

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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ALFRED W. TRENKLER

v.

UNITED STATES OF AMERICA

CIVIL ACTION NO. 07-11823-RWZ

PETITIONER'S REBUTTAL TO THE GOVERNMENT'S  
OPPOSITION TO PETITIONER'S MOTION TO VACATE,  
SET ASIDE, OR CORRECT SENTENCE PURSUANT TO  
28 USC 2255

PETITIONER ALFRED W. TRENKLER ("TRENKLER") HEREBY REBUTS  
THE GOVERNMENT'S OPPOSITION TO TRENKLER'S PROPERLY FILED 28 U.S.C.  
2255.

THE GOVERNMENT DECLINES TO RECOGNIZE THE FACT THAT TRENKLER  
DEMONSTRATES EXAMPLES OF THE GOVERNMENT WITHHOLDING OF EXCULPATORY  
EVIDENCE FAVORABLE TO TRENKLER. HAD TRENKLER BEEN ALLOWED  
ACCESS TO OTHERWISE WITHHELD EVIDENCE WITHIN THE GOVERNMENT'S  
GRASP, A DIFFERENT RESULT AT TRIAL WOULD HAVE OCCURRED.

THE GOVERNMENT RECHARACTERIZES TRENKLER'S 2255 AS A RULE 33  
MOTION FOR NEWLY DISCOVERED EVIDENCE. THE GOVERNMENT ATTEMPTS TO  
TIME BAR TRENKLER'S 2255 MOTION BY NEGATING THE FACT THAT DESPITE A  
STANDING SPECIFIC AND GENERAL BRADY MOTION, PRIOR TO TRIAL, FOR THE  
PRODUCTION OF EXCULPATORY EVIDENCE AND THE GOVERNMENT'S SUBSEQUENT  
AND CONTINUED FAILURE TO PRODUCE SUCH EVIDENCE, WHETHER WILLFULLY  
OR ACCIDENTALLY, WAS INDEED A CONSTITUTIONAL VIOLATION FITTING  
UNDER 28 U.S.C. 2255.

TRENKLER HAS, IN FACT, ESTABLISHED A START DATE FOR HIS 2255 AS EXPLAINED IN HIS AMENDED GROUNDS FOR RELIEF. BASED UPON RECENTLY DISCOVERED FACTS BROUGHT FORWARD AND UNDER TRENKLER'S CIRCUMSTANCES AND WITH DUE DILIGENCE, RESULTED IN TRENKLER'S CURRENT 2255. SINCE THE GOVERNMENT WITHHELD EVIDENCE IT LEARNED HAD EXCULPATORY VALUE TO TRENKLER, IT RENDERED THE EVIDENCE UNAVAILABLE TO TRENKLER WHICH INDEED IS A BRADY VIOLATION.

THAT TRENKLER, PROCEEDING PRO SE, ADHERED TO THE FORM FOR 2255 MOTIONS AS PROVIDED TO TRENKLER BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS, BY NOT, AS INSTRUCTED, MENTIONING CASES OR LAWS, SHOULD NOT PERMIT THE GOVERNMENT TO RECHARACTERIZE TRENKLER'S 2255 MOTION AS A RULE 33 MOTION SIMPLY BECAUSE TRENKLER DID NOT USE THE WORDS "BRADY VIOLATION".

TRENKLER'S 28 U.S.C. 2255 SHOULD BE ALLOWED TO PROCEED. AT A MINIMUM A HEARING SHOULD BE CONDUCTED TO DETERMINE THE CONSTITUTIONAL WITHHOLDING OF EXCULPATORY EVIDENCE HELD BY AND IN CONTROL OF THE GOVERNMENT AND HOW TO REMEDY THE SITUATION.

#### TRENKLER'S CURRENT 2255 MOTION

THROUGHOUT THE GOVERNMENT'S OPPOSITION IT DOES NOT WANT TO ACKNOWLEDGE THAT TRENKLER HAS MADE COLORABLE ALLEGATIONS THAT THE GOVERNMENT, BEING IN CONTROL OF ALL THE FORENSIC EVIDENCE IN THIS CASE, WOULD ALLOW SCANT ACCESS TO THE EVIDENCE BY TRENKLER'S BOMB EXPERT, PLAYING AN ELABORATE SHELL GAME. FOR EXAMPLE, ONCE THE IMPORTANCE TO TRENKLER OF A GIVEN PIECE OF FORENSIC EVIDENCE IN

THE GOVERNMENT'S POSSESSION WAS REALIZED BY THE GOVERNMENT, THAT PIECE OF EVIDENCE WOULD NO LONGER BE AVAILABLE TO TRENKLER - HIS EXPERTS - FOR ANY FURTHER ANALYSIS, DESPITE TRENKLER'S SPECIFIC AND GENERAL REQUEST FOR BRADY MATERIAL, A COPY OF THAT MOTION WAS INCLUDED IN THE APPENDIX TO TRENKLER'S AMENDED MOTION [APP AT 4]!<sup>1</sup> ALSO SEE UNITED STATES V. BAGLEY, 473 U.S. 667, WHERE THE COURT ABANDONED THE DISTINCTION BETWEEN THE AGURS CIRCUMSTANCES, I.E., THE "SPECIFIC-REQUEST" AND "GENERAL-OR NO REQUEST" SITUATIONS. (UNITED STATES V. AGURS 427 US 97)

THE GOVERNMENT FALLS BACK ON DUE DILIGENCE STATING THAT TRENKLER DID NOT ESTABLISH THAT HE COULD NOT HAVE DISCOVERED THIS EVIDENCE EARLIER. TRENKLER, THROUGH HIS FAMILY, HAS BEEN IN CONTACT WITH ATTORNEY'S AND EXPERTS INVOLVED WITH TRENKLER'S TRIAL OVER THE YEARS UP UNTIL AND INCLUDING 2007. AT NO TIME DID ANY OF THESE PARTIES MENTION THE RECENT REVELATIONS BUT ONE IN 2007. OTHER EVIDENCE WAS INDEPENDENTLY DISCOVERED BY TRENKLER'S FAMILY AND ASSOCIATES.

THE 40 BOXES OF LEGAL MATERIALS TRENKLER SPEAKS OF HAD BEEN IN POSSESSION OF THE VARIOUS ATTORNEYS THROUGHOUT THE YEARS. ONLY SINCE 2005 HAVE ALL THE FILES BEEN AVAILABLE TO TRENKLER'S FAMILY AND ASSOCIATES. FURTHER, TRENKLER IS INCARCERATED AND IS LIMITED TO THE AMOUNT OF PAPERWORK HE IS PERMITTED TO POSSES. TRENKLER IS NOT AN ATTORNEY. TRENKLER'S BROTHER LIVES AND WORKS IN MAINE, HAS LIMITED SPARE TIME AND IS NOT AN ATTORNEY.

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<sup>1</sup> CITATIONS TO THE APPENDIX TO TRENKLER'S MOTION WILL BE REFERENCED HEREIN BY "[APP AT —]"

TRENKLER'S STEP FATHER IS 80 YEARS OLD, HAS DIABETES AND HAS SUFFERED FROM PERIPHERAL NEUROPATHY FOR YEARS AND IS SEVERELY LIMITED IN MOBILITY. HE ALSO IS NOT AN ATTORNEY. MORRISON BONPASSE, AN ADVOCATE FOR TRENKLER, JOINED TRENKLER'S DEFENSE IN 2006 AND REVIEWED OVER 160,000 PAGES OF CASE RECORDS AND CONDUCTED COUNTLESS INTERVIEWS WITH PARTIES SURROUNDING THIS CASE RESULTING IN SOME OF THE REVELATIONS IN THIS 2255.

IT SHOULD BE EVIDENT THROUGH THE GOVERNMENT'S OWN OBSERVATION OF THE MANY MOTIONS FILED, WITH NEW EVIDENCE OR SUPREME COURT RULINGS WERE DISCOVERED, THE DILIGENCE TRENKLER AND HIS ASSOCIATES UTILIZED THROUGHOUT TRENKLER'S CASE.

