

ISSUES

I. Trial attorney Terry Segal did not preserve for appeal the testimony of Dr. Philips, Shay Jr's psychiatrist. Philips would have testified that Shay Jr had a disorder causing him to "spin a web of lies" to be the center of attention even if it were to harm him. This psychiatrist had been barred in Shay Jr's trial by Judge Rya Zobel but in subsequent hearings and appeal decision was said to be relevant resulting in Shay Jr being awarded a new trial. The reason my attorney gave for not asking for a hearing to admit Philip's testimony was because of Zobel's adamant refusal to even hear about this psychiatrist during proceedings in Shay Jr's trial. To support the ineffective assistance claim, I was prejudiced for the simple reason that had my attorney merely asked for a hearing concerning this psychiatrist, I may have been granted this request since I had no other way to cross examine Shay Jr's statements that had been entered via a videotape and through testimony of inmates, since the codefendant Shay did not testify at my trial. My **only** possible defense against these statements would have been through Dr Philips since Shay Jr was not testifying. The appeals court decided that psychological testimony was not considered new evidence even though without a hearing during Shay Jr's trial there was little to go on as to **what** Dr Philips would say. Therefore, my attorney failed to preserve it for appeal.

SEE APPEALS COURT DECISION, PAGE 41

MEMORANDUM OF DECISION, PAGE 2

APPEALS COURT DECISION, JAN 6, '98, PAGE 4,9

GOVERNMENT REPLY RE §2255 MOTION FOR INEFFECTIVE ASSISTANCE CLAIM

II. There was another witness that was available to impeach Shay Jr - USADA Paul Kelly - Kelly had taken 3 "proffer" statements from Shay Jr concerning "details" of his participation in this crime as well as pointing the finger at me in the hopes of getting a "deal" of only 3 years incarceration. However, Kelly and the ATF had not been able to corroborate **any** statements of Shay Jr's and considered him to be lying. These **same** statements were made by Shay Jr to **WLVI Channel 56** and to other inmates which had both been displayed in my trial. My trial attorney had filed a motion to require USADA Paul Kelly to take the stand but my attorney had been told by Judge Rya Zobel that it "was too late in the game" and that it would take too long to brief another US Attorney to take Kelly's place. I was prejudiced in that I had no other way to cross examine or impeach Shay Jr other than putting Kelly on the stand since only Kelly had made the statements in the form of memos to Shay Jr's attorney that **none of Shay Jr's statements could be corroborated**, statements that had been identical to what Shay Jr had repeated to inmates and again to Channel 56 and statements that had been used against me. This would have shown that the government was using known lies of Shay Jr's against me. This would have been even more powerful evidence than the psychiatrist, Dr. Philips - Kelly had **proven** that Shay Jr was lying whereas Dr Philips could only show that Shay jr had a habit of telling stories with no way for the listener to tell if these stories were true or false.

SEE TRENKLER MOTION TO CALL ASSISTANT US ATTORNEY PAUL KELLY

III. William David Lindholm, the government "rat"
My trial attorney, Segal, had "made minimal effort to impeach Lindholm". I had requested Segal to subpoena inmates from the Plymouth County House of Correction where Lindholm and I had been held in order to show that Lindholm was lying. By Lindholm's own admission, there were some 40 inmates in the orientation unit when he had arrived but the number of inmates dwindled down to 6 inmates - I had requested my attorney to interview these inmates that would have shown that beyond the 5-10 minute conversation I had with Lindholm, there was no other interaction between myself and Lindholm, Lindholm had remained in bed almost the entire time he was there in fact it had been rumored that he had AIDS and everyone, including me, avoided him like the plague. These inmates would have testified that I constantly proclaimed my innocence **and** that Lindholm would spend his day reading newspapers in bed, something that Kindholm had denied. I was prejudiced in that I had available witnesses to corroborate my avoiding Lindholm and my proclamation of innocence. I had no other way to obtain these witnesses without the assistance of my attorney. Interesting in that there was **no way** or **no one** to corroborated **any** of Lindholm's statements. My attorney refused to subpoena and or interview these inmates that would have impeached Lindholm. Even the Appeals Court had noted that Segal had made only a "minimal effort" to impeach Lindholm. The government had relied most heavily on Lindholm, in fact, Lindholm was said to be the "overwhelming evidence" that Had rendered the otherwise harmful evidence against me to harmless error "in light of the Lindholm testimony". My attorney did next to nothing to impeach Lindholm and had ignored my wishes to bring in available witnesses that could have impeached this witness.

