21 by reference, the instructions from the earlier case?
22 MR. KELLY: Yes, your Honor, there's four, as I
23 understand it. There's the one that has just been discussed.
24 THE COURT: There's no problem with circumstantial
25 evidence, is there?

1 MR. KELLY: Circumstantial, there's no problem. You
2 cover that, anyway.
3 THE COURT: Guilt by association is appropriate, is
4 it not?
5 MR. KELLY: You cover that, anyway. I think you
6 cover that in your instructions about you have to have more
7 than merely being present, you know, associating.
8 THE COURT: I do say all of that.
9 Missing witnesses?
10 MR. KELLY: I have a serious problem with that. I
11 think that what they are tying to do is take a stab at the
12 fact that we even put Mr. Shay on the stand here. Is that the
13 effort here? I mean, they haven't even identified alleged
14 missing witness.
15 MR. SEGAL: Absolutely not.
16 MR. KELLY: Well, who's the missing witness?
17 MR. SEGAL: We're saying that there are other people
18 who were present at the November 6th interview, who aren't
19 here.
20 MR. KELLY: That's baloney.
21 THE COURT: November 6th?
22 MR. SEGAL: Yes. Their ARCOM interview, there were
23 eight police officers there who allegedly drew the diagram.
24 THE COURT: Oh.
25 MR. SEGAL: And they could have brought in those

1 people. Not Mr. Shay. I have no intention of saying he's a
2 missing witness.
3 MR. KELLY: None of these people are missing, your
4 Honor.
5 THE COURT: If you are going to argue that there are
6 witnesses missing who saw the diagram, I think I would tell
7 the jury that counsel are constantly under pressure from the
8 Court not to put on unnecessary witnesses. I mean, cumulative
9 witnesses.
10 I certainly would not have permitted Mr. Kelly to
11 put on five witnesses who tell us the same thing.
12 If that's the argument, I think I would be bound to
13 say that because he certainly knows the pressure he's under
14 not to put on cumulative evidence.
15 MR. KELLY: In addition, your Honor --
16 THE COURT: Right? Just as you are under pressure
17 not to put on cumulative evidence.
18 I mean, if that's what this goes to, then I think
19 maybe you won't make the argument and I won't give the
20 instruction.
21 Right?
22 MR. SEGAL: Well, I understand the instruction. I
23 think I understand if I make the argument, I can get an
24 instruction about cumulative evidence, too.
25 THE COURT: That is, if you make the argument about

1 missing witnesses, then, if it is November 6th, I will tell
2 the jury that the government was under pressure not to put on
3 anything that they didn't have to put on, and that I would not
4 allow them to put on five witnesses to tell us about the same
5 thing.
6 I have some questions that I need to clear with you.
7 First, have you decided what you want me to say about
8 Mr. Shay and what happened at the first trial?
9 MR. SEGAL: My recommendation, your Honor, would be
10 for you to repeat what you said before we opened in this
11 case.
12 THE COURT: What was that?
13 MR. SEGAL: I simply will tell you this because I
14 want you to be very clear that the fact Mr. Shay was convicted
15 on some counts is absolutely nothing to say about whether
16 Mr. Trenkler is guilty of the charges that have been brought
17 against him.
18 You will need to decide whether he's guilty or not
19 based entirely on the basis of the evidence you will hear, and
20 in no way based on the fact that Mr. Shay was convicted on
21 evidence that, I can guarantee, you is in some respects quite
22 different from that which you will hear.
23 That's fine. You said that once and I'd be happy to
24 have that again.
25 THE COURT: Any problem with that?

1 MR. KELLY: Well, he's reading from Page 2-3 and
2 2-4. But what you said, the bottom line, he continued with
3 what -- after what you said.
4 You said, quote, Mr. Thomas Shay, Jr., has already
5 been tried and he was convicted on some but not all of the
6 counts of the indictment.
7 And I think that states it fairly simply.
8 THE COURT: Well, I think I should tell them, also,
9 that whatever happened in the trial of Mr. Shay has no bearing
10 on this jury's determination with respect to Mr. Trenkler.
11 MR. KELLY: I think that's already in the
12 instructions and obviously we have no objection to that.
13 MR. SEGAL: I just ask that you repeat that the
14 evidence is different, as you said here in your opening.
15 THE COURT: I guess those are all the questions I
16 had.
17 Anything else?
18 Yes, Mr. Kelly.
19 MR. KELLY: Yes, I have a couple, your Honor, I'm
20 sorry.
21 I just happened to be flipping back through our
22 requests, and I noted a couple of instances of, I assume the
23 Court has already caught those that aren't applicable.
24 There was an issue last time about the
25 attorney/client privilege with Mr. Pransky. That never came

1 up this time.

2 There was an issue of an audiotape recording in the

3 first trial.

4 THE COURT: Oh, I know, that raises the second

5 question.

6 During the last trial, I did talk about statements by

7 the defendant.

8 Now, there are some statements by the defendant in

9 evidence here, although, while I distinguished last time

10 between statements that the jury heard Mr. Shay make on the

11 video, and perhaps audio, as well, here there are none such.

12 Here are only statements by Mr. Trenkler as reported by

13 others.

14 I assume you wish me to give the instruction that

15 they first have to decide whether the reporter, namely, the

16 police officer or Mr. Lindholm, is correct, and then whether

17 Mr. Shay -- Mr. Trenkler in fact said what he said, so that

18 that instruction about the defendant's statements still needs

19 to be given?

20 MR. SEGAL: Yes, your Honor.

21 THE COURT: Okay.

22 What else, Mr. Kelly?

23 MR. KELLY: The only other matter, obviously, there

24 was an instruction on flight.