#### TRENKLER'S GROUNDS FOR RELIEF

AS THE GOVERNMENT IS AWARE, IT WAS THE RESULT OF MORRISON BONPASSE'S INTERVIEW WITH DENNY KLINE, TRENKLER'S BOMB EXPERT, THAT RESULTED WITH GROUND ONE. IN A JULY 2007 CONVERSATION MR BONPASSE HAD WITH DENNY KLINE, KLINE REVEALED THAT IN 1993, WHILE AT THE ATF OFFICE, HE OBSERVED "TRACES OF A FINGERPRINT" ON BLACK ELECTRICAL TAPE USED TO CONSTRUCT THE BOMB. KLINE INFORMED THE ATF OF WHAT HE HAD FOUND AND THAT "THE PRINTS COULD DETERMINE THE GUILT OR INNOCENCE OF SOMEONE" AFTER THAT MEETING KLINE "DID NOT SEE THE SAME LAYERS OF TAPE AGAIN." [APPATI]. IT IS OBVIOUS THAT THE FINGERPRINT OBSERVED BY KLINE BELONGS TO THE BUILDER OF THE BOMB OR A PARTY WITH A DIRECT LINK TO THE BOMB MAKER.

THE GOVERNMENT CLAIMS THIS IS ONLY A "NEWLY DISCOVERED EVIDENCE

CLAIM AND NOTHING MORE" AND THAT "TRENKLER DOES NOT ALLEGE A CONSTITUTIONAL VIOLATION. HE DOES NOT ALLEGE THAT HIS TRIAL COUNSEL WAS INEFFECTIVE IN NOT PURSUING THE PRINT OBSERVATION BY KLINE. HE DOES NOT ALLEGE HIS FIRST GROUND FOR RELIEF THAT THE FINGERPRINT CONSTITUTED WITHHELD BRADY MATERIAL, IN VIOLATION OF THE GOVERNMENT'S CONSTITUTIONAL OBLIGATION TO DISCLOSE EXCULPATORY EVIDENCE" [OPP AT 10]<sup>2</sup>

ONCE THE GOVERNMENT BECAME AWARE THAT THE ELECTRICAL TAPE IN ITS POSSESSION AND CONTROL HAD A LATENT PRINT UPON IT AND REALIZED THE CHARACTER OF THE EVIDENCE IT HELD, THE IDENTITY OF THE BOMB BUILDER, WHETHER WILLFUL OR INADVERTENTLY, THE GOVERNMENT WITHHELD THIS EVIDENCE FROM TRENKLER SO THAT KLINE COULD NOT PROVE THE IDENTITY OF THE BOMB BUILDER.

TRENKLER'S TRIAL COUNSEL, PRIOR TO TRIAL, HAD SUBMITTED A "BRADY MOTION" FOR "SPECIFIC EXCULPATORY EVIDENCE AND/OR EVIDENCE "MATERIAL TO THE PREPARATION OF THE DEFENSE" PURSUANT TO RULES 16(A)(1)(C) AND 16(A)(1)(D)" [APP AT 4].

THE GOVERNMENT HAD INDEED BEEN PUT ON NOTICE TO PRODUCE EXCULPATORY EVIDENCE.<sup>3</sup>

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<sup>2</sup> CITATIONS TO THE GOVERNMENT'S OPPOSITION WILL BE REFERENCED HEREIN BY "[OPP AT —]".

<sup>3</sup> IN UNITED STATES V BAGLEY, 473 US 667, THE COURT ABANDONED THE DISTINCTION BETWEEN THE AGURS CIRCUMSTANCES, I.E. THE "SPECIFIC-REQUEST" AND "GENERAL OR NO-REQUEST" SITUATIONS. (US V AGURS, 427 US 97 (1976)). "BAGLEY HELD THAT REGARDLESS OF THE REQUEST, FAVORABLE EVIDENCE IS MATERIAL AND CONSTITUTIONAL ERROR RESULTS FROM ITS SUPPRESSION BY THE GOVERNMENT, IF THERE IS A REASONABLE PROBABILITY THAT HAD THE EVIDENCE BEEN DISCLOSED TO DEFENDANT THE RESULTS OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT."

AFTER KLINE'S INITIAL OBSERVATION AND THE VALUE OF THE FINGERPRINT WAS SHARED WITH THE GOVERNMENT, KLINE WAS PROHIBITED "EITHER WILLFULLY OR INADVERTENTLY" BY THE GOVERNMENT FROM ANY FURTHER ACCESS TO THE TAPE IN ORDER TO 'LIFT' AND IDENTIFY THE PRINT. SEE U.S. V. CONNOLLY NO. 05-2772 AT 10 (1ST CIR. 2007)<sup>4</sup>. THE EVIDENCE WAS "WITHIN THE GOVERNMENT'S GRASP AND WRONGFULLY HELD FROM THE DEFENSE." BRADY, 373 U.S. AT 87, AS QUOTED IN CONLEY V. U.S. 323 F.3D 7 (1ST CIR 2003).

LOGICALLY, IF THE GOVERNMENT HAS A GRASP OF, IT HAS CONTROL OVER, THE ELECTRICAL TAPE THAT IT IS AWARE COULD MAKE OR BREAK THIS CASE AND WITHHOLDS THE TAPE FROM TRENKLER'S EXPERT IN ORDER TO IDENTIFY THE OWNER OF THOSE PRINTS TO "DETERMINE THE GUILT OR INNOCENCE OF SOMEONE" HERE, THE INNOCENCE OF TRENKLER, THE GOVERNMENT IS PREVENTING TRENKLER ACCESS TO EXCULPATORY, ACTUAL INNOCENCE EVIDENCE IN VIOLATION OF THE GOVERNMENT'S CONSTITUTIONAL OBLIGATION TO DISCLOSE EXCULPATORY EVIDENCE.

IN NOTE 5 OF THE GOVERNMENT'S OPPOSITION [OPP AT 16], THE GOVERNMENT MAKES THE BOLD AND ERRONEOUS ASSUMPTION THAT SINCE TRENKLER'S BOMB EXPERT AND TRIAL COUNSEL "DID NOT PURSUE THE "DISCOVERY" STRONGLY SUGGESTS THAT THE "TRACES OF A FINGERPRINT" COULD NOT AND DID NOT PRODUCE A LATENT OF VALUE FOR COMPARISON PURPOSES." IF TRENKLER'S EXPERT WAS NEVER AGAIN GIVEN ACCESS TO THE ELECTRICAL TAPE IN ORDER TO ACTUALLY

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<sup>4</sup> IN U.S. V. CONNOLLY, NO. 05-2772 AT 10, THE FIRST CIRCUIT COURT RECOGNIZED THE "THREE COMPONENTS OF AN AUTHENTIC BRADY VIOLATION. THE EVIDENCE AT ISSUE (WHETHER EXCULPATORY OR IMPEACHING) MUST BE FAVORABLE TO THE ACCUSED; THAT THE EVIDENCE MUST HAVE BEEN EITHER WILLFULLY OR INADVERTENTLY SUPPRESSED BY THE GOVERNMENT; AND PREJUDICE MUST HAVE ENSUED."

LIFT THE PRINT, HOW COULD IT BE DETERMINED THAT THE TAPE "DID NOT PRODUCE A LATENT OF VALUE"? ONCE THE "CHARACTER OF [ ] INFORMATION IS RECOGNIZED", HERE, THE RECOGNITION OF A FINGERPRINT ON ELECTRICAL TAPE USED TO WRAP EXPLOSIVES INSIDE THE BOMB, "DUE PROCESS OBLIGATES TO DISCLOSE [PRODUCE] THE EXCULPATORY INFORMATION [EVIDENCE]". "SEE DISCLOSURE OF EVIDENCE FAVORING ACCUSED, 87 LER 2d AT 805, NOTE 7, U.S. V. BAGLEY REPORTED AT PAGE 481.

THE GOVERNMENT ATTACKS TRENKLER'S GROUND TWO, "THE GOVERNMENT POSSESSES EXCULPATORY ACTUAL INNOCENCE EVIDENCE THAT IS FAVORABLE TO DEFENDANT TRENKLER." TRENKLER REPEATS THE ELECTRICAL TAPE OBSERVATION BY HIS BOMB EXPERT. THE GOVERNMENT NOTICES THAT TRENKLER "ALLEGES THAT THE GOVERNMENT WITHHELD THIS FAVORABLE EXCULPATORY EVIDENCE" [OPP AT 11]. THE GOVERNMENT GOES ON TO SAY THAT TRENKLER "ATTEMPTS TO ALLEGE A BRADY VIOLATION BY THE GOVERNMENT" BUT GOES ON TO SAY THAT TRENKLER "DOES NOT ALLEGE A CONSTITUTIONAL BRADY VIOLATION" AND QUOTES U.S. V BENDER, 304 F.3d 161 AT 164 (1ST CIR. 2002), "BRADY APPLIES TO MATERIAL THAT WAS KNOWN TO THE PROSECUTION BUT UNKNOWN TO THE DEFENSE" BUT DOES NOT MENTION THAT BENDER ALSO SAYS THAT "A PROSECUTOR CHARGED WITH DISCOVERY CANNOT AVOID WHAT 'THE GOVERNMENT KNOWS' SIMPLY BY DECLINING TO MAKE A REASONABLE INQUIRY OF THOSE IN A POSITION TO HAVE RELEVANT KNOWLEDGE."

