UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO: 07-2764

THOMAS A. SHAY,

Petitioner/Appellant

v.

UNITED STATES OF AMERICA,

Respondent/Appellee

CIVIL ACTION NO: 07-11752-RWZ

On Appeal from the United States District Court
District of Massachusetts

APPLICATION FOR A CERTIFICATE OF APPEALABILITY

THOMAS A. SHAY
Petitioner/Appellant
Reg. No: 19193-038
FCI MEMPHIS
Post Office Box 34550
Memphis, TN. 38184-0550

****

TABLE OF CONTENTS

TABLE OF CITATIONS OF AUTHORTIES

STATUTES:

Petitioner appeals pro se from the district court judgment that denied petitioner's motion to vacate his sentence under 28 U.S.C.§2255.

Petitioner files this Memorandum in support of his certificate of appealability. See, Fed.R.App.P 22(b).

To obtain a certificate of appealability ("COA) petitioner must make a substantial showing of the denial of a constitutional right. See, 28 U.S.C. §2253(c)(2).

> Where a district court has rejected the constitutional claims on the merits, the petitioner must demonstrate that reasonable jurist would find the district court's assessment of the constitutional claims debatable or wrong...When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying in violation of a constitutional claim, a COA should issue when the petition states a valid claim of the denial of constitutional right and that jurists of reason would find it debatable whether the district court was correct in the procedural ruling.

Slack v. McDaniel, 529 U.S. 473, 484 (2000). the Supreme Court held that when a district court denies a habeas petition without reaching the petitioner's constitutional claims a COA should issue.

Procedural and Factual Background

On December 16, 1992, Appellant and co-defendant Alfred Trenkler were charged in a five-count indictment for their roles in an October 1991 bombing that killed Boston Police Officer Jeremiah Hurley. (Criminal No. 92-10369-RWZO D.1)

On June 24, 1993, a superseding indictment was returned charging that, in September and October 1991 Petitioner and Trenkler received

explosive materials in interstate commerce with intent to kill, injure, and intimidate and cause destruction of property, which conduct had caused death and serious personal injury, in violation of 18 U.S.C. §844(d) Count Two, knowingly attempted to maliciously damage and destroy property unse in and affecting interstate commerce, by means of fire and explosives, in violation of 18 U.S.C. §844(i) Count Three, and knowingly conspired to commit the foregoing acts, in violation of 18 U.S.C. §371 Count One.

On July 27, 1993 the jury convicted Appellant on Counts One and Three. On October 8, 1993, Appellant was sentenced to 188 months imprisonment to be followed by five years of supervised release, A timely appeal followed. On April 1, 1998, after remand from the First Circuit, hearings before this Court, and the government's appeal, the First Circuit remanded this case a second time for a new trial.

Upon remand for a new trial, this case was reassigned to United States District Judge Edward F. Harrington. On October 29, 1998, Appellant pled guilty to Counts One and Three of the Superseding Indictment.

Appellant was sentenced that same date to 144 months imprisonment and five years of supervised release. Judgment entered November 9, 1998, and no appeal was noticed by Appellant within the applicable ten day periond. Fed.R.App.P 4(b)(1)(A).

ISSUES PRESENTED FOR REVIEW

Appellant seeks to set aside his 1998 conviction under 28 U.S.C. §2255 on the claimed basis that his guilty plea was entered due to ineffectiveness of counsel and improper coercion by the same attorney's and was therefore involuntary.

Issues Presented By The Government in Opposition to Appellant's 28 U.S.C. §2255:

The Government i.e., Appellee states that Appllant's 2255 motion to set aside his 1998 conviction is time-barred by the one-year statute of limitation applicable to motions under 28 U.S.C. §2255.

Additionally, whether Appellant's time-barred motion is nevertheless cognizable under 28 U.S.C. §2241 because his §2255 motion to set aside the judgment in his criminal case is inadequate of ineffective to test the legality of his detention.

Appellant brings forth it's argument as to the Appellee's argument that the Appellant is time barred from filing this 28 U.S.C. §2255 motion. First and foremost the Appellant was never informed that he had the right to file a 28 U.S.C. §2255 motion. That the Appellant suffers from a mental health organic brain impairment refered to as "Neuropsychologist" the Appellant had no way of knowing about a 28 U.S.C. §2255 motion nor was he ever made aware of this motion or the time limitation of the one year.

