

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ALFRED TRENKLER, )  
 )  
Petitioner, )  
 )  
 V )  
 )  
UNITED STATES OF AMERICA )  
 )

Case No: 99-CV-10074-RWZ

Respondent.

Honorable R. Zobel,  
District Judge

**PETITIONERS ADDENDUM TO BE ADDED  
TO THE TRAVERSE TO THE GOVERNMENT'S  
MEMORANDUM OF LAW IN OPPOSITION  
TO ALFRED TRENKLER'S 28 USC 2255  
PETITION TO VACATE SENTENCE**

COMES NOW, Alfred W. Trenkler, Petitioner Pro Se, to request John D. Wallace, his step father with power of attorney, to add the following addendum to the Traverse, dated July 12, 1999, recently submitted.

## ADDENDUM

1. Affidavit of Terry Phillip Segal, Esquire

The affidavit clearly states Mr. Segal's rationale for not introducing Dr. Phillips testimony at Alfred Trenkler's trial.

It clearly disputes the government's theory that it was a tactical trial decision on Mr. Segal's part.

2. Defendant's motion for authority to call Assistant United States Attorney Paul Kelly as a defense witness at trial.

The motion clearly states Mr. Segal's desire to get Shay Jr.'s inconsistent statements made to Mr. Kelly before the court.

The statements led to Mr. Kelly's conclusion that Shay Jr. had not been 'entirely truthful and cooperative', concerning the offense under investigation or his role therein.

On November 12, 1992, Mr. Kelly wrote Shay Jr.'s attorney that he had been unable to corroborate any aspects of the proffer provided by Mr. Shay.

The statements made to Mr. Kelly were inconsistent with subsequent statements made by Shay Jr. to Karen Marinella of WLVI-TV Channel 56 on October 17, 1992.

On September 29, 1993, Judge Rya W. Zobel denied the above motion.

3. Government states Shay Jr.'s statements did not directly implicate Trenkler in the bombing.

Robert Evans and Lawrence Plant referred to Alfred by name in their testimony; Karen Marinella of WLVI-TV Channel 56 referred to Alfred by name in her interview.

There was no other defendant on trial to whom the jury could assign the blame even if there were no names mentioned.

The court did not credit as the truth Shay Jr.'s statements to plant and after hearing Dr. Philip's testimony at the sentencing hearing, the court concluded that it did not believe Shay Jr.'s statements to the witnesses in their entirety.

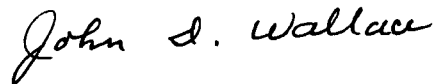
Robert Evans wrote a note to his wife, Diane, describing what Shay allegedly told him. He thought he might have a bargaining chip of some kind - for a pardon, leniency or bail of some kind.

Judge Zobel said she had some doubts as to Mr. Evans who is selling his testimony from day 1.

In Mr. Kelly's letter dated December 23, 1992, he stated that Evan's attorney, Beverly Cannone, Esq., never called to discuss the truthfulness and credibility of his testimony.

Petitioner prays that the court will allow him to file this Addendum to the Traverse recently submitted.

Respectfully submitted,



John D. Wallace  
for Alfred Trenkler, Pro Se

cc: Kevin McGrath, Assistant United States Attorney  
Michael B. Cohen, Esq., Legal Research Limited  
Joseph Kalady, Legal Research Limited  
Alfred W. Trenkler

Attachments:

1. Affidavit of Terry Phillip Segal, Esquire.
2. Defendant's motion for authority to call Assistant United States Attorney Paul Kelly as a defense witness at trial.
3. Paul V. Kelly, letter dated November 12, 1992.
4. Paul V. Kelly, letter dated December 23, 1992.
5. Robert Evans, letter to his wife, Dianne, on or about November 1, 1991.
6. Power of Attorney granted to John D. Wallace by Alfred W. Trenkler.

TO: Assistant United States Attorney,  
Kevin McGrath  
U.S. Courthouse  
Suite 9200  
1 Courthouse Way  
Boston, MA 02210

CERTIFICATE OF SERVICE

I do hereby certify that I have caused a copy of the foregoing Addendum to be served upon the above-named counsel by mailing him a copy, with proper first class postage prepaid, to the above-listed address, by placing a copy of same in the U.S. Post Office at Milton, Massachusetts on or before 5:00 PM on the 29<sup>th</sup> day of July, 1999.

John D. Wallace  
John D. Wallace  
Power of Attorney for  
Alfred W. Trenkler, Pro Se

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).