25 THE COURT: That, I won't give.

1 MR. KELLY: There was an instruction on consciousness
2 of guilt by means of a false name.
3 Finally, I guess we have the flip side of an
4 instruction of what we just discussed, in the first trial, it
5 was disregarding the fact that Mr. Trenkler wasn't in the
6 room. I guess we're getting the reverse of that with the
7 embellishment that you pay no attention to Mr. Shay, the fact
8 that you know he's been convicted. That would be the only
9 exception.
10 I would just say one thing on the missing witness
11 point, your Honor, which is, Mr. Segal well knows that he
12 served trial subpoenas on a lot of those police officers.
13 They were at all times ready, willing and able. If they were
14 missing, it wasn't because the government somehow stashed
15 these people away. He could have called those people, he
16 chose not to.
17 THE COURT: Well, I suppose if he makes the argument,
18 that would be appropriate for rebuttal. That, I would regard
19 as proper rebuttal.
20 Anything else?
21 MR. LOPEZ: No, your Honor.
22 THE COURT: Well, we have five minutes before the
23 jury was told to be here, so why don't we see if they are
24 here, bring Mr. Trenkler down as soon as we can and start as
25 soon as he gets here.

1 You said you wanted about an hour.
2 MR. KELLY: I think the government's main closing,
3 which Mr. Libby will deliver, will be about 50, 55 minutes and
4 we will reserve 15 minute for rebuttal. It may be shorter
5 than that, but no more.
6 MR. SEGAL: I'll stay within an hour.
7 THE COURT: All right.
8 MR. SEGAL: I take it after each argument there is a
9 short break just to set up, or what's the procedure?
10 THE COURT: Ad hoc.
11 MR. SEGAL: It will take me a couple of minutes just
12 to set up.
13 MR. KELLY: Thank you, your Honor.
14 THE COURT: That way I keep you on your toes.
15 [Recess.]
16 [Whereupon, the jury entered the courtroom.]
17 THE COURT: Members of the jury, this is the last
18 lap. You are about to hear counsel's argument, or their
19 summation, and both words describe what they are about to do.
20 You will first hear from the government, then from
21 the defendant and then the government has an opportunity for
22 brief rebuttal.
23 What they will tell you is in the nature of argument
24 in the sense that they will try to persuade you of their
25 respective positions. They also will sum up the evidence,

1 recall it to you, interpret it for you. And all of that is
2 entirely proper and appropriate.
3 Understand, however, that when you're in the jury
4 room deliberating on your verdict, you must base your verdict
5 on your interpretation and your recollection of the evidence.
6 So if you agree with counsel, fine, but if you do not
7 agree with them, pay heed to your own recollection and your
8 own interpretation of the evidence that you have heard.
9 So we will now hear first from, I think Mr. Libby,
10 whom I can't see, on behalf of the government.
11 You may proceed.
12 **Closing Argument by Mr. Libby**
13 May it please the Court, counsel, and may it please
14 you, ladies and gentlemen of the jury.
15 Good morning.
16 I'd like to start my remarks, ladies and gentlemen,
17 by taking us back one final time to Eastbourne Street in
18 Roslindale, that Monday in October 1991. You recall the
19 scene, it is a quiet, dead end street, an elementary school a
20 few houses down the block.
21 We see a Jeep Wagoneer bearing official Boston Police
22 bomb squad markings drive up, pull up to the mouth of the
23 driveway at 39 Eastbourne Street. Driving the Wagoneer is
24 Officer Jeremiah Hurley, his partner Francis Foley is sitting
25 shotgun, both veteran police officers and highly skilled bomb

1 after the government's rebuttal. We'll take the longer coffee
2 break recess before I charge you.
3 [Whereupon, the jury was excused.]
4 THE COURT: Please be seated. I need to talk to the
5 lawyers for a moment before we take the recess.
6 Let me just tell you how I propose to deal with the
7 1986 bomb.
8 I will tell the jury that there was evidence that in
9 1986 the defendant built another explosive device and there
10 was evidence concerning the circumstance surrounding its
11 construction and placement.
12 I will tell the jury that they may use this evidence
13 for only a limited purpose. If the jury believes that the
14 defendant built the device in 1986, they may consider that
15 evidence in determining his knowledge of electronics, remote
16 control, and explosives devices of this type.
17 If the jury believes the evidence as to the
18 circumstances under which the device was built and its
19 purpose, then they may consider that evidence in deciding the
20 defendant's intent in 1991.
21 If the jury believes the signature evidence, that is,
22 that the 1986 and 1991 devices were singular unique, then they
23 may use that evidence in deciding the identity of the builder
24 of the 1991 device.
25 I will tell them that if they believe, if they

1 determine beyond a reasonable doubt, that the two bombings
2 were sufficiently unusual and distinctive so as to constitute
3 the handiwork of one and only one person, and I am essentially
4 quoting your request, and so on, then they may consider it to
5 be the defendant's handiwork.
6 I will tell them also that it is up to the jury to
7 decide what weight, if any, they give this evidence. And I
8 will also tell them that they may not use it to decide that
9 the defendant is a bad person and because he is a bad person,
10 he therefore built the 1991 device.
11 That, in substance, is what I will tell them on this
12 issue. To the extent you disagree, I am sure you will let me
13 know later on.
14 MR. LOPEZ: Your Honor, if I can just comment on one
15 additional area?
16 If you could merely instruct them that they shall not
17 substitute whatever facts they find with respect to 1986 for
18 the facts of 1991.
19 THE COURT: I don't know what you mean by that.
20 MR. LOPEZ: Strike it.
21 THE COURT: We'll take a brief recess, shorter than
22 the usual one, five minutes.
23 [Recess.]
24 [Whereupon, the jury entered the courtroom.]
25 THE COURT: Please be seated.

1 **Charge to the Jury**

2 You have now heard all of the witnesses, you have
3 received all of the evidence in the case. The next job will
4 be for you to find the facts and, ultimately, to determine
5 your verdict in this case and, specifically, to determine
6 whether the government has proven the defendant guilty beyond
7 a reasonable doubt on one or more of the charges that it has
8 made against him.