THE GOVERNMENT BECAME AWARE OF THE FINGERPRINT WHEN TRENKLER'S BOMB EXPERT, KLINE, POINTED IT OUT TO GOVERNMENT ATF AGENTS.

"TO COMPLY WITH BRADY THE INDIVIDUAL PROSECUTOR HAS A DUTY TO FIND

ANY EVIDENCE FAVORABLE TO THE DEFENDANT THAT WAS KNOWN TO THOSE ACTING ON THE GOVERNMENT'S BEHALF." STRICTER V. GREEN, 527 US, 263, 280 (1999) AS QUOTED IN U.S. V. BENDER, 364 F.3d 161 AT 164. BENDER DOES NOT DIFFERENTIATE ON HOW THE GOVERNMENT LEARNS OF EXCULPATORY EVIDENCE, ONLY THAT IT HAS A DUTY TO DISCLOSE WHEN IT KNOWS OF IT. WHILE IT IS TRUE THAT KLINE NOTICED THE FINGERPRINT ON THE BOMB TAPE, ONCE IT WAS SHOWN TO THE GOVERNMENT'S AGENTS, PRIOR TO TRIAL, DURING THE DISCOVERY PHASE AND AFTER A "BRADY" MOTION HAD BEEN SUBMITTED, THE "GOVERNMENT" WAS THEN ON NOTICE THAT THERE WAS EVIDENCE THAT "COULD DETERMINE THE GUILT OR INNOCENCE OF SOMEONE." HOWEVER, BOMB EXPERT KLINE WAS PREVENTED FURTHER ACCESS TO THE EXCULPATORY EVIDENCE IN ORDER TO DO A COMPARISON OF THE BOMB'S TAPE PRINT TO PRINTS ON FILE.

IN THE SECOND PART OF GROUND TWO CONCERNING FIVE SETS OF FINGERPRINTS RECOVERED FROM THE UNDERCARRIAGE OF THE SHAY TARGET VEHICLE, THE GOVERNMENT GLOSSES OVER TRENKLER'S ALLEGATION.

THE LATENT FINGERPRINTS HAVE NEVER BEEN DISCLOSED TO TRENKLER, OR TO HIS DEFENSE TEAM. IT SHOULD BE NOTED, TRENKLER'S UNDERSTANDING OF LEGAL VERNAULAR, WHEN SPEAKING OF TRENKLER'S DEFENSE DURING TRIAL, TRENKLER AND HIS DEFENSE TEAM ARE ONE IN THE SAME. THE GOVERNMENT ASSUMES TRENKLER STATED THAT THE SHAY CAR PRINTS WERE NEVER PROVIDED TO TRENKLER PERSONALLY, IMPLYING THAT THE DEFENSE ATTORNEYS RECEIVED A COPY, WHICH THEY DID NOT.

WHILE IT IS TRUE THAT TRENKLER AND HIS DEFENSE TEAM WERE AWARE OF THE PRINT "LIFTS" VIA THE NOVEMBER 2, 1991 REPORT FROM THE



BOSTON POLICE [APP AT 3]; CONTRARY TO THE GOVERNMENT'S ERRONEOUS ASSUMPTION, TRENKLER, NOR HIS ATTORNEYS WERE EVER "PROVIDED BEFORE TRIAL WITH THE RESULTS OF THE LATENT PRINT EXAMINATION". TRENKLER, AND HIS ATTORNEYS, WERE ONLY PROVIDED WITH THE "EXISTENCE OF THE LATENT FINGERPRINT LIFTS." THE GOVERNMENT SUGGESTS THAT TRENKLER DID NOT SPECIFICALLY REQUEST TO INSPECT THE LIFTED PRINTS NOR THAT THE "GOVERNMENT REFUSED SUCH A SPECIFIC REQUEST." AND STATES THAT SINCE THE EXISTENCE OF THE PRINTS WERE KNOWN TO TRENKLER PRIOR TO TRIAL THERE IS NO BRADY CLAIM. FURTHER, THE GOVERNMENT WRONGLY ASSUMES IN IT'S NOTE 6 [OPP AT 12] THAT "TRENKLER'S COUNSEL'S FAILURE TO PURSUE THE LIFTED FINGERPRINTS FROM THE UNDERCARRIAGE OF SHAY SR'S VEHICLE IS STRONGLY SUGGESTIVE THAT THEY WERE OF NO CONSEQUENCE." THE GOVERNMENT MAKES NO MENTION OF THE STANDING BRADY MOTION FILED BY TRENKLER (HIS ATTORNEYS) REQUESTING "SPECIFIC EXCULPATORY EVIDENCE AND/OR EVIDENCE "MATERIAL TO THE PREPARATION OF THE DEFENSE" "[APP AT 4]. IN FACT ON PAGE 3 OF 12 OF TRENKLER'S BRADY MOTION, TRENKLER HAD SPECIFICALLY REQUESTED FOR THE PRODUCTION OF "THE RESULTS OF THE FINGERPRINT TESTS DONE ON THE AUTO AND HOUSE OF THOMAS SHAY SR." [RAPP AT 3]<sup>5</sup>. THE GOVERNMENT IN FACT "EITHER WILLFULLY OR INADVERTENTLY SUPPRESSED" THE RESULTS OF THE FINGERPRINTS LIFTED FROM SHAY SR'S AUTOMOBILE, THE TARGET VEHICLE.

THE GOVERNMENT DID NOT REFUSE THE REQUEST, JUST FAILED TO PRODUCE.

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<sup>5</sup> CITATIONS TO TRENKLER REBUTTAL APPENDIX WILL BE REFERENCED HEREIN AS "[RAPP AT \_\_\_]".

TRENKLER FITS THE 3 COMPONENTS OF AN AUTHENTIC BRADY VIOLATION.

1.) THE EVIDENCE AT ISSUE (WHETHER EXCULPATORY OR IMPEACHING) MUST BE FAVORABLE TO THE ACCUSED; 2.) THAT THE EVIDENCE MUST HAVE BEEN EITHER WILLFULLY OR INADVERTENTLY SUPPRESSED BY THE GOVERNMENT ; AND 3.) PREJUDICE MUST HAVE ENSUED.<sup>6</sup> THE FINGERPRINT ON THE BOMB TAPE WOULD HAVE REVEALED THE IDENTITY OF THE BOMB BUILDER, THE CAR PRINTS WOULD BUTRESS THE TAPE PRINTS, ESPECIALLY IF THEY MATCHED THE BOMB TAPE. DESPITE A VALID STANDING BRADY MOTION THE GOVERNMENT EITHER WILLFULLY OR INADVERTENTLY SUPPRESSED THE TAPE AND CAR PRINTS FROM TRENKLER. AND INDEED, SINCE TRENKLER WAS PREVENTED BY GOVERNMENT ACTION FROM ACCESS TO THIS EVIDENCE, PROVING TRENKLER'S INNOCENCE AND THE IDENTITY OF THE ACTUAL BOMB MAKER, TRENKLER WAS PREJUDICED.

NEXT, THE GOVERNMENT ATTACKS TRENKLER'S THIRD GROUND FOR RELIEF, "BOMB SWITCH CONTACTS MATCH SWITCHES FROM MULTIPLE SOURCES AND HAVE BEEN FOUND TO BE A MISMATCH TO RADIO SHACK MODEL NUMBER 275-602 TOGGLE SWITCH." TRENKLER'S DEFENSE EXPERT, DENNY KLIME, HAD FOUND, UPON HIS ONLY PERMITTED INSPECTION OF THE BOMB'S TOGGLE SWITCH CONTACTS, THAT THE GOVERNMENT HAD IN IT'S POSSESSION AND CONTROL, DID NOT MATCH THE RADIO SHACK 275-602 TOGGLE SWITCH AS CLAIMED BY THE GOVERNMENT AT TRIAL.

THE GOVERNMENT REFUSED TO FULLY COMPLY WITH TRENKLER'S STANDING BRADY MOTION. TRENKLER'S EXPERT WAS ALLOWED TO VIEW THE TOGGLE SWITCH CONTACT REMAINS ON ONE OCCASION. BASED ON HIS ONE VIEW HE DETERMINED THAT THE GOVERNMENT ERRED IN ITS IDENTIFICATION.