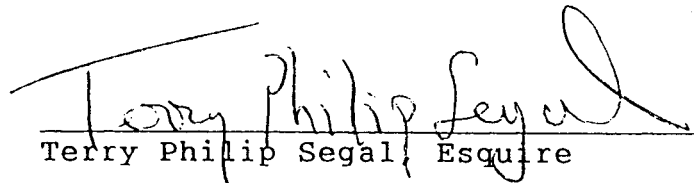
7. Despite its own concerns about Shay Jr.'s reliability, this Court admitted, through three witnesses, nine (9) out-of-court statements by Shay Jr., as well as portions of a videocaped interview given to Channel 56 Reporter Karen Marinella, against Trenkler. Exhibit A, Trial Transcript, pp. 748-93, 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 21<sup>st</sup> DAY OF DECEMBER, 1995.

  
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

LAW OFFICES

**SEGAL & FEINBERG**  
210 COMMERCIAL STREET  
BOSTON, MASSACHUSETTS 02109

TERRY PHILIP SEGAL, P. C.\*  
MATTHEW H. FEINBERG\*\*

MATTHEW A. KAMHOLTZ  
SCOTT P. LOPEZ

\*ALSO ADMITTED IN D. C.  
\*\*ALSO ADMITTED IN NEW YORK

(617) 720-4444  
TELECOPIER (617) 720-4979

September 15, 1993

**BY HAND**

Lisa Urso  
Docket Clerk for  
The Honorable Rya W. Zobel  
Clerk's Office - Seventh Floor  
United States District Court  
District of Massachusetts  
United States Post Office and Courthouse  
Boston, MA 02109

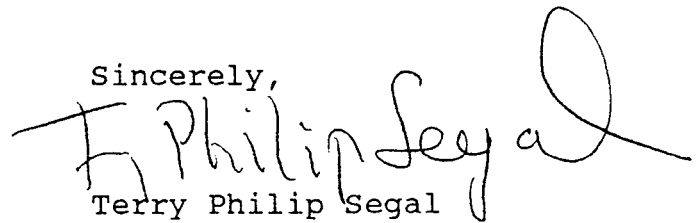
Re: United States v. Alfred W. Trenkler  
Cr. No.: 92-10369-Z

Dear Ms. Urso:

Enclosed please find defendant's motion to call Assistant  
United States Attorney Paul Kelly as a witness.

Kindly file same.

Sincerely,

  
Terry Philip Segal

TPS/jpw

United States District Court  
District of Massachusetts

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United States of America,  
Plaintiff

v.

Alfred W. Trenkler,  
Defendant

---

Criminal No.: 92-10369-Z

DEFENDANT'S MOTION FOR AUTHORITY TO CALL ASSISTANT UNITED STATES ATTORNEY PAUL KELLY AS A DEFENSE WITNESS AT TRIAL

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Now comes defendant and respectfully requests authority to call Paul Kelly as a trial witness. In support of this motion, defendant states:

1. During a portion of the pre-indictment period (March-June, 1992), Thomas Shay, Jr. was held at Charles Street Jail. Thomas Shay, Jr., is a co-defendant in this case, and a person whose inculpatory statements the prosecution will attempt to introduce into evidence in this case. While at Charles Street Jail and while represented by counsel, Thomas Shay, Jr. made several collect calls to Mr. Kelly.

2. During at least two of those collect telephone calls, Mr. Shay told Mr. Kelly that Shay Sr. was responsible for the Roslindale bombing that killed Officer Hurley.

3. Attached hereto (Exhibit A) is Mr. Kelly's April 20, 1992, letter to Shay Jr.'s then attorney, William C. McPhee, Esq., in which Mr. Kelly relates the substance of two of Shay Jr.'s collect

phone calls in which Shay Jr., contrary to other statements he made to Mr. Kelly and other government investigators inculpating himself in the bombing, claims his father was responsible for the bombing. It also seems likely that during this time frame (March-June, 1992) Shay Jr. made several other collect calls to Mr. Kelly for which no written memoranda exist.

4. In early October, 1992, Shay Jr. executed a proffer agreement with Mr. Kelly in which Mr. Kelly indicated that if Shay Jr. was truthful he could expect a sentence in the range of three years.

5. On November 10, 1992, Mr. Kelly wrote a memorandum where he stated "...I advised Shay (1) we had been unable to corroborate any aspects of his 'story'..."

6. In his November 10th memorandum, Mr. Kelly, inter alia, stated,

Shay stated that out of fear of being charged and spending the rest of his life in prison, he had lied to me and agents in several significant respects. Those aspects of his 'story' which he admitted were untrue are as follows:...