9 In doing that, I ask you, please, to apply the law as
10 I shall give it to you and consider all of these instructions
11 as a whole. Do not pick one here and there and leave the
12 others behind.

13 Do not be concerned about any errors that I might
14 make as I outline the law to you. And please accept the law
15 as I give it to you, even if you think it is unwise. If I am
16 in error, then, there is a higher court that can, and will,
17 reverse my interpretation of the law.

18 But understand, also, that just as I am a judge in
19 this case, so are you. I am the judge of the law, but you are
20 the judges of the facts, and you are the only judges of the
21 facts. There will not be a higher court that will review your
22 judgment of the facts in the case that has been presented to
23 you.

24 It is your sworn duty to find the facts from the
25 evidence in the case, and I will explain to you in a moment

1 what I mean by the evidence, but you must do it in light of
2 the law that I'm about to explain to you.
3 You may not base your verdict on any feelings of bias
4 or prejudice or sympathy or emotion. You may not allow
5 personal feelings either about the defendant or about the
6 nature of this crime to interfere in any way with your duty
7 that you have sworn to uphold. Your verdict must be based
8 entirely on the evidence or the lack of evidence.
9 Now, the evidence is in this case really in three
10 parts. One, are the stipulations that the parties have
11 made. And I explained to you earlier in the case that a
12 stipulation is nothing more than an agreement that certain
13 facts are not in dispute. I don't remember what they all
14 were, except I do remember there was one about the date of the
15 arrest of this defendant, and there may be others. And to the
16 extent that the parties have stipulated that the facts are not
17 in dispute, you may, of course, accept those facts that they
18 have agreed are not in dispute.
19 Second, the second part of the evidence are all of
20 the exhibits that have been offered and admitted into
21 evidence, the photographs, pieces of the device, some checks,
22 records, all of the evidence that has been admitted and
23 perhaps even some of the chalks, we call them chalks, these
24 charts, really, will be with you in the jury room, and you
25 should consider them, use them, review them, and take from

1 them whatever assistance they can give you in reaching your
2 verdict.
3 The third and final part of the evidence is the
4 testimony of all of the witnesses who have appeared before
5 you.
6 Now, with respect to the witnesses' testimony, you
7 will need to decide whether you believe what they told you,
8 either in whole or in part. There is nothing mysterious about
9 it. You do it every day. Somebody tells you something, and
10 you make a judgment, probably almost instinctively, as to
11 whether you believe what the person told you. I ask you to
12 make a similar -- the same judgment with respect to each and
13 every one of the witnesses.
14 I will tell you some of the tests that we usually
15 tell jurors they may consider; indeed, Mr. Kelly, I think, had
16 mentioned some in his rebuttal. Understand, however, that any
17 test that you have found to be a reliable test in making this
18 judgment about whether the person who speaks to you is
19 believable, is a test that you may use in judging the
20 witnesses' testimony.
21 You may, for example, consider the demeanor of the
22 witness on the witness stand. You may consider the
23 relationship that the witness had either to the government or
24 the defendant or to the events in the case and how that
25 relationship may have colored the witness's testimony.

1 You may consider whether the witness has an interest
2 in the outcome of the case. You may consider the witness's
3 ability to observe the events about which the witness
4 testified and, then, that witness's ability to recall the
5 events to you. You may consider the witness's bias or
6 hostility either against the government or against the
7 defendant.
8 In some cases, one or the other of the parties tried
9 to show that the witness gave inconsistent testimony here and
10 on earlier occasions. There, you need to decide whether, in
11 fact, the testimony or the statements made were inconsistent;
12 and, if so, you may consider in judging the believability of
13 the witness, the fact that the witness told different stories
14 on different occasions.
15 You may consider the extent to which a witness's
16 testimony is either supported or contradicted by
17 uncontroverted facts or by facts that you find to have been
18 established.
19 Let me briefly recall to you some particular
20 witnesses and give you some particular cautions as to those
21 particular witnesses. First, the experts, Ms. Wallace,
22 Mr. Waskom, Mr. Shapley and Mr. Kline. I think they were the
23 only people who testified as experts.
24 You should judge their credibility as you judge the
25 credibility of anybody else. In deciding whether to give

1 credence to their opinions, however, you may take into account
2 their training, their education, their experience, their
3 expertise in the area in which they were offered as experts.
4 To the extent that their opinion was based on
5 assumptions they were asked to make, again, I remind you, be
6 sure that the assumptions are in accordance with the facts as
7 you find them. Because if they are not, then the opinion is
8 of absolutely no value to you in reaching your verdict.
9 You should give the expert testimony the weight that
10 you decide it deserves, and you do not have to accept it just
11 because a person is styled as "expert."
12 Law enforcement officials. As we discussed, I
13 believe when you were being impaneled a month ago, a person is
14 neither more nor less believable because a person works for a
15 law enforcement agency; that is, just because someone is a
16 police officer or an ATF agent, doesn't mean that the person
17 is more credible or less credible than anybody else.
18 There were a number of people who testified who have
19 admitted that they are convicted criminals: Mr. Evans,
20 Mr. Plant, Mr. Lindholm. With respect to them, you may in
21 judging their credibility take into account the fact that they
22 are convicted. It is a fact that you may take into account
23 only in judging their credibility.
24 There is some evidence in the case that I need to
25 explain to you more particularly. First, there was evidence

