

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

ALFRED W. TRENKLER

Criminal No. 92-10369-Z

**AFFIDAVIT OF ASSISTANT U.S. ATTORNEY PAUL V. KELLY  
IN SUPPORT OF GOVERNMENT'S OPPOSITION TO DEFENDANT  
ALFRED W. TRENKLER'S MOTION FOR NEW TRIAL**

I, Paul V. Kelly, being duly sworn, do hereby depose and state as follows:

1. I am an Assistant U. S. Attorney and have been so employed for approximately nine (9) years. I am currently assigned to the Public Corruption and Special Prosecutions Unit of the United States Attorney's Office for the District of Massachusetts.

A. BACKGROUND AND PROCEDURAL HISTORY

2. Assistant U.S. Attorney Frank A. Libby, Jr. and I were responsible for the investigation and prosecution of the case of United States v. Thomas Shay and Alfred Trenkler, Criminal No. 92-10369-Z, which involved the explosion of a bomb in Roslindale, Massachusetts in October, 1991 which took the life of Boston Police Bomb Squad Officer Jeremiah Hurley, and severely maimed his partner, Boston Police Bomb Squad Officer Francis Foley. Following a fourteen (14) month investigation, Thomas Shay and Alfred Trenkler were indicted by a federal grand jury, each charged with conspiracy, receiving explosive materials, and

malicious destruction of property by means of explosives -- resulting in the death of Officer Hurley and maiming of Officer Foley.

3. The above-referenced case was severed and resulted in two separate jury trials, both presided over by U.S. District Judge Rya W. Zobel. The Shay case proceeded to trial in June, 1993, and ended with Shay Jr.'s conviction on charges of conspiracy and malicious destruction of property by means of explosives. Shay Jr. was acquitted of the charge of receiving explosive materials. Shay Jr. was sentenced to a term of 188 months imprisonment as a result of his conviction. The Trenkler case proceeded to trial in November, 1993, and ended with Trenkler's conviction on each of the three criminal charges against him. Trenkler was sentenced to a term of life imprisonment, consistent with the applicable federal sentencing guidelines, as a result of his conviction.

4. On appeal, the Shay case was ordered remanded to the district court by the First Circuit on June 22, 1995, on the issue of whether the district court had correctly excluded the proffered trial testimony of Shay Jr.'s psychiatric expert under Fed.R.Evid. 702. The matter remains pending on remand, although there have been some recent procedural developments, including the issuance of a clarifying order by the First Circuit on December 27, 1995. **Exhibit A.** In its Order, which allowed a motion for clarification as to the scope of remand brought by the government, **Exhibit B,** the court of appeals indicated that the

district court may yet affirm its earlier order excluding the proffered psychiatric testimony concerning "pseudologica fantastica" ("PF") if the district court finds: (1) that the proffered expert testimony fails to satisfy the Daubert standard of "evidentiary reliability" (ie. that PF is a "novel or ad hoc syndrome" as opposed to a scientifically valid diagnosable mental disorder admitting of specialized knowledge), or (2) that Shay Jr.'s purported expert (Dr. Robert Phillips) is not qualified to give expert testimony concerning this alleged disorder, or (3) that there is an insufficient "fit" or "valid connection" between the proposed expert testimony and the reliability of Shay Jr.'s statements, or (4) that the proffered expert testimony is nonetheless excludable under Fed.R.Evid. 403. A hearing before the district court as to the remand is scheduled for sometime in April, 1996.

5. The conviction and sentence in the Trenkler case was affirmed by the First Circuit on July 18, 1995. On August 8, 1995, Trenkler filed a motion with the court of appeals seeking to remand the case to the district court based upon a newspaper article which had recently appeared in the Boston Globe indicating that one of the government's trial witnesses, David Lindholm, had been released from a 97-month prison term after only "37 months," at some point after the Trenkler trial was concluded. Trenkler's (otherwise unsupported) motion asserted that there must have existed an agreement between the government and Lindholm that was not disclosed to Trenkler prior to or

during his criminal trial. The court of appeals, while observing that Trenkler's remand motion raised "issues of concern," denied the motion on August 25, 1995, indicating that "the proper forum for such a hearing is before the district court upon motion of a new trial." **Motion for New Trial, Exhibit E.** Trenkler filed his motion for a new trial on December 22, 1995.