...Shay then told us a new 'story' which he claimed was truthful - obviously we have a high degree of skepticism. his new story may be summarized as:...

7. On November 12, 1992, Mr. Kelly wrote (Exhibit B) Shay's then lawyer and stated,

I am writing at this time to formally advise you what I have been saying for the past several weeks. To date, ATF has been unable to corroborate any aspects of the proffer provided to us by your client, Thomas A. Shay. It seems that the only independent evidence tending to confirm Shay's story is that which federal investigators had uncovered prior to Shay's recent proffer.

Given the foregoing, absent any new evidence being brought to my attention that substantially corroborates significant aspects of Shay's proffer, I am unable to conclude that he has been 'entirely truthful and cooperative' concerning the offense under investigation or his role therein.

8. On December 15, 1992, according to Mr. Kelly's memorandum of January 5, 1993, Shay Jr., in the company of his attorney, told Mr. Kelly that the bomb was attached to his father's car several days before the explosion "while the Buick was parked in the vicinity of the Waltham Tavern in the South End of Boston."

9. According to the transcript of the October 17, 1992, Channel 56 interview of Thomas Shay, Jr. by Karen Marinella, Shay said:

...U.S. Attorney Paul V. Kelly said, it doesn't matter how much money this task force will take to find the package, it could go from \$1,000 to \$1,000,000, doesn't matter as long as they convict Al Trenkler...

...[H]e knows that Al Trenkler is the dangerous one so he offered me, in April, 20 years and he offered me ten - five and down to three years here to go to a white-collared prison with - out of 6,000 inmates, a federal prison, 3,500 are appellants so it's a very, you know, three years, I can do standing on my head...

...My father knew that was a bomb. How did he know? Nobody knows. My father denies that he ever had any threats. Paul Kelly talked to him the other day, and Paul Kelly said, 'Tom Shay, you know, did you get some threats, I don't believe you.' He said, 'I think you're a liar because I think you got threats or something in that sense...'

...From my knowledge, my father picked it up three times and threw it, but then Paul Kelly said my father changed his story. He picked it up carefully, placed it, placed it again and placed it again, and here come these officers, and they go to lift it up with a - a file. lift it up and it blows up on them.

10. Based upon the foregoing and possibly other telephone conversations between Thomas Shay Jr. and Mr. Kelly, Mr. Kelly is an important defense witness.

11. More specifically, Mr. Kelly is an important witness relating, inter alia, to the following matters:

a. Shay Jr.'s prior inconsistent statements made to him in at least two telephone conversations;

b. His opinions, as expressed in the November 10th memorandum (defendant requests permission to submit the entire November 10th memorandum to the Court under seal) and November 12th letter (Exhibit B) as to the credibility of Thomas Shay, Jr. See Federal Rule of Evidence 608(a);

c. The fact that after executing a three-year sentence proffer agreement in October, Shay Jr. implicated Alfred Trenkler, and the government concluded his proffer testimony could not be corroborated.

Wherefore, defendant respectfully requests:

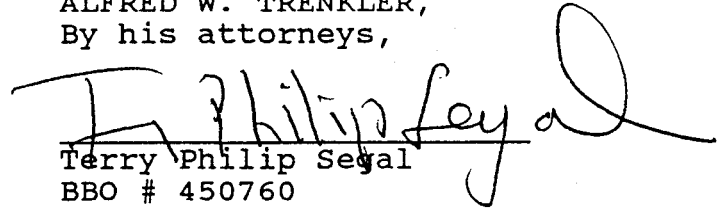
1. This Court permit defendant to call Paul Kelly as a witness.

2. This Court conduct an evidentiary hearing to determine the substance of any telephone conversations between Paul Kelly and Thomas Shay Jr., and determine whether Mr. Kelly made the statements attributed to him by Shay, Jr. in the Channel 56 interview.

3. This Court permit defendant to submit, under seal, the November 10th memorandum and the January 5, 1993, memorandum referred to in this motion.

4. This Court grant such other relief as is meet and just.

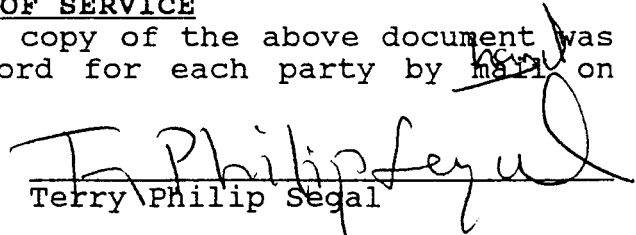
Respectfully Submitted,  
For the defendant,  
ALFRED W. TRENKLER,  
By his attorneys,



Terry Philip Segal  
BBO # 450760  
Scott P. Lopez  
BBO # 549556  
Segal & Feinberg  
210 Commercial Street  
Boston, MA 02109  
(617) 720-4444

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by <sup>mail</sup> on September 15, 1993.