1 about statements that Mr. Trenkler made to various people.
2 With respect to that evidence, you need to decide, first,
3 whether you believe the witness's account of what Mr. Trenkler
4 said; that is: Did the witness hear correctly what he said?
5 Did the witness accurately report to you what, what he had
6 said? And this applies to the testimony by the inmates, as
7 well as to testimony by police officers, about what
8 Mr. Trenkler -- what they testified Mr. Trenkler said to them.
9 With respect to statements made to police, you have
10 also to determine whether the statements were made knowingly
11 and voluntarily. And in that connection, you should consider
12 all the circumstances surrounding the making of the statements
13 by Mr. Trenkler to any police officer. And if you find that
14 any statement was not made knowingly and voluntarily, then you
15 may not consider it at all in reaching your verdict. You
16 simply need to strike it from your minds and not pay any
17 attention to it whatsoever in reaching your verdict.
18 Now, once you have sorted out what statements you
19 believe the defendant did make, of both categories, that is,
20 to inmates or to police, then you must next determine whether
21 they indicate guilt or not; that is, you should, in this
22 connection, consider: Are these statements reliable? Have
23 they been in some way corroborated? And if you find that they
24 are reliable, then, you may consider the defendant's
25 statements with all the other evidence, to decide whether the

1 government has proven the defendant guilty beyond a reasonable
2 doubt.
3 The second category of evidence that requires
4 particular mention is that concerning the 1986 device. There
5 was evidence that in 1986, the defendant built another
6 explosive device, and there was evidence concerning the
7 circumstances surrounding its construction and placement.
8 Now, this evidence may be used by you for a limited purpose.
9 And the purpose depends on what you find, so listen carefully.
10 If you believe, and find, that the defendant built
11 that device in 1986, then you may consider that evidence in
12 determining the defendant's knowledge of electronics, remote
13 control, and explosive devices with remote control.
14 If you find and if you believe the evidence as to the
15 circumstances under which this device was built and its
16 purpose, then you may consider that evidence, also, in
17 deciding what if any intent the defendant may have had in
18 1991.
19 If you believe the so-called signature evidence, that
20 is, that the 1986 and 1991 devices were unusual and
21 distinctive or idiosyncratic, then you may use that evidence
22 in deciding the identity of the builder of the 1991 device;
23 that is, if you determine beyond a reasonable doubt that the
24 two bombings were sufficiently unusual and distinctive so as
25 to constitute the handiwork of one, and only one person, you

1 may, but you do not have to, infer that the 1991 bombing is
2 the defendant's handiwork.
3 It is up to you to decide what weight, if any, you
4 give to this evidence. You may not, however, simply decide
5 that the defendant did it once and, therefore, he must have
6 done it again; or, that the defendant is a bad person and,
7 therefore, he must be guilty of the charges that are now
8 before you.
9 Evidence may be direct or circumstantial. Direct
10 evidence is testimony by a witness about what the, what the
11 witness personally saw, heard or did. Circumstantial evidence
12 is indirect evidence; that is, it is proof of one or more
13 facts from which you may infer and find another fact.
14 Let me give you an example. In one scenario, the
15 witness testifies that he left some fish on the counter to
16 defrost, and he left the room for a while; and when he came
17 back into the room, there was the cat sitting on the counter,
18 eating the fish. That would be direct evidence of the fact
19 that the cat ate the fish.
20 Change that a little bit. The person leaves the fish
21 on the counter, leaves for a while; and when the person comes
22 back, he sees pieces of fish on the floor and he sees the cat
23 sitting in the corner, licking its whiskers and looking fat
24 and happy. That would be circumstantial evidence of the fact
25 that the cat ate the fish. And, contrary to Perry Mason,

1 circumstantial evidence is, in law, just as good as direct
2 evidence.
3 Note, however, that -- and circumstantial evidence
4 really means nothing more than drawing inferences from
5 evidence that you have.
6 Note, however, that the inferences must be
7 reasonable; they must be based on common sense. You must be
8 certain that the chain of inferences is not broken at any
9 point along the way to the ultimate fact that you infer.
10 And in a chain of circumstantial evidence, it is not
11 required that every one of your inferences or conclusions be
12 inevitable. But each must be reasonable, and they must be
13 consistent with the each other, and they must be based on
14 facts that have been proven by direct evidence. You may not
15 draw inferences, unless you are convinced of the truth of the
16 inference beyond a reasonable doubt.
17 So, you may consider both direct and indirect, that
18 is, circumstantial evidence; you may give both equal weight,
19 and it is for you to decide as to all of the evidence what
20 weight you give it.
21 And finally, consider all the evidence. Draw
22 reasonable inferences. But do not guess. Do not speculate.
23 That you may not do. And I urge you to use your common sense
24 as you go about sifting the evidence in reaching your verdict.
25 Let me very briefly outline to you what is not

1 evidence because much of what you heard, particularly today
2 and on the first day of trial, is not evidence.
3 The opening statements by counsel were simply their
4 outline of what they expected to present; the opening
5 statements are not evidence in and of themselves. The closing
6 arguments that you just heard are not evidence; they are
7 counsels' recollection and counsels' interpretation, as I told
8 you earlier, of the evidence. And you must now do your own
9 separate job of recalling and interpreting the evidence when
10 you're in the jury room.
11 Any testimony that was ordered stricken is not to be
12 considered by you in reaching your verdict.
13 There were times, and I think I explained this to you
14 during the trial, as well, there were times in the course of
15 the questioning when counsel would put a question to the
16 witness in the form of a statement, and the witness said no.
17 That is not evidence of the statement that counsel, perhaps,
18 had hoped that the witness would say yes to.
19 Anything you may have heard about this case outside
20 the courtroom is not to be considered by you in reaching your
21 verdict. And nothing that I have said is evidence, and I am
22 not in any way trying to influence your verdict one way or the
23 other.
24 There were, in the course of the trial, objections by
25 counsel. You should not hold that against them. They not

1 only have a right to object but, in fact, that's their duty.
2 Part of the job of the lawyer is to call to the attention of
3 the judge when the lawyer thinks that what the other lawyer is
4 offering is not in accordance with what you now know are very
5 complicated rules. Then, it is up to the judge to decide
6 whether the evidence comes before you or not.
7 To the extent that the objection was overruled, you
8 have heard the evidence, and you should consider it. To the
9 extent that the objection was sustained, I ask you, please,
10 not to speculate about what you didn't hear but simply decide
11 the case on the basis of what is, in fact, before you.
12 When you next leave the courtroom, take your
13 notebooks with you, and I hope that they will assist you in
14 reaching your verdict. One final caution on the notebooks,
15 sometimes when we take notes, we paraphrase. And it just may
16 be that one of you remembers more exactly what a witness said
17 than what another one wrote down. So, I ask you, please, in
18 your deliberations not to ignore the memory of one of you
19 about what may have occurred in the courtroom just because
20 somebody else wrote it down differently.
21 You will not be able to have transcripts of any of
22 the testimony, although it has been transcribed. I regard it
23 as unfair to highlight the testimony of any one witness. So,
24 besides, there is not much point in your spending hours and
25 hours rereading what you have already heard.