REASONS WHY A CERTFICATE OF APPEALABILITY SHOULD ISSUE

I. Appellant can make a substantial showing of the denial of a constitutional right.

II. The proceeding involves one or more questions of exceptional importance on which the District Court's decision conflicts with the authoritative decisions of the Supreme Court of the United States.

III. The constitutional issues presented by the Appellant in his 28 U.S.C. §2255 motion, which the District Court denied, raised issues that are debatable amoung a jurists of reason.

IV. This Court could resolve the issues presented by the Appellant in a manner different from the District Court.

V. The issues presented by the Appellant in his §2255 motion are adequate to deserve encouragement to proceed further.

VI. There are substantial grounds upon which relief may be granted.

VII. The blanket denial of a certificate of appealability in this case, as to all issues presented in the §2255 motion fails to give adequate consideration and or assessment to each claim so that appellate review of the claims presented is necessary to determine the vialbility of Appellant's constitutional claims.

POINTS AND AUTHORITIES SUPPORTING THE ISSUANCE OF A CERTIFICATE OF APPEALABILITY

Although habeas corpus and §2255 appeals follow the usual civil appellate procedures in most respects, appellate practice in these affairs is unique in one important respect. In contrast to the unrestricted availabilty of appeals in most other civil litigation, there is no appeal of right for prisoners in §2255 cases, Instead, the prisoner must obtain leave to appeal by making a "substantial showing of the denial of a constitutional right." See, Barefoot v. Estelle, 463 U.S. 880, 893 (1983). See also, 28 U.S.C. §2253(c)(2) (West 1994 & Supp. 2001).

Prior to the enactment of the Antiterrorism and Effective Death Penalty Act of 1996, herein (AEDPA), the mechanism for making the requisite "substantial showing" in habeas corpus cases (2255 appeals did not require such showing at that time) was an application for a "certificate of probable cause." Barefoot" supra, 463 U.S. at 892-93.

The application could be directed to a district or circuit court judge or, it could be made to a Supreme Court Justice. Absent a certificate of probable cause to appeal, federal appellate courts

apparently were without jurisidiction to consider the appeal. See, e.g., **Fabian v. Reed**, 707 F.2d 147, 148 (5th Cir. 1983).

By Amendment to 28 U.S.C. §2253, the AEDPA replaced the "certificate of probable cause" with a "certificate of appealability," 28 U.S.C. §2253(c). As a feneral note, initially, it was questionable whether the requirement for a certficate of appealability applied to §2255 proceedings.

However, this court held that such certificates are required in all §2255 proceedings, and the Supreme Court has revised Rule 22(b) to conform to that view.

To warrant the issuance of a certificate of appealability, the Appellant must make a substantial showing of the denial of a constitutional right, 28 U.S.C. §2253(c)(2). This standard has been interpreted to codify the **Barefoot** standard that existed prior to the AEDPA, at least insofar as constitutional claims are at issues. See, **Slack v. McDaniel**, 529 U.S. 473, 483-84 (2000) (Except for substituting the word "constitutional" for the word "federal," §2253(c) is a codification of the "certificate of probable cause" standard announced in **Barefoot**.

In **Slack v. McDaniel,** the Supreme Court held that "when a district court denies a habeas petition on procedural grounds, without reaching the Appellants' underlying constitutional claim(s), a certificate of appealability should issue if the Appellant shows, at least, that juries of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional rightm and that jurists or reason would find it debatable whether the district court was correct in its procedural ruling. 529 U.S. at 478.

Because Appellant has shown in the case sub judice, that there exists constitutional claims upon which relief could be granted, and that reasonable jurists would differ in their opinion with respect to the viability of the claims, a certificate of appealability should issue in this case.

In numerous cases the courts have granted a COA on issues of ineffective assistance of counsel even where the issues have ultimately failed on the merits. See, **Lozada v. Deeds,** 498 U.S. 430, 112 L.Ed.2d 956, 11 S.Ct. 860 (1991) (per curiam); Also, **Mayfield v. Calderon,** ____F.3d_____, 2000 U.S. App. LEXIS 25461 (9th Cir. 10-13-00).

Issuance of the COA in the present case is warranted, even though the district court disagrees with Appellant's arguments on the merits

STANDARD OF REVIEW

The First Circuit reviews de novo a district court's decision to deny a federal prisoner's motion under 28 U.S.C. §2255, and reviews its factual findings for clear error. **Nagi v. United States,** 90 F.3d 130 (1st Cir. 1996).