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<sup>6</sup> SEE NOTE 4 SUPRA.

KLINE REQUESTED "A REEXAMINATION [OF THE SWITCH CONTACTS]... TO RESOLVE THIS PRELIMINARY CONCLUSION." [APP AT 8]. KLINE WAS DENIED ANY FURTHER ACCESS TO THE SWITCH CONTACTS BY THE GOVERNMENT, NOR WAS KLINE OR DEFENSE ATTORNEY SEGAL PROVIDED WITH THE ATF PHOTOS OF THE SWITCH CONTACTS.

IN OPPOSING TRENKLER, THE GOVERNMENT INSISTS THAT THIS IS ONLY A NEWLY DISCOVERED EVIDENCE CLAIM, THAT THERE IS NO CONSTITUTIONAL VIOLATION ALLEGED AND THAT TRENKLER DOES NOT ALLEGE THAT THE SWITCH INFORMATION CONSTITUTED WITHHELD BRADY MATERIAL AND GOES ON TO SAY THAT SINCE KLINE WAS THE ONE WHO NOTICED THE SWITCH MISMATCH, BRADY DISAPPEARS. HOWEVER, AS DISCUSSED PREVIOUSLY, KLINE HAD REQUESTED TO SEE THE TOGGLE SWITCH REMAINS BUT, AFTER THE GOVERNMENT HAD BECOME AWARE THE TRENKLER DEFENSE COULD PROVE OF THE SWITCH MISMATCH AND THAT THE CENTERPIECE OF THE CASE AGAINST SHAY SR WOULD EVAPORATE, THE GOVERNMENT WOULD NOT DISPLAY THE SWITCH CONTACTS FOR KLINE, NOR WOULD THEY GIVE TRENKLER'S DEFENSE COPIES OF THE ATF PHOTOGRAPHS OF THE SWITCH CONTACT REMAINS.

THE GOVERNMENT MAKES THE ASSUMPTION THAT THE REASON TRENKLER'S DEFENSE DID NOT "FULLY EXPLORE" THE SWITCH ISSUE WAS "BECAUSE IT TURNED OUT TO BE OF LITTLE OR NO CONSEQUENCE TO TRENKLER'S DEFENSE" NOTE 7 [OPP AT 13]. IN ACTUALITY, THE REASON THE SWITCH COMPARISON COULD NOT BE "FULLY EXPLORED" WAS BECAUSE OF THE GOVERNMENT'S WITHHOLDING OF THE SWITCH CONTACTS.

TRENKLER'S TRIAL COUNSEL HAD SUBMITTED BRADY MOTIONS, SUCH AS [APP AT 4], THAT

WAS A "SPECIFIC-REQUEST" AND A "GENERAL[]" REQUEST" SITUATION AND BAGLEY "HELD THAT REGARDLESS OF THE REQUEST, FAVORABLE EVIDENCE IS MATERIAL AND CONSTITUTIONAL ERROR RESULTS FROM ITS SUPPRESSION BY THE GOVERNMENT, IF THERE IS A REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED [PROVIDED] TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT" US V BAGLEY, 473 US AT 682.

THE GOVERNMENT BELITTLES THE PROFOUND RESULT THAT WOULD OCCUR IF KLINE PROVED THE BOMB SWITCH DID NOT MATCH THE RADIO SHACK SWITCH. IF IT WAS SHOWN THAT SHAY JR COMMITTED NO OVERT ACT THERE WOULD BE NO CONSPIRACY AND THE GOVERNMENT'S CASE WOULD BE SEVERELY HAMPERED. INDEED, THE RESULTS OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

THE GOVERNMENT MAKES NO MENTION OF HOW THE SWITCH SAGA WAS LAUNCHED. A WITNESS OF "QUESTIONABLE CHARACTER", AS WELL AS UNKNOWN MOTIVE, HAD CONTACTED TREMKLER'S FAMILY SOME TIME AGO WITH A TALE OF OVERHEARING HIGH RANKING STATE AND GOVERNMENT OFFICIALS DIRECTLY INVOLVED IN THIS CASE DISCUSSING THE FACT THAT THE BOMB SWITCH CONTACTS DID NOT MATCH THE RADIO SHACK 275-602 TOGGLE SWITCH. WHILE TREMKLER ET AL. UNDERSTANDS THAT WITHOUT AN AFFIDAVIT OR SWORN TESTIMONY THIS REVELATION POSSESSES LITTLE TO NO VALUE, HOWEVER, THIS INFORMATION WAS KEPT ON THE BACK BURNER. SOMETIME LATER, THE SEGAL/GERTNER/KLINE LETTER WAS FOUND [APP AT 9], WHICH WAS BEYOND COINCIDENCE, I.E. THIS WITNESS WAS NOT PRIVY TO TREMKLER'S DEFENSE EXPERTS' WORK, COULD THERE BE SOME TRUTH TO THIS STORY? BASED ON THE HITLER TO UNNAMED WITNESS, IF THEIR STORY WAS PROVEN TO BE TRUE, THIS WOULD BE INDICATIVE OF PROSECUTORIAL MISCONDUCT.

NEXT WE HAVE AN ATTACK BY THE GOVERNMENT ON THE REMOTE CONTROL TIMING ISSUE.

THE GOVERNMENT HAD PROPOSED THREE THEORIES FOR WHEN OR HOW THE BOMB BECAME ARMED. 1.) THE BOMB WAS ATTACHED TO SHAY SR'S VEHICLE SOME 40 HOURS PRIOR TO THE NOON EXPLOSION; 2.) THE BOMB SOMEHOW BECAME ARMED WHEN SHAY SR ALLEGEDLY RAN OVER OR HANDLED THE BOMB SOME 24 HOURS PRIOR TO THE NOON OCT 28 EXPLOSION; AND 3.) A LOOSE WIRE CAUSED THE BOMB TO EXPLODE. OBVIOUSLY, THE LESS OPERATING TIME, THE LESS THE POSSIBILITIES EXIST FOR WHEN AND BY WHOM THE BOMB WAS ARMED.

IF, FOR EXAMPLE, WITH A 10 HOUR OPERATING TIME, AS DISCOVERED BY TREMKIER, THE BOMB ARMED 40 HOURS PRIOR TO NOON WOULD HAVE BEEN DEAD PRIOR TO SHAY SR'S DISCOVERY THE NEXT DAY NEVER MIND PRIOR TO NOON ON OCTOBER 28. IF SHAY SR'S HANDLING OF THE BOMB SUBSEQUENT TO HIS "DISCOVERY" CAUSED THE BOMB TO ARM, THE SERVO MOTOR WOULD NOT BE ABLE TO OPERATE BY NOON OCTOBER 28.

THE GOVERNMENT MAKES THE OBSCURE STATEMENT THAT THE EXPLOSION COULD HAVE OCCURRED WITH DEAD BATTERIES. RESPONDING BOMB SQUAD OFFICER, FRANCIS FOLEY, TESTIFIED AT TREMKIER'S TRIAL THAT HE SAW THE FUTABA SERVO MOTOR MOVE WHILE THE DEVICE WAS LAYING ON THE GROUND, WHICH PROVES THAT THE BATTERIES THAT POWERED THE FUTABA RECEIVER HAD TO HAVE BEEN ACTIVATED, TURNED ON, BY THE BOMBER 14 HOURS AFTER SHAY SR "DISCOVERED" THE BOMB. EVEN WITH DENNY KLINE'S 22 HOUR TEST, THE BOMB WOULD HAVE TO BE ARMED SUBSEQUENT TO SHAY SR'S "DISCOVERY" SOME 24 HOURS PRIOR TO NOON. THIS SHOWS THAT THE ONLY WAY THE FUTABA SERVO COULD HAVE WORKED IS IF SOMEONE WHO KNEW WHERE THE BOMB WAS HIDDEN ARMED IT WITHIN 10 HOURS OF ITS NOON

EXPLOSION. BY HIS OWN WORDS THAT PERSON WAS SHAY SR, THE SAME MAN THAT HAD PREDICTED A BOMB ON HIS CAR TO HIS PSYCHOLOGISTS, THE SAME MAN THAT HAD DRAWN A DIAGRAM OF HIS CAR WITH A BOMB UNDERNEATH SOME MONTHS PRIOR TO THE OCTOBER 28 EXPLOSION.