1 A transcript of this charge will be available later.
2 And if you feel that you must have it, then we will supply it
3 to you.
4 A defendant in a criminal case is presumed to be
5 innocent, which means really much more than that, it means
6 that the defendant is innocent. He is innocent until the
7 government proves him guilty. And that means that a defendant
8 does not have to prove his innocence, he does not have to
9 offer any evidence whatsoever, he does not have to take the
10 stand and testify in the trial. And you may draw no inference
11 of guilt from the fact that this defendant did not testify.
12 He did offer evidence, and the evidence is before you, and it
13 should be considered by you in reaching your verdict.
14 But there are many reasons why a defendant might
15 choose not to testify, including, very simply, that he can
16 just say to the government: You, Government, have accused
17 me. Now, you, Government, prove my guilty. But you may draw
18 no inference of guilt from the fact that this defendant chose
19 not to testify in this case.
20 Now, the government has to prove him guilty beyond a
21 reasonable doubt. Proof beyond a reasonable doubt is not, is
22 not, proof beyond all possible doubt. It is not proof to a
23 mathematical certainty. Proof beyond a reasonable doubt is
24 proof that leaves you firmly convinced of the defendant's
25 guilt.

1 A reasonable doubt is not a doubt in the mind of a
2 juror who is looking for doubt as an excuse to acquit. It is
3 doubt in the mind of a reasonable juror who is earnestly
4 seeking the truth. It is doubt based on reason and common
5 sense.
6 Note that a reasonable doubt may arise both from the
7 evidence adduced or from the lack of evidence. It's not
8 sufficient for the government to establish a probability, even
9 a strong one, that the defendant is guilty. And the defendant
10 may not be convicted on the basis of suspicion or conjecture.
11 If you view the evidence in the case as reasonably
12 leading to one of two conclusions, either that the defendant
13 is guilty or that the defendant is not guilty, then you cannot
14 convict. You must find the defendant not guilty.
15 If after examining all of the evidence as to a
16 particular count and drawing reasonable inferences therefrom,
17 you are left with a clear and settled conviction of the
18 defendant's guilt as to that count, then you may find the
19 defendant guilty on that charge. If, on the other hand, you
20 are left with a reasonable doubt about the defendant's guilt,
21 he is entitled to the benefit of that doubt, and you must find
22 him not guilty on that charge.
23 In reaching your verdict, do not consider what the
24 punishment might be, if you find the defendant guilty. I will
25 need to deal with that if you do find him guilty. Your only

1 job is to determine whether the government has proven him
2 guilty or not.
3 You will have with you in the jury room, a copy of
4 the indictment in the case. Understand that the indictment is
5 nothing more than a piece of paper that contains the
6 accusation. That's all it is, the accusation. It is not
7 evidence of guilt and it is not proof of guilt.
8 I need to tell you a little bit about some of the
9 conventions of drafting indictments which are different from
10 other documents. When an indictment says "on or about certain
11 dates," it means dates reasonably near the date that is set
12 forth therein. If the government says that something happened
13 on or about June 1st, it doesn't have to prove that it
14 happened exactly on June 1st between 12:01 a.m. and
15 11:59 p.m.
16 When an indictment says "and," it means "or." So,
17 when the indictment says the defendant did this and this and
18 this and this, it probably means, almost certainly, means the
19 defendant did this or this or this or this; that is, the
20 government has to prove one but not every one of the things,
21 and I will come back to that later on.
22 There are in this indictment three counts. You have
23 to consider each of them separately, and your verdict as to
24 each should not dictate the verdict as to each other one; that
25 is, the evidence is different, the elements are different as

1 to each of them, so you need to lack at each of them
2 separately and consider the evidence as it applies to each of
3 the counts.
4 The indictment charges not only Mr. Trenkler but also
5 Mr. Shay, Jr. And as I told you, earlier, Shay, Jr., was
6 tried earlier; he was convicted on some but not all of the
7 counts. The fact that he was convicted is no evidence bearing
8 on the guilt of Mr. Trenkler. You will need to decide whether
9 he's guilty or not based entirely on the evidence that you
10 have heard in this trial and in no way based on the fact that
11 the co-defendant, Mr. Shay, was convicted on some of these
12 counts.
13 Let me review, now, the indictment by first giving
14 you an overview of the three counts.
15 Count 1 is the count that charges conspiracy. It
16 says that the defendant conspired with Mr. Shay to commit two
17 offenses: (1) to receive explosives in interstate commerce
18 with the knowledge and intent that these explosives would be
19 used to kill, injure or intimidate another person. I think
20 this is one of those -- yes, this is one of those "ands" --
21 kill, injure and, which means kill, injure or.
22 I don't know why they do that, but they always do
23 that.
24 And second, that they conspired to damage and
25 destroy -- that they conspired to attempt to destroy, by means