ARGUMENTS AND CITATIONS OF AUTHORITIES

Appellant's contends that his §2255 motion was denied by the district court because it was filed too late, and that the decision was mandated by statute and because the District Judge could not discern any room for disagreement. **(Exhibit-A)**

Appellant asserts that his §2255 motion was considered time barred by the statute that rules §2253 motions. The issue here before this Honorable Court is "how do people, who are mentally incapacited, subject to be fallible, to make decisions based on a sound mind and have the

knowledge within the confines of the criminal justice system. How can an individual be subject to the same laws or penalties, or legal system confound in time lines, while at the same time be mentally unstable. It is further clear that even throughout the court proceedings Judge Rya Zobel stated in open court that Appellant was a "sick man." See. **(Exhibit-B).**

Appellant is not learned in law, and due to his mental incapacitated the appellant has to depend upon the assistance of other prisoners who have little or no knowledge of the law. Although Appellant's §2255 motion did not qualify under the stringent standards required of educated attorney's, given his claims liberal interpretation required the district court to look to every conceivable notion implied in appellant's claims that were presented.

In addition, the Appellant was just recently informed that the U.S. Attorney ordered the Destruction of case evidence, while Appellant's appeal was pending before this Court, which could have lead to new trials, and the evidence lead to the innocents [sic] of both defendants.

Furthermore, it was error of the district court to consture Appellant's Motion as a 28 U.S.C. §2241 given the fact there was no proper forms that were filled out to require this motion to even be entertained by the district court. Thereby, the district court erred by denying the Appellant's §2255 motion as a §2241 motion, that at no time did the Appellant argue that his 28 U.S.C. §2255 motion was inadequate or ineffective testing the legality of his detention.

Appellant contends that he just recently received as submitted as **(Exhibit-C)** Affidavit of Terry Philip Segal, attorney for codefendant Alfred W. Trenkler, Criminal No: 92-10369-Z, Appellant contends that this Affidaivt from Attorney Segal could be considered new evidence in light to the fact the Appellant was never made aware of this Affidavit to which if it had been in the present of Appellant's attorney a different outcome of the proceeding would have been produced as to Appellant's guilt.

Appellant argued in his 28 U.S.C. §2255 Motion ineffective assistance of counsel. Appellant contends that counsel violated appellant's Sixth Amendment Right to effective assistance of counsel, that counsel abandon the Appellant at a crucial part of appellant's proceedings.

Appellant asserts that counsel has an obligation to represent the Appellant to the fullest extent during "all" of the proceedings this includes trial, sentencing, and appeal[s]. Appellant requested that counsel request the court for a mental evaluation.

It is clear that it was an abuse of the court's decision not to allow Dr. Robert Phillips testimong be submitted as an expert for the Appellant which Dr. Phillips would have testified that Appellant had a mental disorder known as "pseudologi fantastica."

It is clear that counsel for the Appellant never informed the court before or during sentencing that Appellant should be given a psychiatric or psychological examination pursuant to 18 U.S.C. §4244(b). It is further clear that during Appellant's sentencing the court asked the Appellant on Page 12, "Have you ever been under psychiatric care? On page 13 the Appellant responded, Yes, Your Honor, to which counsel for the Appeallant Mr. Kettlewell, answered for the Appellant by stating, the defendant's history in that regard is fairly lengthy. You probably seen his PSI.

It dates back to his days as a child. This should have been grounds for a mental examination request by counsel but this was not counsel's plan. Counel's plan was to advise the court that Appellant was competent to stand trial and sentencing, which neither counsel nor the court had the authority to find that Appellant was competent not only to enter into a plea voluntary, that Appellant's plea was entered involuntary under coercesion to which counsel informed the Appellant that if he did not enter a plea of guilty he would be facing a life sentence.

At this stage counsel abandon the Appellant. That had counsel reviewed the United States Supreme Court case **North Carolina v. Pierce**, 395 U.S. 711 (1969), that counsel advised Appellant that if he sought a retrial in his case Appellant could be sentenced to a longer term following the 1993 conviction than the 188 month original sentence, up to life in prison. This advise violated the Constitutional Prohibition against such an increased sentence upon a retrial as determined by the above cited case.

Appellant informed his attorney that he was hearing voices and needed mental health care. Appellant contends that this was grounds enough for a psychiatrist evaluation examination, but again counsel neglected to request for this evaluation.

