UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA)))
v.)
THOMAS A. SHAY	;

MOTION TO PRECLUDE EVIDENCE OF AN ALLEGED THEFT BY SHAY JR.

Defendant Thomas A. Shay ("Shay Jr.") hereby moves that this Court prohibit the introduction of an alleged theft of property from Mary Flanagan and Thomas L. Shay in or about June 1988, which the government has informed him it may seek to introduce at trial, as an exception to Rule 404(b)'s prohibition against character evidence. Shay Jr. objects to the introduction of this alleged theft for the following reasons:

- 1. Use of this alleged theft for the asserted purpose of showing motive is nothing but character assassination, clearly prohibited by Rule 404(b) of the Federal Rules of Evidence and the Due Process Clause.
- 2. First, there is no reliable evidence at all that Shay Jr. committed the theft. Shay Sr. never pursued the claim; no charges were issued, much less litigated.
- 3. The government seeks to introduce the alleged theft to show motive, because, it asserts that Shay Sr. informed Shay Jr. he would never forgive him for what he had done.
- 4. However, Shay Jr. continued to have a relationship with his father after the incident in June of 1988. See attached Affidavit.

5. The government therefore seeks to introduce this incident for nothing other than character assassination. It must be precluded under Fed.R.Evid. 404(b) and the Due Process Clause.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(c), Shay requests that the Court schedule a hearing on this motion on the ground that oral argument will be of assistance to the court.

Respectfully submitted,

THOMAS A. SHAY By his attorneys

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Dated: June 24, 1993

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney or record for each other party