THROUGH THE CONTINUOUS SEARCHES OF THE LEGAL FILES, TRENKLER'S STEP FATHER CONTACTED THE LOCAL FUTABA DEALER WHO STATED THAT THE FUTABA RECEIVER COMBINED WITH AN OLDER MODEL SLIDE SWITCH, IDENTIFIED BY THE ATF, WOULD HAVE LASTED ONLY TWO HOURS. THIS INFORMATION WAS SHARED WITH THE VISITING ATF AGENTS WHO HAD SPENT MANY HOURS SEARCHING THE FUTABA DEALER. THIS INFORMATION WAS NEVER SHARED WITH TRENKLER'S EXPERTS OR ATTORNEYS.

CODERENDANT SHAY ARGUMENT. SHAY JR. MADE MULTIPLE STATEMENTS STATING THAT TRENKLER IS INNOCENT. THE GOVERNMENT USED SHAY JR TO SAY TRENKLER WAS GUILTY THROUGH TWO INMATE WITNESSES. WHENEVER SHAY JR SAID HE OR TRENKLER PLAYED SOME PART IN THIS TRAGIC CASE IT IS CONSIDERED THE TRUTH. BUT WHEN SHAY STATES THAT OTHERS ARE RESPONSIBLE AND THAT HE AND TRENKLER ARE INNOCENT, SHAY IS SAID TO HAVE MENTAL PROBLEMS WHOS STATEMENTS CAN'T BE TRUSTED.

THE STATEMENTS TRENKLER CITES OF SHAY JR'S WERE ALL MADE WITHIN THE LAST YEAR.

GROUND 6, COADY. TRENKLER DID NOT POSSESS THE TWO COADY AFFIDAVITS UNTIL AFTER OCTOBER 6, 2007 AND OCTOBER 8, 2007. COADY HAD MADE THE STATEMENTS CONCERNING HIS PERJURED TESTIMONY IN 2001. JUST PRIOR TO SENDING AN INVESTIGATOR TO INTERVIEW AND OBTAIN AN AFFIDAVIT

FROM COADY, COADY INFORMED TRENKIER'S FAMILY THAT HE WOULD NOT GIVE ANY STATEMENTS. FOLLOWING THE COADY PHONE CALL THE WEYMOUTH POLICE DEPARTMENT CALLED TRENKIER'S STEP FATHER INFORMING HIM THAT THE OFFICER HAD BEEN INSTRUCTED BY THE ATF TO CALL THE ATF OFFICE IF JACK WALLACE, TRENKIER'S STEP FATHER, MADE ANY CONTACT WITH COADY. COADY STATED THAT HE WOULD COME FORWARD TO TELL THE TRUTH, THAT THERE WERE NO BUTTON-LIKE MAGNETS IN TRENKIER'S CAR, THERE WAS NO REMOTE CONTROL TOY CAR, AND THAT THERE WAS NO LOUD EXPLOSION IN THE BLUE HILLS.

### ARGUMENT

THE GOVERNMENT CONTINUES TO AVOID TRENKIER'S CLAIMS THAT THE GOVERNMENT WITHHELD EXCULPATORY EVIDENCE FAVORABLE TO TRENKIER, THE BRADY VIOLATIONS, THE GOVERNMENT SKIPS OVER THE BRADY VIOLATIONS APPARENTLY BECAUSE TRENKIER DID NOT USE THE MAGIC WORDS "BRADY VIOLATION" ALTHOUGH TRENKIER INCLUDED ONE OF MANY OF HIS ATTORNEY'S BRADY MOTIONS AND IN TRENKIER'S STATEMENT OF FACTS SPELLING OUT MANY OF THE DEFINING TERMINOLOGIES FROM BRADY.

FOR THE GOVERNMENT TO STAND BEHIND THE FINALITY OF JUDGEMENT DOCTRINE, ESPECIALLY IN A CASE SUCH AS TRENKIER'S, WHERE ABSOLUTELY NO PHYSICAL EVIDENCE OR WITNESSES TIE TRENKIER TO THIS HORRIBLE CRIME, AND THE GOVERNMENT, PRIOR TO TRIAL, WENT OUT OF ITS WAY NOT TO LET TRENKIER CONDUCT TESTS OR REFUSED, BY DEFAULT, TO REVEAL TESTS COMPLETED BY THE GOVERNMENT, TESTS THAT HAD THE ABILITY TO PROVE THE IDENTITY OF THE ACTUAL PERPETRATOR OF THIS CRIME AND, AT THE SAME TIME, TRENKIER'S ACTUAL,

FACTUAL INNOCENCE, DOOMS TREMKLER AND GUARANTEES THE CONTINUED FREEDOM OF THE ACTUAL BOMB BUILDER.

IN EFFECT, THE GOVERNMENT IS DEPENDING ON TIME TO BURY THE TRANSGRESSIONS OF THE PRETRIAL AND TRIAL PROSECUTORS AND RECHARACTERIZING TREMKLER'S 2255 AS A RULE 33 WHEN TREMKLER CALLS THE GOVERNMENT TO THE CARPET. THIS IS A CATCH ME IF YOU CAN MENTALITY. ENOUGH TIME PASSES WITHOUT DISCOVERING THE GOVERNMENT'S VIOLATIONS, THE GOVERNMENT CITES THE FINALITY OF JUDGEMENT DOCTRINE AND EVERYONE IS SUPPOSED TO LOOK THE OTHER WAY.

THE GOVERNMENT MISREADS TREMKLER'S STATEMENT OF FACTS CONCERNING ACTUAL INNOCENCE. THE GOVERNMENT IMPLIES THAT TREMKLER FIRST MAKES A CLAIM THAT HE'S ACTUALLY INNOCENT THEREFORE THIS MOTION SHOULD BE ALLOWED. TREMKLER IN FACT STATED ON NUMEROUS OCCASSIONS THAT A GIVEN PIECE OF FORENSIC EVIDENCE THAT HAD BEEN WITHHELD WOULD PROVE TREMKLER'S ACTUAL FACTUAL INNOCENCE BUT FOR THE IMPERMISSABLE WITHOLDING OF THAT EVIDENCE BY THE GOVERNMENT.

THE GOVERNMENT INFERS THAT A RETRIAL HAS BECOME IMPOSSIBLE 14 YEARS AFTER THE VERDICT. WHILE IT IS TRUE THAT BOSTON POLICE OFFICER DEVISE CRAFT PASSED AWAY IN THE PAST YEAR, HER TESTIMONY CONCERNED DETAILS SURROUNDING SHAY SR.

ATF SPECIAL AGENT MARTY MARCINIAC DID NOT TESTIFY AT TREMKLER'S TRIAL.

OF THE THREE WITNESSES WHO WERE INCARCERATED AT THE TIME OF THEIR TESTIMONY AT TREMKLER'S TRIAL, DAVID LINDHOLM LIVES IN



WELLSLET MASSACHUSETTS, LARRY PLANT IS IN AND OUT OF JAIL IN MASSACHUSETTS, ROBERT EVANS IS ALSO LIVING IN MASSACHUSETTS. THESE PARTICULAR WITNESS ARE EASILY LOCATED.

IN A SELF SERVING ACTION BY THE GOVERNMENT, AS IF TO GUARANTEE THAT NO ONE COULD GAIN ACCESS TO ANY EVIDENCE THAT COULD DISPROVE THE GOVERNMENT'S CASE, THE UNITED STATES ATTORNEY'S OFFICE "AUTHORIZED" THE ATF TO DESTROY THE EVIDENCE IN THIS CASE NOT ONCE, BUT TWICE. EVIDENTLY THE GOVERNMENT DID NOT GIVE ANY WEIGHT TO TRENKLER'S DECEMBER 2005 LETTER TO JUDGE ZOBEL, A COPY OF WHICH HAD BEEN SENT TO THE UNITED STATES ATTORNEY'S OFFICE, CONCERNING TRENKLER'S SENTENCING ISSUE, WHEN THE UNITED STATES ATTORNEY'S OFFICE "AUTHORIZED" THE ATF TO DESTROY EVIDENCE IN FEBRUARY OF 2006.

LIKE THE FOX GUARDING THE HEN HOUSE, IT'S A CONSTERNATION THAT THE UNITED STATES DISTRICT ATTORNEY FOR THE DISTRICT OF MASSACHUSETTS, MICHAEL S. SULLIVAN, IS ALSO THE ACTING DIRECTOR OF THE A.T.F. AND HAD A WORKING RELATIONSHIP WITH THE ATF PRIOR TO BECOMING THE ACTING DIRECTOR. WHY WAS THE U.S. ATTORNEYS OFFICE SO QUICK TO DESTROY THE EVIDENCE IN THIS CASE EVEN AFTER IT WAS AWARE THAT TRENKLER WAS STILL FIGHTING HIS CASE?