Appellant contends that counsel stated during sentencing that the Appellant has not been under the care of a psychiatrist. Appellant asserts that counsel is not a certified expert in this field therefore, even if Appellant was not under the care of a psychiatrist, does not mean that the Appellant was competent to enter a plea of guilt or subject to being sentenced without a evaluation examination.

On July 19, 1993 Appellant had a"Neuropsychiatric Evaluation" that was conducted by Robert T.M. Phillips, M.D., Ph.D that based

on his examination, (1) that Appellant was of low average to subaverage intellectual functioning who possess concurrent deficits in adaptive functioning that renderes Appellant less effective in meeting the standards expected for his age such as areas as social skills and responsibilities, daily living skills, personal independence and self-sufficiency. (2) Further, it was Dr. Phillips professional medical opinion that Appellant has identifiable deficits in intellectual functioning consistent with those individuals who are diagnosed as having a **"learning disability."**

It should also be noted that Appellant has a genetric chromosomal disorder, called, seminiferous tubular dysgenesis, resulting in having 47 rather than 46 chromosomes. Dr. Phillips stated that persons who suffer from this genetic abnormality are known to be at risk of exhibiting various degrees of mental deficiencies.

Appellant contends that due to these mental disorders it is clear that the Appellant could not have had the intellectual mind to understand the time limitation on filing his 28 U.S.C. §2255 motion, that it is futher clear that Dr. Phillips examination and diagnose states that the Appellant has a learing disability.

Appellant contends that the district court states that Appellant makes no allegation that the facts supporting his claims could not have been discovered earlier through the exercise of due diligence.

Appellant submit's as **(Exhibit-D)** letter from John D. Wallace, stepfather of co-defendant Alfred Trenkler,even though this letter was written on November 1, 2005, the Appellant just recently obtain a copy, which had Mr. Wallace testified at Appellant's sentence the outcome could have been different. This letter should also be submitted as discovery of new evidence.

RELIEF REQUESTED

Appellant prays that this Honorable Court will GRANT the Appellant the right to proceed with this certificate of appealablility to this Honorable Court under the facts stated within this Motion.

In addition, and based on the facts related above, Appellant contends it is clear Appellant's Sixth Amendment Right to effective assistance counsel was clearly violated, and, that "jurists of reason" would find it debateable whether the district court was correct in its assessment of his claims.

Appellant prays that due to his mental disability he be given the chance to bring forth this (COA) that appellate courts have held the saving clause to authorize relief only in extraordinary rare circumstances.

Appellant asserts that this case is one of an extraordinary and rare circumstance and should be allow to proceed with this appeal.

WHEREFORE, Appellant parys that this Honorable Court GRANT the Appellant the right to proceed with this appeal in a timely manner.

Respectfully submitted,

_____
Thomas Shay

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Application to Proceed with a certificate of appealability is true and correct and was forwarded by U.S. Mail postage prepaid to the below following parties:

Clerk of the Court
United States Court of Appeals
First Circuit
John Joseph Moakley U.S. Courthouse
1 Courthouse way Suite 2500
Boston, Massachusetts 02210

Office of the United States Attorney
1 Courthouse way, Ste. 9200
Boston, Massachusetts 02210
David Apfel, AUSA

Acknowledged on this the ____day of June 2008

Respectfully submitted,

Thomas A. Shay #19193-038
FCI Memphis
P.O. Box 34550
Memphis, TN. 38184-0550

cc: Clerk Appeals/
DA, AUSA
jdb paralegal

E X H I B I T - A

E X H I B I T - A

ORDER DENYING APPELLANT'S 28 U.S.C. §2255 MOTION

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 07-11752-RWZ

THOMAS A. SHAY

v.

UNITED STATES OF AMERICA

ORDER
January 3, 2008

ZOBEL, D.J.

Petitioner's motion under 28 U.S.C. § 2255 was denied because it was filed too late. Because the decision was mandated by statute and because I cannot discern any room for disagreement, the motion is denied.

January 3, 2008
DATE

/s/Rya W. Zobel
RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

E X H I B I T - B

E X H I B I T - B

JUDGE RYA W. ZOBEL STATEMENT TO BOSTON HERALD
THAT APPELLANT WAS A VERY SICK MAN

BOSTON HERALD WEDNESDAY, JULY 25, 2007

Cop killer gets 33 months for probation foul

By LAUREL J. SWEET

Even his lawyer doesn't advise taking Thomas Shay at his word.