THE NEWSPAPERS
CONTAINED THE SAME
ITEMS LINDHOLM W.
TESTIFYING THAT
FOU 1102

SEE APPEALS COURT DECISION, 1995, PAGE 10,12,27,39,64
MEMORANDUM OF DECISION, PAGE 2
APPEALS COURT DECISION, 1998, PAGE 8

Concerning Lindholm, I recently received an affidavit from a John J. Bowden that states Lindholm had been in^{1A} the same prison unit where Lindholm ~~and~~^{had} been held during my trial. Bowden states that while in the same unit as Lindholm, Lindholm had stated that he did not care if Trenkler was guilty or not, Lindholm was not going to pass up his chance to make a deal with the government by testifying against me, if Lindholm didn't do it, someone else would. Lindholm had told Bowden to simply look up Rule 35(b) to explain how Lindholm would be getting out of prison for his **upcomming** testimony against Trenkler.

I believe that this constitutes "new evidence" which was unknown or unavailable at the time of trial, despite due diligence material and likely to result in acquittal upon retrial.

Lindholm would no longer be considered the "overwhelming evidence" that seems to have rendered harmful evidence harmless.

SEE AFFIDAVIT

IV. The "overt act" evidence was impeachable but my trial attorney failed to utilize a witness that would have totally refuted this evidence.

The Radio Shack employee that "witnesses" Shay Jr making a purchase of components the government maintained were used in the making of the '91 bomb had been discredited in Shay Jr's trial by Judge Rya Zobel's decision that in light of fellow employee, **Alan Kingsbury**, that had stated that he witnessed "two Middle Eastern men" making the purchase, not Shay Jr.

Dwayne Armbrister, the employee that had allegedly made the sale to Shay Jr, is allowed to testify in my trial. My attorney failed to take advantage of the same witness that Zobel had credited with the striking of Armbrister in Shay Jr's trial. This would have been an obvious witness that my attorney had available to him and which the trial judge in my case had believed and **had not believed Armbrister**.

This was very important evidence for the government's case, since there was no other evidence to show any "overt act".

This would have also blown the government's theory of "similar M.O." in that they would not be able to say I had sent Shay Jr into a store namely a Radio Shack that happened to be across the street from a major project I was doing for Christian Science for the past year.

Combined with evidence of "overly suggestive" showing of "mug shots" to Armbrister over months of time before he could "remember" Shay Jr making the purchase, this would pretty much show that Armbrister simply said what the government wanted him to.

I was prejudiced in that I had available to me powerful impeachment evidence that all but negated the "overt act" of Shay Jr, the "similarity" to the 1986 "prior act", thus the M.O. theory and the lack of my participation in this case.

SEE appeals court decision, page 7, 24, 40
memorandum of decision citation, page 9, 10

V. FLAWED DEFENSE EXPERT TESTIMONY

My attorney had prohibited me from corresponding, meeting or conversing with my hired bomb expert. In doing so it was to ensure that I gave no input to the expert's analysis of my prior bad act. However my expert, **Denny kline**, in trying to show a dissimilarity between my prior act and the '91 bombing, had given my prior act device attributes and features that never existed, namely 1) **Twisted soldered and taped wires** and 2) **slide switch**. **Nowhere** in the 1986 device evidence was there **any** mention of the "twisted" aspect of wires. While there was no evidence of twisted, soldered and taped wires in the '91 device evidence room when my bomb expert, private investigator and attorney had gone to inspect the bomb remains on multiple occasions, it was only **after** my bomb expert had signed an affidavit stating, wrongly, that the 1986 evidence had twisted soldered and taped wires **unlike** the 1991 device, that the government would "suddenly" produce a "twisted, soldered and taped" wire and the government now saying that, **bolstered** by Kline's error, that this "twisted" aspect showed a "unique style" of attaching wires to each other thus, a "signature trait". Without Kiline's wrong analysis of the 1986 device, this would have been one thing less to show a similarity between the 1986 device and the 1991 device. This was a fatal error on the part of my attorney and bomb expert. For some reason, since Kline did not see "twisted wires" in the 1991 device, he puts them in the 1986 device, again, the "twisted" aspect of the 1986 device was never mentioned in the 1986 report as well as the fact that the author of the 1986 report had deceased prior to the 1991 bombing. **There was no way for either Kline or Waskom to base their finding that the 1986 device contained "twisted wires"**, further, Kline had placed a "slide switch" in the 1986 device but had no basis for doing so since **nowhere in the 1986 report was there any mention of the presence of a "slide switch" being used and the only person that could have verified this was deceased**. There was no way for either Kline or Waskom to know