1 of an explosive, an automobile used in and affecting commerce.
2 Count 2 is what we call a substantive offense. And
3 it harkens back to the first of the objects of the
4 conspiracy. It charges that the defendant and Mr. Shay -- but
5 here, you need to be concerned about the defendant -- received
6 an explosive, an explosive material, with the knowledge and
7 intent that the explosive material would be used to kill,
8 injure and intimidate Shay, Sr., and cause damage and
9 destruction to his real and personal property. That's
10 count 2.
11 Count 3 says that the defendant attempted the
12 malicious destruction of property used in and affecting
13 interstate commerce, namely, a 1986 Buick, by means of an
14 explosive. And counts 2 and 3 also allege that the unlawful
15 conduct of the defendant caused the death of Mr. Hurley and
16 injuries to Mr. Foley, both public service officers,
17 performing their official duties.
18 Now, counts 2 and 3 do not say that Mr. Trenkler did
19 this alone or that Mr. Shay did it alone, but it says that
20 they did it together, that they aided and abetted each other.
21 One section of the Criminal Code says that an
22 individual may be found guilty of an offense, even though he
23 did not himself commit it, if, if, he either assists someone
24 else to commit the offense or gets somebody else to do it.
25 Then, if two or more persons do so associate in a criminal

1 venture, each is responsible for the acts of the other that
2 are part of that venture.
3 But the law imposes that responsibility for the acts
4 of another only if the defendant knowingly and willfully
5 associates himself with a venture, and it is not enough to
6 show that he was present or even that he knew what was going
7 on. The government has to prove that he knowingly became a
8 participant to some degree. It doesn't have to prove that he
9 was the prime mover, that -- if you find that the defendant
10 knowingly and willfully participated in the building and
11 placing of the bomb in some way, he may be found to be
12 responsible for the acts of any coventurer. And a person
13 cannot insulate himself from criminal responsibility by
14 leaving to others his dirty work.
15 Knowingly means voluntarily, with knowledge, and not
16 by mistake or accident. Willfully -- and these words will
17 recur throughout the rest of this -- means purposely, with the
18 intent to do something that the law forbids. It means
19 operating with the intent to disobey the law.
20 Now, intent and knowledge is a state of mind. You
21 need to infer that. It is the quintessential thing that is
22 proven by circumstantial evidence. You will need to look at
23 what the defendant did, what the defendant said, the
24 circumstances surrounding the defendant's conduct, and his
25 statements, and from all of that infer what was in his head,

1 what did he know, what was his intention.
2 There have been references in the course of the
3 trial, not only to intent but also to motive. Motive is
4 different from intent. Intent refers to a state of mind with
5 which an act is done. Motive is what prompts a person to act,
6 a reason a person acts. The government does not have to prove
7 the defendant's motive, although evidence as to the
8 defendant's motive may shed light on his intent, which the
9 government does have to prove.
10 Let me start by giving you the elements of count 2.
11 Because count 1, the conspiracy count, harkens back to
12 counts 2 and 3, I will start with count 2.
13 In count 2, the government has accused the defendant,
14 it says that on -- in or about October, 1991, Thomas Shay and
15 Alfred Trenkler did receive in interstate commerce certain
16 explosive materials, including dynamite and detonators, with
17 knowledge and intent that said explosive materials would be
18 used to kill, injure and intimidate Thomas L. Shay -- that's
19 senior -- and cause damage and destruction to his real and
20 personal property, including a 1986 Buick automobile. And
21 then it goes on about Mr. Hurley's death and Mr. Foley's
22 injuries.
23 There are three elements that the government has to
24 prove: (1) that the defendant actually or constructively
25 received or participated in receiving an explosive; (2) that

1 he did so with the knowledge and intent that it would be used
2 to kill, injure or intimidate Shay, Sr., and/or unlawfully
3 damage and destroy his property; (3) that the explosive has
4 been transported in interstate or foreign commerce. Those are
5 the three elements.
6 The first one, that the defendant actually or
7 constructively received or participated in receiving an
8 explosive, to receive something means to acquire control of
9 it. If you take physical control of an object, if you were to
10 take this pencil that I'm holding, you have actually received
11 it. If you have the power and the ability to control the
12 disposition of an object, that is, you would tell the store to
13 deliver the coffee pot to your house, for instance, you have
14 constructive receipt of that coffeepot. An object may be
15 received by one person, in which case, we talk about sole
16 receipt; or, it may be received by more than one person, then
17 we talk about joint receipt. The government has to show that
18 the defendant actually or constructively received an
19 explosive; that he did so either alone or jointly with
20 another.
21 And an explosive, you must understand, is defined by
22 the statute as a device or material that is designed to
23 explode. And it includes blasting caps, detonators, and high
24 explosives.
25 The second element, I told you, is that the defendant

1 received the explosive with knowledge and intent that it would
2 be used to kill and commit a -- or injure Shay, Sr. So after,
3 you if you find that the defendant did receive an explosive,
4 either actually or constructively, then you must next
5 determine his state of mind. The government has to prove that
6 he knew and intended that the explosive would be used to harm
7 Shay, Jr.'s, father.
8 I had explained to you earlier what knowledge and
9 intent means. You need to review the evidence of the
10 defendant's conduct, of his statements, and infer from his
11 conduct and statements and the surrounding circumstances, what
12 knowledge he had and what his intent was.
13 The government, as I told you a moment ago, does not
14 have to prove that he intended to kill and intimidate and
15 injure and to damage the property. Anyone of these is
16 sufficient. So, that is, "and" really does mean "or" in the
17 context of count 2.
18 The third element, that the explosive had traveled in
19 interstate or foreign commerce, is a jurisdictional one. The
20 Constitution assigns certain responsibilities to the states
21 and other responsibilities to the federal government. This is
22 a federal court, and it can only hear those matters that are
23 within the purview of the constitutional grant of authority to
24 the federal government. One of the authorities that the
25 United States, as opposed to the individual states, has, is