The cross-dressing bomber behind the grisly 1991 death of a Hub police officer was sentenced to 33 months behind bars yesterday for violating the terms of his probation for the third time since his 2002 release.

"I think he is a very sick man," said U.S. District Court Judge Rya W. Zobel, whose many kindnesses toward Shay over the years have been thrown back in her face.

SHAY

Still, in punishing Shay, 35, an admitted cross-dresser who until last week had been a fugitive for nearly a year, Zobel stuck to federal sentencing guidelines.

Assistant U.S. Attorney James Lang had beseeched her to put Shay away for four years and four months, calling the cop killer's ungrateful conduct "disgusting."

While living in a boarding house in Spencer last year, Shay confessed to local police that he had crushed up Klonopin pills and invited a teenage couple to snort them off a CD case, telling them it was cocaine.

No sooner had the 17-year-old boy and 16-year-old girl left Shay's room when they crashed and flipped their car. "They certainly could have been killed," Lang said.

But for reasons no one was able to explain to Zobel yesterday, a state police lab test on the CD came back negative for drugs.

Shay has been diagnosed with "pseudologia fantastica," a disorder that allegedly causes him to concoct tall tales. His attorney, Page Kelley, said he "is not a reliable reporter. He tailored his statement to suit what narrative the officers had presented him with."

Kelley suggested the teens were "probably" stoned "on something they smoked or drank before they got to Mr. Shay's apartment."

E X H I B I T - C

AFFIDAVIT OF TERRY PHILIP SEGAL, ESQUIRE

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA v. ALFRED W. TRENKLER, Defendant.	CRIMINAL NO. 92-10369-Z

AFFIDAVIT OF TERRY PHILIP SEGAL, ESQUIRE

I, Terry Philip Segal, Esquire, hereby depose and say the following:

1. I am an attorney duly licensed to practice law in the Commonwealth of Massachusetts. I represented the Defendant Alfred W. Trenkler in his criminal trial before this Court in October and November, 1993.

2. Mr. Trenkler was charged with conspiracy under 18 U.S.C. §371, receipt of explosive materials under 18 U.S.C. §844(d), and attempted malicious destruction of property by means of explosion under 18 U.S.C. §844(i).

3. A central contested issue in the Government's case against Trenkler was whether he entered into a conspiracy with Thomas Shay Jr. ["Shay Jr."]. At the trial, the Government introduced Shay Jr.'s statements to prove Trenkler entered into a two-person conspiracy.

4. Over the course of three days of the trial, a colloquy ensued between this Court, the Government and the defense Counsel as to the reliability of Shay Jr.'s out-of-court statements which the Government wanted to admit, as exceptions to the hearsay rule, through three separate witnesses to establish the existence of a conspiracy between Trenkler and Shay Jr. See **Exhibit A**, Trial Transcript, pp. 748-93, 795-828, 871-75.

5. The Government contended that Shay Jr.'s statements were the key to showing that a conspiracy between Trenkler and Shay Jr. existed. Exhibit A, Trial Transcript, at pp. 758-759, 761.

6. This Court acknowledged the reliability problems associated with the testimony of Shay Jr. and even referred to evidence from Shay Jr.'s trial some months earlier.

> A hearsay exception is an indication of the reliability of the statement, a statement against penal interests. Obviously, the idea is that a person wouldn't say I did something wrong if in fact I didn't do something wrong. The fact of the matter is that we have evidence in the Shay case from the Government that Mr. Shay precisely and repeatedly did just that. He brags about things. He called attention to himself. He does it time and time and time again, and that is what Dr. Kelly [the Government's expert] told us. He's a chronic liar. That's what he said. And under those circumstances, whatever may be the general rule about the liability of a statement against penal interests, sort of

> loses all reliability, the case is (sic) interpreting also say that the more crucial the evidence is that the Government wants to put into evidence against, by a declarant, an unavailable declarant, the more vigilant the Court has to be and the more difficult it becomes for the Government. If it were just something that corroborated something else, it would be one thing by your own statement it is highly crucial evidence. It is the evidence on the issue of conspiracy. Exhibit A, Trial Transcript pp. 762-763 (emphasis added).

7. Despite its own concerns about Shay Jr.'s reliability, this Court admitted, through three witnesses, nine (9) out-of-court statements by Shay Jr., as well as portions of a videotaped interview given to Channel 56 Reporter Karen Marinella, against Trenkler. Exhibit A, Trial Transcript, pp. 748-93, 795-828, 845-849, 855-858, 866-868, 871-875, 879-880, 883-887, 1540.