whether or not the "twisted" aspect or "slide switch" ever existed. Further, there were no photos, schematics or any physical remains of the 1986 device other than a list of parts that had been recovered and that there was the presence of tape and solder, therefore, there was no way, other than guessing, of knowing how the 1986 device ^{was} designed or what method of connecting wires beyond the 1986 report stating that there were solder and tape. None of these details had ever been published, therefore, never available, therefore, could not have been determined short of ESP. I was prejudiced in that my attorney and bomb expert would actually guess instead of simply stating that there was no way to ascertain details beyond what was available in the 1986 report, therefore, not enough evidence available for signature analysis. These "guesses" the government would use to their full advantage and most likely was the evidence that had allowed my prior act into trial.

Another point, if it is useful, during the hearing on whether to admit the 1986 "prior act" evidence, my attorney requested that I remain out of the procedure, something I had told him might be important for me to be present for, since I knew that my attorney Segal would be snowed by the experts' knowledge in electronics as well as the USADA Frank Libbey who also had a background in electronics. I felt that I could have assisted my attorney since I had a vast background in electronics and would have been able to combat whatever tried to "snow" the judge with.

SEE Appeals Court decision Page 8, 22, 26

VI. Attorney Segal did not present witnesses that would have shown "someone else" guilty. There were many witnesses that would have shown that Shay Sr was lying and possibly carrying the actual bomb that had exploded moments after Shay Sr had been seen carrying it. For example in a **Boston Police field report Evelyn Pirello** had stated that she saw Shay Sr get out of a light colored car with a tool box in one hand and a "drab colored 12" by 6" flat box" in his other hand and quickly going up his driveway toward the very spot where the bomb explodes within minutes. At around the same time, **Elenor McKernan** sees Shay Sr standing in his driveway **with a black box in his hands**, this also was written in a Boston Police Report. **Tom McKernan** had told police that he had seen Shay Sr within 20 minutes of the bombing coming out of a local gas station bathroom with something in his hands. Later, Tom McKernan would tell the **ATF** that he saw Shay Sr leave the gas station with "nothing in his hands".

Robert Pirello had stated to **Boston Police** that he had seen Shay Sr carrying a tool box in his left hand and a Black box in his right hand. Robert was in the same car as Evelyn. But when Robert Pirrelo testifies, he changes his story and now says that he saw Shay Sr carrying only a "gym bag" and nothing else.

I was prejudiced by my attorney not bringing in these other witnesses that would have shown that 1) Shay Sr had been seen by at least three people carrying an identically described black box as the bomb sitting in front of the jury at my trial as reported in **both ATF and Boston Police Reports** (included) 2) Robert Pirello would look pretty silly changing from his original story to a new story that conflicts with two other people, one of whom was in the same car as he had been.

John Doering was available to testify and would have shown that Shay Sr was lying about being afraid of driving his car because he, Shay Sr, thought that there might be more bombs

under his car. Doering stated to police that Shay Sr was not driving his neighbor's car, a **gray Mazda**, on October 28th, but in fact, Shay Sr was driving his Blue/Black Buick, ^{ON WHICH} ~~where~~ the bomb had been allegedly attached. Doering also stated that when he, Doering, mentioned that what Shay Sr says he "found" in his driveway might be a bomb, that Shay Sr simply laughed at the "bomb" comment of Doering's. Doering also displayed a knowledge of magnets similar to those used on the 1991 bomb as coming from old auto transmissions and indicated that he **used** to have some of them on an **empty shelf** behind his desk. He also had knowledge of the other type of magnets that were on the 1991 bomb as being used in the autobody business that Shay Sr just happened to be in.