1 the power to regulate commerce between the states and between
2 the United States and foreign governments. Therefore, in
3 order for this case to be in this court at all, the government
4 has to prove that some interstate element exists with respect
5 to the events in question.
6 So here, what the government has to show is that the
7 explosive at some time moved from one state to another. It
8 doesn't have to prove that the defendant moved it. It doesn't
9 even have to prove that he knew it came from another state.
10 All it has to prove is that the explosive, either the dynamite
11 or the detonator caps, had at one time been outside of
12 Massachusetts and then came into the state. So, if you find
13 that the explosive or one element of the explosive was
14 manufactured outside of Massachusetts and was received or
15 possessed within the Commonwealth, then this element is
16 satisfied.
17 So, if you find that the government has proven each
18 one of the three elements beyond a reasonable doubt, then you
19 may find the defendant guilty of count 2. But if the
20 government has not proven every one of the three elements,
21 then you must find him not guilty on count 2.
22 Count 3 charges that the defendant and Mr. Shay
23 knowingly attempted to maliciously damage and destroy, by
24 means of fire and explosive, a 1986 Buick automobile which was
25 owned by Thomas L. Shay and used in interstate commerce and in

1 activities affecting interstate commerce. You will have, as I
2 told you, the indictment with you, so that you can review that
3 when you are in the jury room.
4 Again, there are three elements: (1) that the
5 defendant participated in using an explosive in an attempt to
6 damage or destroy Shay, Sr.'s, Buick; (2) that the Buick was
7 either used in interstate commerce or used in an activity
8 affecting interstate commerce; and (3) that the defendant
9 acted maliciously.
10 With respect to the first element, that the defendant
11 participated in using an explosive in an attempt to damage or
12 destroy Shay, Sr.'s, Buick, explosive has the same meaning
13 here as it does in count 2; it includes blasting caps,
14 detonators and dynamite.
15 To prove an attempt, the government has to show that
16 the defendant intended to commit the crime charged, namely,
17 destroy the Buick, and that he took some action that was a
18 substantial step to accomplish the crime. Merely planning an
19 offense does not constitute a substantial step. But some
20 preparation may. A substantial step is an act which
21 corroborates that the defendant did, in fact, intend to
22 destroy the car.
23 The second element, that the car was used in
24 interstate commerce or in an activity affecting interstate
25 commerce, you see here, the interstate element is somewhat

1 different. In the first count, the explosive had to be in
2 interstate commerce; here, it is the car that had to have been
3 used in interstate commerce.
4 The government has to show either that Shay, Sr.,
5 from time to time drove out of state on some business-related
6 activity or that he used the car in the autobody business and
7 that that is a business that affects interstate commerce. Any
8 business, I can tell you, that uses materials manufactured in
9 other states is a business affecting interstate commerce.
10 And now, here, again, the government doesn't have to
11 prove that the defendant knew about the interstate commerce or
12 that he intended to affect it. All it has to prove is that
13 the car, in fact, was used in interstate commerce or in a
14 business affecting it.
15 The third element, I told you, is that the defendant
16 must have acted maliciously. Malicious, in this context,
17 means willful, which I've already defined to you, that is,
18 with a bad purpose to disobey, to violate the law. The
19 government does not have to prove that the defendant acted
20 with spite, hatred, or ill will, only that he acted purposely
21 with disregard for the practical certainty of damage and with
22 the intent to break the law.
23 Let me go back to count 1, which is the conspiracy
24 count. And here, the indictment says that in or about
25 September and October, 1991, the defendants did knowingly and

1 willfully combine, conspire and agree with one another --
2 which means "or," -- to commit certain offenses against the
3 United States, and then it lists the two that we have just
4 discussed.
5 The essence of conspiracy is agreement, an agreement
6 by two or more persons to commit a crime, here, to receive
7 explosives with intent to injure or kill or to destroy
8 property by means of explosives.
9 Because the charge of conspiracy is directed to the
10 agreement to commit a crime, the government doesn't have to
11 prove that the defendant actually committed or participated in
12 committing the underlying crime. It does have to prove,
13 again, three elements: (1) that there was an agreement about
14 the time alleged by Shay, Jr., and Mr. Trenkler to accomplish
15 some unlawful purpose, here, the two mentioned, to receive
16 explosives with intent to injure and/or to destroy the
17 property, the Buick; (2) that the defendant knowingly and
18 willfully entered into the agreement, the conspiracy; and (3)
19 that one of the conspirators, during the existence of the
20 conspiracy, willfully committed at least one overt act at
21 about the time alleged.
22 Go back to the first element, that there was an
23 agreement to accomplish these unlawful objectives.
24 The government doesn't have to prove that there was
25 some formal written contract. Conspiracy is established if

1 the evidence and the reasonable inferences drawn therefrom
2 show beyond a reasonable doubt that the conspirators in some
3 way either explicitly or tacitly came to an understanding to
4 achieve their unlawful plan.
5 Conspiracy is by nature usually secret. It may be
6 shown by the conduct of the alleged conspirators, conduct that
7 evidences a shared purpose to violate the law. It may be
8 inferred from the movements of the conspirators, what they
9 did, how they acted, how they interacted. It may be inferred
10 from their statements, what they said to each others and what
11 they have may have said to others, all in the context of the
12 circumstances surrounding their acts and their statements.
13 The government does not have to prove both
14 conspirators played an equal role, doesn't have to prove that
15 the defendant, Mr. Trenkler, initiated the conspiracy. It
16 does have to prove that there was some agreement between
17 Mr. Shay and Mr. Trenkler to achieve the object of the
18 conspiracy as set forth in the indictment.
19 If you find that -- now, we go to the second
20 element. If you find that the defendant and Mr. Shay had come
21 to some agreement, then the government must still prove that
22 the defendant joined in the unlawful plan knowingly and
23 willfully and with an understanding of its unlawful character.
24 Knowingly and willfully have, again, the same meaning
25 here that I explained earlier, that is, voluntarily,