Terry Philip Segal





United States Attorney  
District of Massachusetts

1107 J.W. McCormack Post Office Courthouse  
Boston, Massachusetts 02109

November 12, 1992

Francis J. O'Rourke, Esquire  
101 Federal Street  
Boston, MA 02110

Jefferson W. Boone, Esquire  
Boone & Henkoff  
138 Brighton Ave.  
Allston, MA 02134

Re: Thomas A. Shay

Dear Messrs. O'Rourke & Boone:

I am writing at this time to formally advise you what I have been saying for the past several weeks. To date, ATF has been unable to corroborate any aspects of the proffer provided to us by your client, Thomas A. Shay. It seems that the only independent evidence tending to confirm Shay's story is that which federal investigators had uncovered prior to Shay's recent proffer.

Given the foregoing, absent new evidence being brought to my attention that substantially corroborates significant aspects of Shay's proffer, I am unable to conclude that he has been "entirely truthful and cooperative" concerning the offense under investigation or his role therein.

Our investigation will continue. At this point I anticipate that we will be seeking to lodge further and more serious charges against Shay upon completion of our investigation.

Very truly yours,

A. JOHN PAPPALARDO  
UNITED STATES ATTORNEY

By:

  
\_\_\_\_\_  
PAUL V. KELLY  
Assistant U.S. Attorney

cc: Frank A. Libby, Jr., AUSA

U.S. Department of Justice



United States Attorney  
District of Massachusetts

1107 J.W. McCormack Post Office and Courthouse  
Boston, Massachusetts 02109

December 23, 1992

BY HAND

Nancy Gertner, Esquire  
Dwyer, Collora & Gertner  
400 Atlantic Avenue  
Boston, MA 02110

Terry Philip Segal, Esquire  
Segal & Feinberg  
210 Commercial Street  
Boston, MA 02109

Re: United States v. Thomas A. Shay and Alfred W. Trenkler  
Criminal No. 92-10369-Z

Dear Counsel:

This letter will summarize the automatic discovery being provided to you, pursuant to Local Rule 116.1., as counsel for one of the defendants in the above action. The actual documents being produced will be delivered to you directly by Nightrider Overnight Copy Service sometime later today.

1. Statements of Defendants

Any written or recorded statements made by either defendant will be supplied to counsel for both parties. Such materials will include the following:

- a. Statements by either defendant to law enforcement agents which are recorded in written investigative reports.
- b. Videotapes containing relevant statements by Shay Jr.
- c. Audio tapes containing relevant statements by either Shay Jr. or Trenkler.<sup>1</sup>

<sup>1</sup> Audio tapes and videotapes are being reproduced and will be provided to counsel early next week.

6. Intercepted Wire And Oral Communications

All documents, records and recordings made or generated pursuant to the provisions 18 U.S.C. Sections 2515-2518, together with any consensually recorded communications, will be produced. The actual tapes will not be available until next week.

7. Promises, Rewards or Inducements

The government has provided promises, rewards or inducements (as described below) to the following witnesses:

- a. Christopher Henry - No promises or inducements in advance; following grand jury testimony AUSA Frank Libby called ADA Timothy Spillane (Norfolk) to report that Henry had provided what we believed was truthful and credible testimony.
- b. Mark Means - No promises or inducements in advance; following grand jury testimony AUSA Frank Libby called ADA Arthur Tiernan (Suffolk) to report that Henry had provided what we believed was truthful and credible testimony.
- c. Robert Evans - No promises or inducements in advance; following grand testimony we informed Evans that he could have his attorney (Beverly Cannone, Esq.) call AUSA Kelly or Libby to confirm that he had testified and to discuss our impression of the truthfulness and credibility of his testimony. To the best of our knowledge, attorney Cannone never called.
- d. Donna Shea - Prior to her second appearance before the grand jury, she asked us about any help we might be able to provide with her husband's case (John Shea). We instructed her to have her husband's attorney call AUSA Kelly or Libby if she desired, but advised her that it was unlikely that her husband would derive any benefit from her testifying before the grand jury.
- e. Jim Harding - As per the documents provided, Harding was arrested pursuant to a criminal complaint for obstruction of justice on March 5, 1992. That complaint was dismissed on March 23, 1992, after Harding agreed to supply a complete and truthful proffer. Harding later testified before the grand jury.