8. Before Trenkler's trial began, I considered calling Dr. Robert Phillips as an expert psychiatric witness to testify that Shay Jr.'s statements were the unreliable product of a recognized mental disorder known as "pseudologia fantastica." Because of this Court's prior exclusion of Dr. Phillips' testimony at Shay Jr.'s trial, I decided not to seek the introduction of Dr. Phillips' testimony.

9. Had this Court permitted Shay Jr. to introduce Dr. Phillips' testimony at his trial, I would have sought to introduce Dr. Phillips' testimony at Trenkler's trial as it

related to Shay Jr.'s out-of-court statements. However, in light of this Court's prior ruling at the Shay Jr. trial, I concluded it would be futile to do so.

SIGNED UNDER THE PENALTIES OF PERJURY THIS 21st DAY OF DECEMBER, 1995.

Terry Philip Segal

Terry Philip Segal, Esquire

T:585

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by hand/mail on 12/22/95

E X H I B I T- D

E X H I B I T - D

LETTER FROM JOHN D. WALLACE

JOHN D. WALLACE
7 WHITELAWN AVENUE
MILTON, MA 02186
617-698-2652

November 1, 2005

Honorable Edward F. Harrington,
United States District Judge
1 Courthouse Way
Boston, MA 02210

RE: United States of America vs. Thomas A. Shay
Criminal Action No. 92-10369
Change of Plea and Disposition
October 29, 1998

I am writing to you to rebut Mr. Apfel's remarks in response to your question regarding the evidence the government would have introduced were the case have gone to trial.

David Apfel, AUSA, who represented the government at the hearing, is the same David Apfel who informed Alfred Trenkler's attorney, Morris Goldings, that Tom Shay told several government agents that Alfred had nothing to do with the bombing.

He told Morris to do with it what he wished whereupon Morris called Kevin McGrath, AUSA, with the information and asked Mr. McGrath what he was going to do about it. His response was that he wasn't going to do anything.

Mr. Apfel's facts which are in dispute:

1. There was insufficient evidence of any conspiracy to commit the substantive counts alleged.
2. Then was no evidence that Alfred Trenkler or Tom Shay agreed to construct a remote controlled explosive device.
3. There was insufficient evidence to prove that Tom Shay purchased certain electrical components including a toggle switch at a Radio Shack store located at 197 Massachusetts Ave. in Boston.

At Tandy Corporation headquarters in Texas, Robert W. Blair never found a copy of the receipt introduced at trial. They only found a computer print out which showed a toggle switch No. 275-602 had been sold by the above store. There was no address or telephone no. to trace the purchase to anybody.
Also none of the six (6) items listed on the receipt were even found in the debris with the exception of the two contacts.

4. The government never proved that Alfred Trenkler built the device. They never found the toggle switch – only two contacts which the ATF evidence shows were like a competitive toggle switch, not Radio Shack (see enclosed).

5. There was no evidence that Alfred Trenkler or Tom Shay affixed the explosive device to the under carriage of Thomas L. Shay's 1986 Buick. As a matter of fact, tests for dynamite on the car proved negative. There was no evidence that Alfred Trenkler or Tom Shay, in or about October, 1991, received in interstate commerce explosive materials.

Tom Shay now admits that the government convinced his attorneys that he could get life imprisonment if the case went to trial. He said he was coerced by his attorney to plead guilty or take the chance of spending his whole life in prison.

Apparently both parties ignored double jeopardy, and the Supreme Court case, North Carolina vs Pierce, which states that a defendant cannot be punished for seeking a new trial by a harsher sentence the second time around.

Shay's attorneys were told by Terry Segal, Alfred's attorney, that our bomb expert, Denny Kline said the remains of the toggle switch were not from Radio Shack. (See enclosed).

I hope that this letter clarifies the facts that were used against Tom Shay, and which adversely reflected on my stepson, Alfred Trenkler. My stepson is serving two illegal life sentences for a crime he did not commit. I should have responded sooner, but have been pursuing appeals with the District Court, the Court of Appeals and the Supreme Court, all of which were denied without addressing the merits of the case.

Thank you for taking my comments into consideration, and also for your help correcting the injustice done to Alfred Trenkler.

Respectfully yours,

John D. Wallace, (Alfred Trenkler's Stepfather).

cc: Dana A. Curhan, Esq.