THE GOVERNMENT STATES THAT THE INABILITY OF THE GOVERNMENT TO RETRY THIS CASE MAY OR MAY NOT BE AN INDEPENDENT REASON TO DENY TRENKLER'S MOTION. PERHAPS THE REAL REASONS THE GOVERNMENT WOULD NOT RETRY THIS CASE STEMS FROM INFORMATION DEVELOPED BY TRENKLER THAT SEVERELY WEAKENS THE GOVERNMENT'S CASE.

FOR EXAMPLE, THE TRENKLER APPEAL'S COURT MAJORITY STATED THAT IF NOT FOR THE "OVERWHELMING" LINDHOLM EVIDENCE, THE ATF'S EXPLOSIVE INCIDENT SYSTEM (EXIS) DATABASE EVIDENCE WOULD NOT BE ALLOWED. IT IS DOUBTFUL THE GOVERNMENT WOULD RISK USING LINDHOLM AGAIN SINCE IT WAS DISCOVERED LINDHOLM LIED ABOUT HIS PLANNED WHITET BULGER TESTIMONY, AND THAT LINDHOLM LIED ABOUT EVER SEEKING A DEAL FROM THE GOVERNMENT, LINDHOLM, UNDER RULE 35(B), BEGGED FOR HIS RELEASE TWO WEEKS AFTER TRENKLER'S SENTENCING HEARING, FOR HIS "SUBSTANTIAL ASSISTANCE" AGAINST TRENKLER. NOT TO MENTION THAT TRENKLER HAS A WITNESS PREPARED TO TESTIFY THAT LINDHOLM ADMITTED TO LTING FOR THE GOVERNMENT AGAINST TRENKLER TO GAIN HIS FREEDOM. TAKE AWAY LINDHOLM, AWAY GOES THE EXIS DATA BASE PUTTING THE 86 PRIOR ACT IN JEOPARDY. THEN WE HAVE SHAY SR. THE GOVERNMENT'S BRUTON VIOLATIONS WOULD NOT SO EASILY BE OVERLOOKED, WITHOUT LINDHOLM, AND THE SHAY JR. PHILIPS TESTIMONY WOULD BE UP FOR GRABS. THE TOGGLE SWITCH EVIDENCE, NO MATCH TO RADIO SHACK, NO OVERT ACT BY SHAY SR. OF COURSE THERE IS THE SHAY SR EVIDENCE WHERE, IN RELATION TO HIS LAWSUIT, SHAY SR NOT ONLY PREDICTS THE BOMBING, HE PREDICTS A BOMB WOULD BE PLACED UNDER THE SEAT OF HIS CAR IN THE FALL OF 1991, PREDICTIONS HE MADE MONTHS PRIOR TO OCTOBER 1991, A JURY WOULD BE MOST INTERESTED IN A DRAWING BY SHAY SR OF HIS CAR WITH A BOMB INDICATED UNDER ITS SEAT, DRAWN MONTHS BEFORE OCTOBER, 1991.

NONE OF THE EVIDENCE TRENKLER QUESTIONS TODAY, AND WHICH THE GOVERNMENT STATES IT DESTROYED, INCULPATES TRENKLER. IF ANYTHING,

IT WOULD BE TRENKLER THAT WOULD BE PREJUDICED BY THE LACK OF FORENSIC EVIDENCE.

TRENKLER'S MOTION IS COGNIZABLE UNDER 2255

PRIOR TO TRIAL, TRENKLER'S COUNSEL MADE SEVERAL TIMELY REQUESTS FROM THE GOVERNMENT FOR ALL BRADY MATERIAL, SIMILAR TO U.S. V BENDER, 304 F.3d 161. AND JUST LIKE BENDER, THE GOVERNMENT, IN TRENKLER'S CASE, HAD AGREED TO ACCEPT ITS OBLIGATION, HOWEVER, "WILLFULLY OR INADVERTENTLY" THE GOVERNMENT FAILED TO PROVIDE. BAGLEY HELD:

THAT REGARDLESS OF REQUEST, FAVORABLE EVIDENCE IS MATERIAL, AND CONSTITUTIONAL ERROR RESULTS FROM ITS SUPPRESSION BY THE GOVERNMENT, IF THERE IS A REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE, THE RESULTS OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT.

BAGLEY, 473 US, AT 682. INDEED, THE WITHHELD EVIDENCE WOULD PROVE WHO BUILT THE BOMB, THAT SHAY JR COMMITTED NO OVERT ACT SINCE THE BOMB SWITCH CONTACTS DID NOT MATCH THE RADIO SHACK SWITCH AND THAT THE FINGERPRINTS ON THE SHAY SR CAR COULD INDICATE THE IDENTITY OF WHO ATTACHED THE BOMB UNDER SHAY'S CAR. CONLEY PUT IT BETTER WELL:

CLAIMS BASED ON NEW EVIDENCE WRONGFULLY WITHHELD CAN PREVAIL ON A LESSER SHOWING OF PREJUDICE THAN CLAIMS BASED ON NEWLY DISCOVERED EVIDENCE (BECAUSE THE FORMER ASSUMES GOVERNMENT MISCONDUCT). THE EVIDENCE MUST, AT A BARE MINIMUM, HAVE BEEN WITHIN THE GOVERNMENT'S GRASP AND WRONGLY WITHHELD FROM THE DEFENSE. SOME BRADY ISSUES CAN REQUIRE FACT FINDING AS TO WHAT THE GOVERNMENT KNEW AND WHEN IT KNEW IT.

CONLEY V U.S. 323 F.3d 7 AT 15.

TRENKLER HAD STATED IN HIS GROUND ONE THAT THE GOVERNMENT WAS IN

POSSESSION OF ELECTRICAL TAPE, WITHIN THE GOVERNMENT'S GRASP, THAT IT HAD BECOME AWARE, PRIOR TO TRIAL, POSSESSED A FINGERPRINT. THAT THE GOVERNMENT, SUBSEQUENT TO RECEIVING MULTIPLE BRADY MOTIONS, WILLFULLY OR INADVERTENTLY WITHHELD EXCULPATORY EVIDENCE THAT WOULD HAVE CLEARED TRENKLER AND PROVED THE IDENTITY OF THE ACTUAL BOMB BUILDER WAS THE "NEW EVIDENCE" THAT TRENKLER SPOKE OF THAT VIOLATED THE GOVERNMENT'S DUTY UNDER BRADY TO PRODUCE EVIDENCE FAVORABLE TO TRENKLER.

HOW MUCH MORE DOES TRENKLER HAVE TO ELUCIDATE TO DEMONSTRATE THAT THE GOVERNMENT VIOLATED IT'S DUTY TO PROVIDE EVIDENCE UNDER ITS CONTROL, THAT IT KNEW HAD EXCULPATORY VALUE, FOR TRENKLER'S DEFENSE? THE FACT THAT THE EVIDENCE TRENKLER SPEAKS OF WAS RENDERED UNAVAILABLE BECAUSE OF GOVERNMENT ACTION, CONTRARY TO BRADY, SHOULD BE INDICATIVE OF THE CONSTITUTIONAL VIOLATION THAT PREJUDICED TRENKLER AT TRIAL AND CONTINUES TO PREJUDICE TRENKLER TODAY.

THE GOVERNMENT REARRANGES THE CART AND THE HORSE. THE GOVERNMENT SUBSTITUTES TRENKLER'S CONSTITUTIONAL VIOLATION CLAIM WITH A NEWLY DISCOVERED EVIDENCE CLAIM. TRENKLER DID NOT MAKE A "FREESTANDING" CLAIM OF ACTUAL INNOCENCE, TRENKLER STATED THAT NEW EVIDENCE SURFACED THAT THE GOVERNMENT WITHHELD (SUPPRESSED) EXCULPATORY EVIDENCE FAVORABLE TO DEFENDANT TRENKLER THAT "WOULD BE COMPELLING PROOF OF THE ACTUAL PERPETRATOR OF THIS CRIME AS WELL AS PROOF POSITIVE OF DEFENDANT TRENKLER'S ACTUAL, FACTUAL INNOCENCE." [SOF AT 3].