1 intentionally, and with a bad purpose to disregard the law.
2 The government does not have to show that this
3 defendant knew all the details of the scheme, does not -- it
4 does have to prove that the defendant, knowing of the
5 existence and general outline of the unlawful plan,
6 intentionally joined in by advising, assisting, participating
7 with Mr. Shay, and that he did so with the intent to violate
8 the law.
9 Understand that a person does not become a member of
10 a conspiracy merely by associating with another person or
11 merely by knowing about an unlawful plan or merely by being
12 present at the scene of an alleged crime, or happening, even
13 happening, to do something that advances an unlawful plan or
14 assists someone who is planning a crime.
15 The government has to show that Mr. Trenkler
16 knowingly and willfully participated in the building of the
17 bomb and the placing of it under the car.
18 An overt act, the third element, is any act knowingly
19 and intentionally committed by one conspirator to achieve the
20 object of the conspiracy. It doesn't have to be a criminal
21 act, but it must be one that is designed to achieve the object
22 of the conspiracy.
23 Although the government has alleged five separate
24 overt acts, it need prove only one. And it doesn't have to
25 prove that this defendant committed it. It is enough if the

1 government proves that either Mr. Shay or Mr. Trenkler
2 committed at least one of the overt acts and that he did so
3 knowingly and willfully. And you will find the overt acts on
4 pages 2 and 3 -- well, really, mostly 3 of the indictment --
5 I mean -- well, you can read them. It says, as the
6 first one, that in or about September, 1991, Shay solicited
7 the assistance of Trenkler in a plan to kill his father,
8 Thomas L. Shay. The second one, in or about September, 1991,
9 Trenkler, who had a background in electronics, agreed to
10 construct a remote control explosive device, knowing the same
11 would be used by Shay in an attempt to kill his father, and so
12 on.
13 If you find that one of these was committed by one of
14 the two -- by either one of the two conspirators, alleged
15 conspirators, then this element has been satisfied.
16 Here again, if you find that the government has
17 proven each one of the three elements, then you may find the
18 defendant guilty of the count of conspiracy. But if you find
19 that it has not proven every one of the three, then you must
20 find him not guilty of count 1.
21 Your verdict must be unanimous. All twelve of you
22 must agree to your verdict as to each of the three counts.
23 And the first order business when you're in the jury
24 room should be to elect from among the twelve of you who will
25 deliberate, a foreperson, who would then be in charge, in

1 general charge, of the deliberations, make sure that you do
2 not come to blows. If you have any questions, I would ask you
3 to write them out, let the marshal know, your foreperson
4 should sign the question, and I will answer either in writing
5 or by calling you back down and explaining whatever you may
6 not have understood.
7 The marshal will take to you lunch when you leave
8 here. And you should not talk about the case while you are at
9 lunch but use that time to relax and get ready for the work of
10 the afternoon.
11 Once you are back in the jury room, then you should
12 begin your deliberations in earnest. And we will, in the
13 meantime, send up the exhibits so that you will have them all
14 ready and waiting for you when you are actually going to start
15 working.
16 Ms. Shippie, Mr. Woo, Ms. Walsh, and Mr. Corelle, you
17 will be excused when we finish now. Understand, that we are
18 all most appreciative for your presence here every day. We
19 needed you. We desperately needed you because we had to have
20 twelve people at the end of the case. We must have twelve
21 people during the deliberations. And the only way we could
22 assure -- be sure of having twelve, is by starting with more
23 than twelve. You were our very important safety valve, and
24 for that I thank you.
25 Don't go away quite yet because I need to talk to the

1 lawyers before I actually send you off to your deliberations.
2 [Conference at the bench, as follows:
3 THE COURT: Any objections?
4 MR. LIBBY: The government is satisfied, your Honor.
5 MR. SEGAL: Defense is satisfied.
6 THE COURT: Imagine that.
7 ...end of conference at the bench.]
8 THE COURT: Members of the jury, one other thing, you
9 will also have with you, in addition to the exhibits and the
10 indictment, a verdict slip. It gives the name of the case,
11 and then it says: We the jury find the defendant, Alfred
12 Trenkler, blank as to Count 1, blank as to Count 2, blank as
13 to Count 3.
14 Your foreperson should fill in, as you find, either
15 the word "guilty" or the words "not guilty" on each of these,
16 and then sign and date the verdict slip when you have a
17 verdict.
18 And when you have a verdict, please let the marshal
19 know that, and we will reassemble, so that you may deliver
20 your verdict in open court.
21 Members of the jury, you are now charged to commence
22 your deliberations. And the alternates are excused and
23 discharged with the great thanks of the Court, and I think I
24 speak for the parties, as well.
25 [Whereupon, the jury was excused.]

1 THE COURT: Will counsel please assist the clerk in
2 assembling the evidence, so we can send it up to the jury?
3 MR. KELLY: Your Honor, point of clarification, I
4 take it that anything marked for identification, including
5 charts, does not go upstairs?
6 THE COURT: Well, I don't know. I sort of indicated
7 that some of it might because I wasn't sure how you were going
8 to come out on that.
9 MR. KELLY: For example, the charts that show the
10 photographs are actually in evidence. So there are some
11 charts that will go upstairs. But at the last trial, and it
12 would be our position, that the same should hold true here,
13 that the I.D. exhibits should not go upstairs.
14 THE COURT: Why don't you see what you can work out.
15 I won't go away quite yet. I want to give the certificates of
16 appreciation to the alternates before they disappear.
17 [Whereupon, a recess was taken at 12:45 p.m.]
18 [Whereupon, the jury trial adjourned.]
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1 **CERTIFICATE**

2 we certify that the foregoing is a correct
transcription of our computer-aided stenographic notes of the
3 proceedings in the above-entitled matter.

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James E. McLaughlin
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Laura K. S. Walker

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1 **I N D E X**

2 Closing statement by Mr. Libby, Page 18
3 Closing statement by Mr. Segal, Page 57
4 Rebuttal by Mr. Libby, Page 91
5 Charge to the Jury, Page 101
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