Shay Sr's girlfriend, **Mary Flannagan**, had stated to police that Shay Sr was **paranoid of "Lewis and Jeff"** out to harm Shay Sr, in fact, she had stated to a **Dr Weiner**, a psychiatrist that she and Shay Sr were seeing in relation to Shay Sr's ongoing lawsuit, that Shay Sr would always check under the hood and **seat of his car** before using it for "something" that Lewis or Jeff might have put there. She had also stated to police that Shay Sr had put extra locks on the doors and windows of her house and had motion lights installed around the outside of her house. On the Day of the bombing, Flannagan says to police, **"is he hurt, did he get him?"** in reference to Lewis and Jeff. Flannagan would have shown that Shay Sr was lying when he testified that ^{HE} **never said he was afraid of Lewis or Jeff**, and that Shay Sr had predicted the manner and placement of "something" that would kill or injure Shay Sr and that his **only** enemies were Lewis and Jeff. This would have shown that either Shay Sr was concerned that Lewis and Jeff were after him showing their "guilt" or that Shay Sr was simply forecasting the "bombing" and staging this '91 device to "bolster" his ongoing lawsuit that has a possible yield of \$400,000.00 which, coincidentally, Shay Sr's attorney in the ongoing lawsuit had informed Shay Sr that the insurance company did not believe any of Shay Sr's story.

Sr's attorney in the ongoing lawsuit had informed Shay Sr that the insurance company did not believe any of Shay Sr's stories, that Shay Sr was injured or that he was so paranoid of the people that he is suing that he cannot work, two weeks prior to this bombing.

On over 50 occasions, Dr. Weiner had reported that Shay Sr stated that he was convinced that Lewis and Jeff were out to injure or kill Shay Sr. Dr. Weiner was a psychiatrist hired by the insurance company that Shay Sr was suing - the question I have is, can this particular psychiatrist testify in my trial in that the psychiatrist was being used to "verify" Shay Sr's problems stemming a prior explosion at the hands of the people he was suing?

None of these witnesses, who were all available, had given Grand Jury testimony as well as being on record via police and ATF Field reports, were called by my attorney, all of which would have aided in the impeachment of Shay Sr as well as the possible guilt of Shay Sr and pointing the blame away from me and toward Shay Sr who had almost all of the attributes that the government stated that I possessed but were never able to prove. After all, Shay Sr was the one that was running a "failing business" and had the demonstrated motive and intent in having a successful lawsuit, shown by the insurance company's psychiatrist, the many police reports filed because of Shay Sr constantly reporting events that he had attributed to "Lewis and Jeff", Shay Sr's girlfriend that would have shown Shay Sr's absurd behavior, Shay Sr's history of many successful lawsuits, Shay Sr "predicted" the placement of the bomb under the seat of his car, Shay Sr's paranoia had suddenly increased in the Fall of 1991, the bombing had occurred two weeks subsequent to Shay Sr's attorney informing him that the insurance company did not believe any of his stories, Shay Sr's girlfriend, Mary Flannagan, telling police that Shay Sr had a gambling problem that she had recently "paid off". Shay Sr had made several incriminating statements to police but had

testified that all he was reported as saying to police had been reported in error, that police heard wrong and that Shay Sr never said any of what had written in their reports and had testified to in my trial. Shay Sr was indeed "backed" by the US Attorney, Paul Kelly, in that he, Shay Sr, was correct and that 8 Boston Police officers in 8 separate interviews spanning from minutes to months apart from the time of the bombing in 1991 were all wrong and Shay Sr, the original "prime suspect" in the eyes of the Boston Police, was right. **Without these other available witnesses there was not much else available to impeach Shay Sr.**

VII. The government did not try to examine evidence to show guilty party. The government failed to retain **any** items from Shay Sr's home or place(s) or work and only executed a "cursory search" of Shay Sr's home. Even though Shay Sr had in his possession and had been identified with same, the same brand, size and type of duct tape, electrical tape, nails, wood paneling, glue, flat black primer paint, wire, sawdust, hand tools and a wood working shop, none of these items had been taken for examination. No search had been conducted at Shay Sr's place of business or at Shay Sr's brother's home, **Arthur Shay**, even though Shay Sr had been considered the "prime suspect" by the Boston Police.