TRENKLER MAY NOT HAVE USED THE MAGIC WORDS THE GOVERNMENT SOUGHT, "BRADY VIOLATION," BUT THIS COURT SHOULD UNDERSTAND THAT TRENKLER IS NOT AN

ATTORNEY. TRENKLER HAS MADE A COLORABLE SHOWING OF GOVERNMENTAL VIOLATION OF TRENKLER'S CONSTITUTIONAL RIGHT TO ACCESS TO EXCULPATORY EVIDENCE, ESPECIALLY AFTER THE GOVERNMENT HAD BEEN MADE AWARE OF THE VALUE TO TRENKLER OF THE EVIDENCE IT WITHHELD. AS THE GOVERNMENT AND THIS COURT IS AWARE, TRENKLER HAS BROUGHT SEVERAL CLAIMS TO THIS, THE APPEAL, AND SUPREME COURTS AS SOON AS THE EVIDENCE BACKING THESE CLAIMS SURFACED, WHICH SHOULD BE INDICATIVE OF TRENKLER'S CONSTANT DILIGENCE IN THIS CASE. BY THE LIMITED MEANS AVAILABLE TO TRENKLER, HIS FAMILY AND ASSOCIATES, ALL AVENUES AVAILABLE TO TRENKLER HAVE BEEN EXPLORED TO SEEK THE TRUTH AND TO SEEK JUSTICE, TO UNCOVER WHAT HAS BEEN AND CONTINUES TO BE HIDDEN FROM VIEW.

#### TRENKLER'S 2255 IS NOT TIME BARRED

UNCOVERED WAS THE EVIDENCE THAT THE GOVERNMENT, WITH THE KNOWLEDGE THAT FORENSIC EVIDENCE IN THE GOVERNMENT'S GRASP WOULD EXCULPATE TRENKLER AND DESTROY THE GOVERNMENT'S OTHERWISE FORENSICALLY WEAK CASE, WOULD PREVENT TRENKLER FROM ACCESSING FORENSIC EVIDENCE, THUS VIOLATING BRADY, DESPITE A STANDING BRADY MOTION. [APP AT 4]. THE GOVERNMENT ACTION HAS NEVER BEEN REMOVED. ONLY RECENTLY DISCOVERED WAS THE FACT THAT THE GOVERNMENT VIOLATED TRENKLER'S BRADY RIGHTS. OBVIOUSLY THE GOVERNMENT DID NOT EVER VOLUNTEER THIS INFORMATION, NO AMOUNT OF DILIGENCE COULD REVEAL THAT WHICH WAS NEVER VOLUNTEERED.

ALTHOUGH TRENKLER, THROUGH HIS FAMILY, REPEATEDLY CONTACTED HIS TRIAL ATTORNEYS, INVESTIGATORS AND EXPERTS, NO INSIGHT WAS GIVEN TO AID OR ASSIST WITH TRENKLER'S CURRENT CLAIMS, THAT IS UNTIL RECENTLY.

THE BULK OF THE BOXES OF LEGAL MATERIAL, WHERE INFORMATION WAS GLEANED THAT LED TO THE RECENT REVELATIONS, HAD BEEN IN THE HANDS OF OF APPELLATE AND POST CONVICTION ATTORNEYS UNTIL 2005. TRENKLER IS INCARCERATED AND IS ONLY ALLOWED A FINITE AMOUNT OF LEGAL MATERIALS. TRENKLER IS NOT AN ATTORNEY. DEFENDANT'S STEP FATHER, JACK WALLACE, IS 80 YEARS OLD AND FOR MANY YEARS HAS SUFFERED WITH DIABETES AND PERIPHERAL NEUROPATHY WHICH SEVERELY LIMITS HIS MOBILITY. JACK WALLACE IS NOT AN ATTORNEY. DEFENDANT'S HALF BROTHER, DAVID WALLACE, LIVES AND WORKS IN MAINE, SUPPORTS HIS FAMILY THERE, HAS LIMITED SPARE TIME AND IS NOT AN ATTORNEY. MORRISON BONPASSE VOLUNTEERED TO JOIN TRENKLER'S DEFENSE IN 2006 AND HAS TAKEN A CURSORY VIEW OF THE 160,000 SOME ODD PAGES OF LEGAL PAPERS IN OVER 40 BOXES. IT WAS THROUGH HIS SEARCH AND HUNDREDS OF INTERVIEWS OF THOSE SURROUNDING THIS CASE THAT SOME OF THIS INFORMATION WAS DISCOVERED IN SUPPORT OF THIS MOTION. MORRISON BONPASSE IS A RETIRED STATE ATTORNEY.

TRENKLER AND HIS ASSOCIATES HAVE GONE BEYOND DUE DILIGENCE IN EFFORTS TO SEEK JUSTICE. THAT TRENKLER, ETAL, MADE THESE DISCOVERIES, DESPITE THE INHERENT DISADVANTAGES THEY FACED, SHOULD NOT BAR TRENKLER FROM RELIEF FROM THE CONSTITUTIONAL VIOLATIONS OF GOVERNMENT PROSECUTORS SURROUNDING TRENKLER'S PRETRIAL AND TRIAL PROCEEDINGS. HAD THE FACTS BEEN DISCOVERED EARLIER TRENKLER WOULD HAVE BROUGHT THEM EARLIER. LIKE THE ATTEMPT OF OBTAINING BLOOD FROM A STONE, HOW COULD TRENKLER BE FAULTED FOR EVENTS AND CIRCUMSTANCES OUTSIDE HIS CONTROL? THAT TRENKLER COULD HAVE DISCOVERED FACTS SUPPORTING HIS CLAIMS ONLY WHEN THEY BECAME ACCESSIBLE SHOULD NOT FAULT TRENKLER.

SUBSECTION 2 OF SECTION 2255 IS AVAILABLE TO TRENKLER

TRENKLER SET THE STAGE FOR A VALID BRADY CLAIM. THE GOVERNMENT AVOIDS THE POINT. TRENKLER'S CLAIM INVOLVES EVIDENCE KNOWN TO THE GOVERNMENT AND WITHHELD FROM THE DEFENSE. THAT EVIDENCE HELD BY THE GOVERNMENT WAS RENDERED UNAVAILABLE TO TRENKLER'S DEFENSE TEAM PRIOR TO TRIAL WAS THE DIRECT RESULT OF WILLFUL OR INADVERTENT INTENTIONS. THE GOVERNMENT WAS ON NOTICE TO PROVIDE EXCULPATORY EVIDENCE THROUGH THE BRADY MOTION(S) FILED BY TRENKLER'S ATTORNEYS WELL IN ADVANCE OF TRIAL.

AS FOR DUE DILIGENCE UNDER SUBSECTION 4 OF SECTION 2255, IF THE GOVERNMENT IS NOT GOING TO VOLUNTEER THE FACT THAT IT WITHHELD EVIDENCE FAVORABLE TO TRENKLER NOT ONCE, NOT TWICE BUT ON THREE OCCASIONS, HOW IS TRENKLER, NO MATTER HOW DILIGENT, EVER TO DISCOVER THE FACT? CONVERSLEY, IF TRENKLER'S DEFENCE COUNSEL, INVESTIGATORS AND EXPERTS DID NOT SHARE THE GOVERNMENT'S WITHHOLDING OF EXCULPATORY EVIDENCE WITH TRENKLER, FOR WHATEVER REASON, HOW IS TRENKLER TO LEARN OF THE GOVERNMENT'S WRONGFUL TRANSGRESSIONS?

TRENKLER HAS EXPLAINED THE MANY OBSTACLES THAT PREVENTED TRENKLER FROM ACCESSING THIS TROUBLING EVIDENCE.

GROUND ONE INVOLVING "TRACES OF A FINGERPRINT", TRENKLER HAD BEEN IN CONTACT WITH HIS BOMB EXPERT, DENNY KLINE, BY WAY OF HIS STEP FATHER, JACK WALLACE. KLINE, FOR UNKNOWN REASONS, NEVER MENTIONED HIS PRINT OBSERVATION OR THAT THE GOVERNMENT NEVER PRODUCED THE TAPE AGAIN. IT WAS ONLY AFTER MORRISON BONPASSE CONTACTED KLINE THAT THE BOMB'S ELECTRICAL TAPE WITH THE PRINT AND LACK OF SUBSEQUENT ACCESS WAS MENTIONED.

