U.S. Department of Justice

United States Attorney
District of Massachusetts

1003 J.W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

November 3, 1993

BY HAND

Honorable Rya W. Zobel
United States District Judge
U.S. District Court
Boston, Mass. 02109

Re: United States v. Alfred W. Trenkler
Criminal No. 92-10369-Z

Dear Judge Zobel:

In the interest of time, and in lieu of a legal memorandum, I am writing to provide the Court with citations to legal authority which the United States suggests should control the Sixth Amendment/redaction issue which was discussed earlier today in the above case.

As the Court is aware, Bruton v. United States, 391 U.S. 123 (1968), held that the introduction of a co-defendant's hearsay confession implicating a defendant on trial violated that defendant's right of confrontation under the Sixth Amendment even when a limiting instruction was given. The broad holding of Bruton was limited by the Supreme Court in Richardson v. Marsh, 481 U.S. 200 (1987) wherein the Court held that the use of a co-defendant's hearsay confession does not violate the confrontation clause where a proper limiting instruction is given and the confession is redacted to eliminate any reference to his or her existence. Id. at 211. However, Richardson expressly left open the question of whether it would be permissible for the confession to replace the defendant's name with a neutral pronoun. Id. at 211, fn. 5.

There are no First Circuit cases which have addressed Richardson since it was decided in 1986. The Second Circuit, however, has had the opportunity to address the question expressly left open by the Richardson Court in a series of cases beginning in 1989. Cited below are a list of the Second Circuit cases in question, followed by a parenthetical reference to two of the cases which involve conspiracy charges against two co-defendant's (as opposed to multi-defendant conspiracy indictments). In reverse chronological sequence, the relevant cases, copies of which are attached hereto, are:

1. United States v. Williams, 936 F.2d 968, 700-701 (2d Cir. 1991)(2 defendant conspiracy)

2. United States v. Benitez, 920 F.2d 1080, 1086-1087 (2d Cir. 1990)

3. United States v. Tutino, 883 F.2d 1125, 1134-1135 (2d 1989) cert. denied, 110 S.Ct. 1139 (1990)

4. United States v. Alvarado, 882 F.2d 645, 651-653 (2d Cir. 1989) cert. denied, 110 S.Ct. 1114 (1990)(2 defendant conspiracy)

It is the position of the United States that the Second Circuit cases above correctly apply the relevant Sixth Amendment principles in a situation such as that present in this case. To the extent that the Court wishes authority from other circuits, the government would make an effort to supply copies of the same. However, a brief review of the relevant authorities indicates that the decisions of other federal circuits are consistent with the decisions of the Second Circuit as cited above.

The United States intends to offer testimony from witness Larry Plant and portions of the WLVI-TV videotape with any reference to Trenkler's name or any descriptive reference to Trenkler (including any biographical data) removed therefrom. If the Court looks at the redacted transcript which the government provided of the videotape in question you will see the approach which the government proposes to take, consistent with the above cases, in this action.

We appreciate the Court's consideration in accepting this letter and attached cases in lieu of a full memorandum given the time constraints involved.

Very truly yours,

A. JOHN PAPPALARDO
United States Attorney

By: Paul V. Kelly
PAUL V. KELLY
Assistant U.S. Attorney

cc: Terry P. Segal, Esquire