

COPY

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 94-1301

UNITED STATES

Appellee

v.

ALFRED TRENKLER

Defendant - Appellant

DEFENDANT-APPELLANT ALFRED TRENKLER'S
DESIGNATION OF APPENDIX AND STATEMENT OF ISSUES

Pursuant to Fed.R.App.P. 30(b), the Defendant-Appellant, Alfred Trenkler, hereby designates the following portions of the record to be included in the Appendix.

(a) The following papers filed in the District Court:

1. Docket Sheet.
2. Superceding Indictment.
3. Government's Motion in Limine to Admit Evidence of 1986 Bombing, and Defendant's Opposition thereto.
4. Defendant's Motion in Limine to Exclude 404(b) Evidence at Trial (and attachments thereto), and Government's Opposition thereto.
5. Defendant's Motion in Limine to Exclude Any Testimony by Michael Coady which relates to the 404(b) Evidence Previously Excluded by this Court, and Government's Opposition thereto.
6. Defendant's Motion to Strike testimony of Michael Coady, and Government's Opposition thereto.

7. Defendant's Motion to Preclude the Government from Mentioning Any Statements by Thomas Shay, Jr. in its Opening, and Government's Opposition thereto.
8. Defendant's Motion to Preclude Thomas Waskom from Demonstrating the Manner in Which the 1991 Bomb Was Designed to explode, and Government's Opposition thereto.
9. Defendant's Motion in Limine to Exclude Admission of EXIS Computer Evidence, and Government's Opposition thereto.
10. Defendant's Motion for Leave to Present Testimony of Maurice Flynn pursuant to Fed R. Evid. 613(b), and Government's Opposition thereto.
11. Defendant's Motion for Production of Cynthia Wallace's Lab Notes, Charts and/or Results Produced by Instrumentation Analysis For the Identification of Dynamite and Any Other Results of Tests Conducted by Ms. Wallace or Conducted by ATF's Laboratory, and Government's Opposition thereto.
12. Defendant's Motion For Voir Dire hearing to determine Whether Certain Statements Allegedly Made to William David Lindholm were Obtained in Violation of Defendant's Right to Counsel, and Government's Opposition thereto.
13. Government's Motion to Quash Trial Subpoenas to Bureau of Prisons and U.S. Marshall, and Government's Opposition thereto.
14. Decision of Court (Zobel, D.J.) on above-referenced motions.
15. Defendant's Notice of Appeal.
16. Defendant's Motion for New Trial.
17. Defendant's Final Exhibit List.
18. Government's Final Exhibit List.
19. Verdict.
20. Judgment.

(b) The following portions of the trial transcript:

Evidentiary

Hearing,

October 22, 1993:	Entire Transcript	(pp. 1-236)
Day 1 of Trial:	Discussion and Decision Regarding Admissability of 1986 Device	(pp. 1-2 - 1-5) ¹
Day 2 of Trial:	Opening Statement of Government	(pp. 2-4 - 2-38)
Day 4 of Trial:	Testimony of Cynthia Wallace and Discussion and Decision Regarding Defendant's Access to Cynthia Wallace's Lab Notes	(pp. 4-16 - 4-134)
Day 5 of Trial:	Testimony of Thomas Wascom	(pp. 5 -44 - 5-139)
Day 7 of Trial:	Discussion and Decision Regarding Admissability of Statements by Thomas Shay, Jr.	(pp. 7-89 - 7-134)
Day 11 of Trial:	Testimony of Michael Coady	(pp. 11-11 - 11-25)
Day 12 of Trial:	Testimony of Stephen Scheid	(pp. 12-52 - 12-126)
	Testimony of Thomas Wascom	(pp. 12-127 - 12-140)
Day 13 of Trial:	Testimony of Thomas Wascom	(pp. 13-3 - 13-70)

¹ Designation of the trial transcript begins with the particular number of the day of trial and follows with the page number reference.

Day 17 of Trial: Jury Charge (pp. 17-101 - 17-131)

Day 20 of Trial: Discussion and Decision (pp. 20-2 - 20-17)
 Regarding Defendant's
 Request for Jury
 Instruction on
 Circumstantial Evidence

Day 15 of Trial: Testimony and (pp. 15-143 - 15-260)
 (United States v.
Thomas Shay, Jr.
 Criminal No.
 92-10369) Discussion Regarding
 So-Called "Signature
 Issue"

Day 16 of Trial: Testimony and (pp. 16-2 - 16-5)
 (United States v.
Thomas Shay, Jr.
 Criminal No.
 92-10369) Discussion Regarding
 So-Called "Signature
 Issue"

(c) The following Trial Exhibits:

1. Government's Trial Exhibits
2. Defendant's Trial Exhibits

(d) Defendant-Appellant Alfred Trenkler hereby states that he intends to present the following issues for review to this Honorable Court:

1. Whether the Defendant was substantially prejudiced and deprived of a fair trial by the Court's erroneous admission under F.R.E. 404(b) of the evidence relating to the 1986 incident particularly with respect to the so-called "signature issue?"
2. Whether the Court erred by failing to exclude and strike the opinion testimony of Thomas Waskom on the signature issue where an insufficient foundation and proper chain of custody was established?
3. Whether the Court erred by failing to exclude and strike the testimony of Michael Coady after the Court had excluded similar proffered testimony under F.R.E. 404(b)?

4. Whether the Court erred by failing to grant a mistrial after opening statements based on Mr. Kelly's reference to statements by Thomas Shay, Jr. which clearly violated the rules set forth in Bruton and which the Court subsequently refused to admit at trial?
5. Whether the Court erred by failing to preclude or give a limiting instruction as to the Government's remote control bomb demonstration during the testimony of Thomas Waskom as highly prejudicial when coupled with the testimony of Thomas McKernan?
6. Whether the Court erred by failing to sustain Defendant's numerous and continuing objections, and permitting the admission of each and every statement by Thomas Shay, Jr. at trial where this Court excluded other statements by Thomas Shay, Jr. as "inherently unreliable?"
7. Whether the Court erred by failing to sustain Defendant's objection, and permitting the admission of a video-tape concerning a M-21 Flash Simulator during Thomas Waskom's testimony?
8. Whether the Defendant was substantially prejudiced and deprived of a fair trial by the Court's erroneous admission of the EXIS computer evidence where an adequate foundation was not established, and where the evidence should have been ruled inadmissible pursuant to the hearsay rule, best evidence rule, and authentication rules?
9. Whether the Court erred by prohibiting Defendant from calling Maurice Flynn to testify to prior inconsistent statements by the Government's witness, Richard Brown?
10. Whether the Court erred by prohibiting Defendant access to lab notes of Ms. Cynthia Wallace relative to her forensic identification of dynamite?
11. Whether the Court erred by prohibiting Defendant from calling Mr. Kelly as a witness to testify to statements by Shay, Jr. which were inconsistent with guilt?
12. Whether the Court erred by refusing to give the jury an instruction, in response to the jury's question on circumstantial evidence, that if the circumstantial evidence and the inferences therefrom were consistent with both guilt and innocence, the Defendant was entitled to an acquittal?

13. Whether the Court erred in denying Defendant's Motion for Acquittal made at the conclusion of the Government's case and at the conclusion of the evidence?

Respectfully Submitted,

ALFRED TRENKLER



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DATED: June 6 , 1994
T:539

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 mail (by hand) on 4/6/94.

Amy J. Axelrod