B. THE ISSUE CONCERNING DAVID LINDHOLM

6. In his present motion and supporting memorandum, Trenkler speculates that Lindholm must have had a "sweetheart deal" or a secret "agreement" with the government that was not disclosed as part of the government's obligation to inform the defendant of any promises, rewards or inducements that a defendant may have received in exchange for his or her testimony. How otherwise -- Trenkler posits -- would Lindholm have managed to secure his "early release" from prison?

7. There was no agreement of any kind that existed between Lindholm and the government at the time he testified in the Trenkler trial. The undersigned, and AUSA Libby, are, and were at the time of this trial, well aware of the government's discovery obligations, and in particular our responsibility to provide all Brady and potential impeachment material to defense counsel prior to trial. We fully satisfied our obligations in this regard. Lindholm's sworn trial testimony that he had no agreements with the government, and that he had not received any promises, rewards or inducements from the government in exchange for his testimony, was truthful, accurate, and consistent with

the government's view of the same.

8. On April 1, 1994, approximately four (4) months after the trial was concluded, the undersigned received a letter from Lindholm's attorney, Roger Cox. In the letter, Attorney Cox, specifically noting the lack of any preexisting agreement or promise, requested that the government "seriously consider filing a motion before Judge Woodlock [who had sentenced Lindholm] recommending that Mr. Lindholm's sentence be reduced" in light of his substantial assistance and testimony during the Trenkler trial. According to Attorney Cox, in his view it was simply "the right thing to do." **Exhibit C.**

9. The undersigned responded to Attorney Cox's letter on April 12, 1994, agreeing with him that there was no prior agreement between Lindholm and the government, and reminding him that his client, Lindholm, had also testified that he would not ask for any benefit, rewards, inducements "any time in the future" as a result of his testimony. **Exhibit D.**

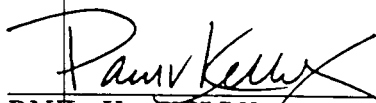
10. Attorney Cox replied in writing later the same day indicating that he had spoken to his client, and that Lindholm was now interested in seeking a sentence reduction. **Exhibit E.**

11. Several months later, on or about July 19, 1994, the government filed a one-page motion seeking a reduction in Lindholm's sentence. Specifically, the government recommended that the Court reduce Lindholm's 97-month sentence by "at least 24 months." Together with its motion -- which was never sealed or impounded and is part of the public court record -- the

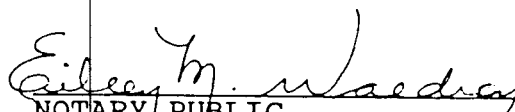
government filed an affidavit by the undersigned specifically informing Judge Woodlock: (1) that "Lindholm had no prior agreement with the government concerning his cooperation and had not been promised any rewards or inducements for his testimony," and (2) that Lindholm had, in fact, testified that he would never ask for any benefit or reward as a result of his testimony in the future. **Exhibit F.**

12. Attorney Cox filed a memorandum supporting the motion for a sentence reduction, but arguing that his client deserved a greater reduction than the 24 months recommended by the government. **Exhibit G.** Lindholm himself also submitted an affidavit for Judge Woodlock's consideration. **Exhibit H.**

13. On September 3, 1994, Judge Woodlock issued an order reducing Lindholm's original sentence of 97 months imprisonment to a sentence of 42 months. **Exhibit I.**

  
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PAUL V. KELLY  
Assistant U.S. Attorney

Sworn to and subscribed before me this 12 day of February, 1996.

  
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NOTARY PUBLIC  
Commission Expires 6/21/02