GROUND TWO, TRENKLER ALLEGES THAT THE GOVERNMENT WITHHELD EXCULPATORY EVIDENCE FAVORABLE TO TRENKLER. LOGICALLY, IF KLINE POINTED OUT A FINGERPRINT ON BOMB TAPE AND WAS NOT GIVEN ACCESS TO THE TAPE IN ORDER TO LIFT PRINTS, TRENKLER WAS DENIED EXCULPATORY EVIDENCE. AS FOR THE FINGERPRINTS ON THE SHAY SR CAR, WHILE TRENKLER'S DEFENSE COUNSEL KNEW OF THE PRINTS, TRENKLER WAS UNAWARE OF THE FACT THAT HIS DEFENSE COUNSEL HAD BEEN REFUSED ACCESS TO THESE PRINTS, DESPITE A GENERAL REQUEST AND A SPECIFIC REQUEST, INCLUDING A SPECIFIC REQUEST FOR THE PRINTS RECOVERED FROM THE SHAY CAR. [RAPP AT 3]. THE TAPE PRINTS WERE NOT VOLUNTEERED BY KLINE UNTIL JULY OF 2007. THE CAR PRINTS AND BRADY MOTION FOR THEIR PRODUCTION DEVELOPED FROM THE EXTENSIVE SEARCH OF LEGAL MATERIALS.

GROUND THREE, THE TOGGLE SWITCH. TRENKLER STATES THAT HIS EXPERT, DENNY KLINE, WAS ALLOWED ONE VIEW OF THE TOGGLE SWITCH CONTACTS WHERE HE MADE THE "PRELIMINARY CONCLUSION" THAT THE ATF HAD "ERRED" IN THEIR IDENTIFICATION OF THE BOMB SWITCH CONTACTS AS THOSE OF RADIO SHACK. ALTHOUGH THERE WAS A STANDING BRADY MOTION TO PRODUCE EXCULPATORY EVIDENCE FAVORABLE TO TRENKLER, DENNY KLINE'S REQUEST FOR A REEXAMINATION WAS NEVER GRANTED. NEITHER DID TRENKLER, OR HIS ATTORNEYS, OR HIS EXPERT EVER RECEIVE THE ATF PHOTOGRAPHS OF THE TOGGLE SWITCH CONTACTS.

CONCERNING THE TOGGLE SWITCH IS A DISTURBING SIDE NOTE. AS MENTIONED EARLIER, A WITNESS INVOLVED WITH THIS CASE REPORTED TO TRENKLER'S FAMILY THE STORY OF OVERHEARING STATE AND GOVERNMENT OFFICIALS DIRECTLY AND INDIRECTLY INVOLVED WITH THIS CASE DISCUSSING THE PROBLEM WITH THE RADIO SHACK SWITCH NOT MATCHING THE BOMB SWITCH. IF THIS IS TRUE



AND THE GOVERNMENT WENT AHEAD WITH THIS CASE, THIS WOULD BE RATHER INDICATIVE OF PROSECUTORIAL MISCONDUCT. OF COURSE, WITHOUT AN AFFIDAVIT OR TESTIMONY WITH SOME KIND OF PROTECTION THIS, SADLY, IS ONLY A COINCIDENTAL STORY.

GROUND FOUR, BATTERY LIFE. ALTHOUGH THE ATF HAD CONTACTED THE LOCAL FUTABA DEALER, AT NO TIME WAS THE TWO HOUR OPERATING TIME ESTIMATED BY THE DEALER SHARED WITH TRENKLER'S ATTORNEYS, EXPERTS OR INVESTIGATORS. A SEARCH OF LEGAL PAPERS REVEALED THE FUTABA DEALER.

GROUND FIVE, THE SHAY STATEMENTS. THE RECENT 2255 MOTION OF SHAY JR'S IS THE CLOSEST ITEM TRENKLER HAS TO A SWORN STATEMENT FROM SHAY STATING THAT TRENKLER IS INNOCENT. ALSO NEW ARE HIS LETTERS TO THIS COURT, THE US ATTORNEYS' OFFICE AND THE MEDIA WHERE HE STATES TRENKLER IS INNOCENT.

GROUND SIX, THE COADY STATEMENTS. AGAIN, TRENKLER IS NOT AN ATTORNEY. THE AFFIDAVITS SUPPORTING THE COADY STATEMENTS WERE PROVIDED AFTER TRENKLER'S INITIAL FILING WITH THE FIRST CIRCUIT.

### CONCLUSION

THIS COURT SHOULD ORDER A HEARING TO DETERMINE IF TRENKLER'S CONSTITUTIONAL RIGHT TO EXCULPATORY EVIDENCE WAS PREVENTED BY TRANSGRESSIONS ON THE PART OF THE GOVERNMENT. IT SHOULD ALSO BE DETERMINED IF THE FORENSIC EVIDENCE HAS ACTUALLY BEEN DESTROYED, AFTER ALL, HOW MANY TIMES HAS EVIDENCE SURFACED THAT PROSECUTORS SWORE HAD BEEN DESTROYED?

RESPECTFULLY SUBMITTED,

BT: Alfred W. Trenkler  
ALFRED W. TRENKLER  
PETITIONER, PRO SE

JANUARY 10, 2008

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I HAVE CAUSED THE MAILING OF THIS PETITION TO THE UNITED STATES DISTRICT COURT, OFFICE OF THE CLERK FOR THE DISTRICT OF MASSACHUSETTS, JOHN JOSEPH MOAKLEY COURTHOUSE, 1 COURTHOUSE WAY, SUITE 2300, BOSTON MASSACHUSETTS, 02210 ON THIS 10TH DAY OF JANUARY, 2008.

Alfred W. Trenkler  
ALFRED W. TRENKLER  
PETITIONER, PRO SE

# APPENDIX

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

United States of America )  
 )  
 v. )  
 ) Criminal No. 92-10369-Z  
 Thomas A. Shay )  
 Alfred W. Trenkler )  
 )

Defendant Alfred Trenkler's Motion For Specific Exculpatory Evidence And/Or Evidence "Material To The Preparation Of The Defense" Pursuant To Rules 16(a)(1)(C) and 16(a)(1)(D)

Now comes defendant, by his attorney, and pursuant to Brady v. Maryland, 373 U.S. 83 (1963); U.S. v. Bagley, 473 U.S. 667 (1985); Giglio v. United States, 405 U.S. 150 (1972), and U.S. v. Aguirs, 427 U.S. 97 (1976); makes the following specific requests for disclosure of exculpatory evidence. Defendant notes that in many cases said requests not only seek exculpatory evidence but also items "material to the preparation of the defense" pursuant to Rule 16(a)(1)(C) and (D):

1. ATF Form 3270.1 which was sent to the TEC in connection with a watch placed on the 8 people listed in ATF Report #E63212-92-21:

2. All reports, mock-ups and diagrams showing how the bomb which exploded on October 28, 1991, works:

3. All the reports, notes and writings of Larry McCune, an explosives enforcement expert with ATF, made in connection with the investigation of this case. More

particularly, any writings or material of Mr. McCune which relate in any way to the material discussed by Special Agent Jeff S. Kerr at paragraphs 33-35 of his "Second Affidavit" executed before the United States District Court on March 12, 1992.

4. All photographs, reports, police notes, lab reports, etc., which relate in any way to the damage caused to a truck on September 1, 1986, in Quincy, MA. More particularly, defendant seeks all material in the possession of ATF, the Quincy Police Department and the MA Department of Public Safety which relates in any way to said incident which incident is more particularly described in paragraphs 23-24 of the Kerr affidavit referred to in paragraph 3 of this motion.

5. All notes, diaries, reports of interview and activity of the ATF and BPD personnel who participated in this investigation.

6. All ATF profiling reports, including said reports involving Thomas Shay, Jr., defendant, and Thomas Shay, Sr.

7. All ATF forensic lab reports concerning explosives, wood, paint, wire, and electrical components in connection with the investigation of the explosion on October 28, 1991.

8. All notes and reports written by the ATF National Response Team.

9. All photos taken by ATF or BPD in connection with the investigation of the 1991 explosion.

10. All ATF and BPD polygraphs conducted on subjects in this investigation, and data used by the ATF polygrapher to determine "deceptiveness" of subjects tested.

11. All photos and diagrams of mock-up devices.

12. All diagrams of circuits and photos of the explosive device which were circulated to members of the International Association of Bomb Technicians and Investigators.

13. All notes, reports and writings of ATF Forensic chemist Cynthia Wallace in connection with her work on the investigation of the 1991 explosion.

14. All ATF and BPD collateral investigation requests and replies received.

15. The results of any tests conducted as a consequence of defendant producing handwriting samples.

16. The results of any BPD or ATF tests which did not connect defendant to the 1991 explosion. For example, the results of the fingerprint tests done on the auto and house of Thomas Shay, Sr.

17. The results of any tests conducted using defendant's voice exemplars.

18. The specific efforts the government and BPD made to corroborate Shay's "proffer" of October 6 and 9, 1992. More particularly, what aspects was ATF or BPD able to corroborate and what aspects were determined to be untrue.