Harding subsequently provided unsolicited assistance to the government, apparently in hopes

that he might claim some portion of the outstanding reward money. Harding was not promised any reward money, has made no claim, and is likely not entitled to the same.<sup>3</sup>

- f. Jennifer Powers - As per the documents provided, Powers was arrested pursuant to a criminal complaint for failure to comply with a grand jury subpoena on February 14, 1992. That complaint was dismissed on or about February 20, 1992, after Powers agreed to comply with the subpoena and testify before the grand jury.
- g. Jeffrey Berry - As per the documents provided, Berry was granted immunity pursuant to a court order on June 17, 1992, and thereafter testified before the grand jury.
- h. Thomas Shay - As per the documents provided, Shay signed a proffer agreement with the government on October 6, 1992, and a further agreement on November 9, 1992. After executing these agreements, Shay provided information to investigators. The proffer arrangement with Shay was terminated on November 12, 1992 when it was determined that he had not been "entirely truthful and cooperative."

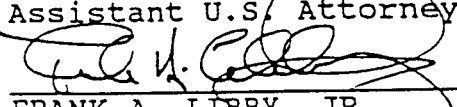
The government recognizes that its duty of disclosure and discovery as set forth in Local Rule 116.1 is a continuing one. Please consider this letter as a request for reciprocal discovery as set forth in Rules 16(b) and (c) of the Federal Rules of Criminal Procedure, and in Local Rule 116.1(b).

Very truly yours,

A. JOHN PAPPALARDO  
United States Attorney

By:

  
\_\_\_\_\_  
PAUL V. KELLY  
Assistant U.S. Attorney

  
\_\_\_\_\_  
FRANK A. LIBBY, JR.  
Assistant U.S. Attorney

cc: Cathy Dello Russo, Deputy Clerk to  
Rya Zobel, USDJ

---

<sup>3</sup> A supplemental letter more fully describing Harding's actions will be supplied to counsel.

Dianne,

CALL Boston Police (Don't let know one know about this) tell them I was in holding cell with Thomas Shay at Quincy district court and he told me all about killing that cop: 1

① Told me he did it.

② Told me about guy who made bomb

③ And asked me how much time he'd get for murder

④ Told me about the effects of a high explosive.

⑤ Told me if he could get out on bail he'd screw.


I want a complete Pardon of All my cases, a Personal Reconise on my bail Right now, And I'll testify in court.

GRANTING POWER OF ATTORNEY

I, ALFRED W TRENKLER, SSN 033-38-2461, INMATE  
NUMBER 19377-038, DO HEREBY GRANT MY STEP  
FATHER, JOHN D WALLACE, WHO RESIDES AT  
7 WHITELAWN AVENUE, MILTON MASSACHUSETTS,  
THE POWER OF ATTORNEY.

SIGNED UNDER THE PAIN AND PENALTIES OF  
PERJURY THIS 20<sup>TH</sup> DAY OF JULY, 1999.

Alfred W Trenkler  
ALFRED W TRENKLER  
INMATE # 19377-038  
P.O. BOX 3000  
USP ALLENWOOD  
WHITE DEER, PA 17887

  
CASE MANAGER  
AUTHORIZED BY THE ACT OF JULY 7,  
1955, AS AMENDED TO ADMINISTER  
OATHS (18 USC 4004).

In Mr. Kelly's letter dated December 23, 1992, he stated that Evan's attorney, Beverly Cannone, Esq., never called to discuss the truthfulness and credibility of his testimony.

Petitioner prays that the court will allow him to file this Addendum to the Traverse recently submitted.

Respectfully submitted,

*John D. Wallace*

John D. Wallace  
for Alfred Trenkler, Pro Se

cc: Kevin McGrath, Assistant United States Attorney  
Michael B. Cohen, Esq., Legal Research Limited  
Joseph Kalady, Legal Research Limited  
Alfred W. Trenkler

Attachments:

1. Affidavit of Terry Phillip Segal, Esquire.
2. Defendant's motion for authority to call Assistant United States Attorney Paul Kelly as a defense witness at trial.
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4. Paul V. Kelly, letter dated December 23, 1992.
5. Robert Evans, letter to his wife, Dianne, on or about November 1, 1991.
6. Power of Attorney granted to John D. Wallace by Alfred W. Trenkler.

*Norfolk County*  
*The above named*  
*before me*

Trenkler vs USA Traverse - Page 5

*John D. Wallace* *July 29, 1995*  
*appeared personally*  
*Margaret M. Henebers, Notary Public*  
*Mass Commissioner expires Jan 22, 2004*