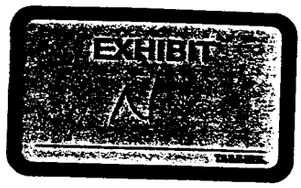

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
vs.	)	Criminal No.:
	)	92-10369-Z
ALFRED W. TRENKLER	)	

DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE ADMISSION OF EXIS COMPUTER EVIDENCE

Now comes defendant, Alfred W. Trenkler, and moves this Court to exclude the admission of the EXIS computer evidence.

In support of this motion, defendant states that an adequate foundation for admission of the EXIS computer evidence can not be established in this case. Specifically, introduction of the EXIS computer evidence is prohibited by the hearsay rule, best evidence rule, and authentication rules.

1. First, the EXIS database consists of totem pole hearsay reports which are not independently admissible as an exception to the hearsay rule. There can be no showing by Mr. Scheid that the reports he added to the EXIS computer were:

1) Made at or near the time by, or from information transmitted by, a person with knowledge; or
2) That these reports were "kept in the course of a regularly conducted business activity"; or
3) That "it was the regular practice of [the] business ... to make the memorandum."

Thus, these totem pole hearsay reports are not admissible under either Fed. Rules Evid. 803 (6) or 805.[1]

2. Moreover, the method and circumstances of preparation indicate a complete lack of trustworthiness. See R. 803(6)(records of regularly conducted activity admissible unless the method or circumstances of preparation indicate lack of trustworthiness). Specifically, this Court is aware from Mr. Scheid's former testimony that the information concerning the 1986 incident was not added to the EXIS system until after October 28, 1991. See Motion To Suppress Transcript (October 22, 1993), p. 72, lines 7-15 (Exhibit A). In fact, defendant submits that the 1986 incident was placed into the computer in anticipation of bringing the criminal indictment at issue in this case almost five (5) years after the fact. In addition, defendant learned on Friday that both the encoding forms, and ATF reporting forms utilized to place information on the computer are routinely discarded one (1) year after the information is placed on the computer. Thus, in this case, both the method (information from investigative reports are placed on reporting forms which in turn are placed on encoding forms), and the circumstances of its preparation (information can be added or deleted at any time) indicate a lack of trustworthiness.

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[1]Defendant further notes that these reports are not admissible under the exception set forth in Rule 803(8) because 1) there was no "duty to report" and 2) 803(6) specifically excludes "in criminal cases matters observed by police officers and other law enforcement personnel."

3. Second, the Best Evidence Rule prohibits introduction of this computer evidence because it can not be shown by the government to "reflect the data accurately." See Fed. R. Evid. 1001(3). Given that there is no duty to report the information contained in the EXIS to ATF, and given that there is no uniform method in which to report this information, there is a serious question as to whether the information contained on the original investigative reports are in fact contained in the computer. See Fed. R. Evid. 1003 (permitting admissibility of duplicates unless there is a genuine question as to the authenticity of the original). In the present case, the "original" or "investigative report" is two or three times removed from the information contained on the computer. Fed. R. Evid. 1004 does not permit admission of other evidence of the contents of a writing unless there is a showing that 1) all originals are lost or have been destroyed; 2) no original can be obtained by available judicial process; or 3) the writing is not closely related to a controlling issue. Fed. R. Evid. 1006 also requires that the originals, or duplicates, of the contents of voluminous writings, are made available to defendant at a reasonable time and place prior to admission of a summary. There has been no showing by the government that the original "investigative reports" have been lost or destroyed. There has been no showing that the original reports are not available by judicial process. Moreover, not only has

defendant not been provided an opportunity to look at the originals or copies of the relevant reports, defendant recently learned that the hearsay encoding forms and ATF reporting forms no longer exist.

4) Third, Mr. Scheid is not capable of properly authenticating the reports contained within the EXIS computer. Specifically, Fed. R. 901(7) provides that public records or reports can be authenticated by "[e]vidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept. Where a process or system is utilized like the EXIS database, authentication also requires "evidence describing a process or system used to produce a result **and** a showing that the process or system **produces an accurate result**." Mr. Scheid cannot testify to any of these propositions. The information contained in the EXIS computer is not "authorized by law to be recorded or filed and in fact recorded or filed". The information is not "from the public office where items of this nature are kept." Most importantly, although Mr. Scheid can testify that the system is used to produce a result, he can not testify to facts which would show that the process or system **produces an accurate result.** Mr. Scheid can only testify to the fact that the database functions accurately whether or not accurate information is added to the system. He can not testify that the system **produces an accurate result.**

In sum, since the government can not establish the necessary foundation for the admission of this evidence, and this evidence is offered on a controlling issue in this case (i.e. identification), admission of this evidence will unfairly prejudice defendant.

WHEREFORE, defendant requests this Court to exclude any and all evidence relating to the EXIS computer system at trial.

Respectfully submitted,
For the Defendant,
ALFRED W. TRENKLER,
By his attorneys,

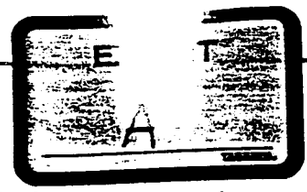
Terry Philip Segal
BBO # 450760
Scott P. Lopez
BBO # 549556
Segal & Feinberg
210 Commercial Street
Boston, MA 02109
(617) 720-4444

Dated: November 8, 1993

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 hand on November 8, 1993.

Scott P. Lopez



A Oh, I know it was put in, but I don't remember whether I personally did it or the data entry person did it.

Q Do you recall who put the Quincy incident in?

A Yes.

Q Who did that?

A I did that.

Q Do you recall whether you did that before or after October 28, 1991?

A I put it in afterwards.

Q So, in fact, on October 28, 1991, the Quincy incident was not part of your data base?

A That's correct.

Q In fact, the local department had not reported that incident to ATF?

A Or to anyone else, as far as my knowledge is concerned.

Q And shortly thereafter, the 1992 incident was put into the data base?

A After the incident happened, yes.

Q Now, let me ask you this, sir, if you had queried one single magnet, would the 1986 incident have popped up?

A At what particular time are you talking about?

Q After you put the 1986 information into the computer?

A If I queried magnets?

Q Magnet, singular?

A I would have to use the code for magnet, and it