When my experts requested to examine Shay Sr's car, the car that the bomb had allegedly been attached to, I am informed that Shay Sr had been given permission to "sell" the car thus preventing me from being able to view key evidence this, within months of the bombing.

Although there remains to this day ^{ELECTRICAL} 6 layers of tape 6" in length, never did the government attempt to separate the tape and examine it for fingerprints. With the total lack of evidence in this case, this could have possibly revealed the identity of the bomb maker and shown my innocence. The government's forensic expert, **Cynthia wallace**, had testified that no attempt was made to separate the tape for possible printing because it had not been deemed important. My trial attorney made no attempt to demand this procedure be attempted even though the tape in question was available for examination.

VIII. Government withholds alibi evidence

I had requested the **Christian Science Monitor Security Log** for the month of **October** to check the dates I had been working at the site. (I had a contract with Christian Science Monitors' World News program, installing microwave transmitter and receiver systems for their world wide news distribution system, I was the consultant, engineer and installer for Christian Science working under my company ARCOMM)

Christian Science security, represented by **Joseph Pelphry**, informed me that the "log was lost" and that no other copies were available and was not in their computer system. What was strange was the fact that out of all the years of records kept, only October of 1991 was missing. But stranger still was the fact that the US government had given me a **partial** copy of the log in question. Missing from the log was a key date, **October 28, 1991**, that I maintain **would have shown that I was working at Christian Science at 12:00PM on October 28th, 1991**, the same day and time that the government would try and place me in Shay Sr's neighborhood **lying in wait** to set off the 1991 bomb. Logically, if Christian Science informs me that the October Log is missing and the government later gives me a partial copy, the government must have taken the log in question and withheld the key dates from my defense. In fact, the government had given me the log for October 18th, 1991 that had shown that I was not working at Christian Science that day, showing that I was not working at Christian Science Monitor that day and sending Shay Jr into the Radio Shack across the street. But the most crucial date was conveniently "missing". Surely, the fact that Christian Science reports the log for the **entire month of October, 1991 and only October, 1991 missing** and the government produces a partial log in discovery, logically would show that the government had access to the **entire** log. Obviously, if I were not at Christian Science near 12:00PM showing my absence

had access to the entire log. Obviously, if I were not at Christian Science near 12:00PM, the government would have given me the October 28th log showing my absence, conversely, had the log proven I was at Christian Science on October 28th, 1991 at 12:00PM, the government would not be able to infer that I was in Roslindale "lying in wait" for Shay Sr, therefore, the October 28th date had been withheld to destroy my alibi.

IX. Trial Attorney did not examine evidence to show someone else was guilty.

The electrical tape that had been recovered from the '91 device had not been examined by the government but neither was it examined by my attorney. Whatever prints existed on that tape, if any, would belong to the bomb maker. This would have been incontrovertible evidence proving someone else's guilt and my innocence all from one test. The question is, who is more at fault, the government or my attorney?

Obviously the government had no interest in finding the guilty party or else they would have attempted to obtain prints.

Secondly, prints had been lifted from Shay Sr's automobile after which he had been allowed to sell the same car. These prints that the government had at their disposal were never given to me to examine as well as the fact that the identity of the prints were never given to me, never mind the fact that the government allowed Shay Sr to "dispose" of the car before I had a chance to examine it, my bomb expert, **Denny Kline**, was an expert on car bombings. Why didn't my attorney subpoena them?

X. Trial attorney failed to request **Mary Anne Leach** to testify which would have impeached her son **Todd Leach** which would have negated the government's "similar M.O." theory. Todd Leach testified that in 1986 I had sent him into a Radio Shack to purchase items for the 1986 device. The government used this testimony to say that my M.O. in 1986 was the same in 1991 by saying that codefendant Shay Jr had been sent into a Radio Shack by me to purchase parts that had been used to "assist" the builder of the 1991 device, showing a signature M.O. to the 1986 device.

Mary Anne Leach had been interviewed by a P.I. who was working for codefendant Shay's attorneys. She stated that her son had told her that he was going to "**lie for the government**" in order to obtain the reward that had been offered in this case, up to \$65,000.00, in order to bail his Uncle **John Shea** out of jail. She also stated that her son was never in a car with me or my roommate, **Robert Craig**, and that he had never left her house with anyone but herself or a family member. (Leach was unemployed at the time and was always home to watch her children as well as the fact that her son was only 9 years old in 1986)

Mary Anne Leach also stated that the 1986 "prior act" was **entirely Donna Shea's idea**, in fact, the simulator used in the 1986 device was owned by Donna Shea, Leach's sister, given to Donna Shea some years prior to the 1986 incident. Donna Shea had "stored" the simulator at Mary Anne Leach's house but had wanted the simulator to show me and to "**get me to find a way to set it off**".

This witness was available and willing to testify. This witness's statements are available from Shay Jr's lawfirm and or P.I. "Emmett" My attorney knew of these statements but had not informed me until **after** my trial. This would have been impeachment evidence of a government witness used to establish M.O. as well as a witness that would have weakened the government's theory that I had some "secret source" for explosives and had simply chosen to use dynamite in 1991 versus "choosing" a simulator in

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in 1986. This witness would show that I did not "choose" a simulator to set off in 1986 to intimidate someone that Donna Shea was having an argument with, instead, Donna Shea chose me to set off a simulator that she had been given some years prior to the 1986 act and something I had not been aware of until 1986.

XI. Trial attorney failed to call 5 alibi witnesses to establish my whereabouts at or around 2:30PM on October 18th.

These witnesses would have put me in my Weymouth office after a meeting with my accountant, **Mark Ramboli**, who had testified, and had terminated at 2:00PM on October 18th i.e. that I could not have been in the middle of Boston at 2:15PM and back in my office by 2:30PM - the overt act was said to have begun at 2:15PM and ended at 2:36PM and I somehow managed to leave my office at 2:00PM, pick up Shay Jr and drive him to the Boston Radio Shack across the street from Christian Science at 2:15PM during Friday rush hour traffic. These witnesses would have shown that I could not possibly been in Boston at 2:36PM.

My attorney did produce Ramboli which could only put me in my office as late as 2:00PM some 15 miles south of Boston but without my other alibi witnesses, the government says that I could not account for my whereabouts after 2:00PM and that I managed to make it all the way into the Middle of Boston through rush hour traffic arriving at 2:15PM at the now famous Radio Shack, although there were no witnesses to place me with Shay Jr or to place me at Radio Shack.

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XII. Trial attorney did not produce local newspaper article that proved that Blasting caps was indeed public knowledge at the time of my alleged drawing of the 1991 bomb that had "shown" Two blasting caps which, according to the government, was a distinctive feature of the 1991 device that was not public knowledge, therefore showed investigators that I must have had something to do with the 1991 bomb. I will send a copy of the article which states, "at least two blasting caps had been recovered from the 1991 crime scene". The government maintained that there was no way I could have known how many blasting caps had been used since there had been no public release of this information prior to my alleged drawing.

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One of the reasons that my attorney gave for not bringing in more witnesses was that, "we are running out of money".

I had learned that, after my trial, that my attorney had stated to a family member that **he had never done a high profile murder case like this before.** Way Back when, I had asked my attorney if this was a case he could handle, **he had never informed me that he was not experienced in such a case as mine.**

Attorney Segal may have had a conflict of interest in that his father was an attorney for the Boston Police and the fact that a Boston Police officer had been killed and another wounded may had prejudiced my attorney. This was but another factoid that I had learned **after my trial.**

Attorney Segal informed me that he had spoken to a US Marshal who had informed my attorney that inmate Lindholm **had not been "accidentally" sent to the same prison as where I was,** in fact, the US Attorney's office had **specifically instructed**

the Marshal's service to send Lindholm to Plymouth where I was and not to send Lindholm to Essex County Prison where Lindholm had already been processed. I am not entirely sure as to when my attorney had this conversation but he had informed me of its content immediately after my conviction.