

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

United States of America)
)
 v.)
) Criminal No. 92-10369-Z
 Thomas A. Shay)
 Alfred W. Trenkler)
)
)

Affidavit Of Terry Philip Segal, Esq. In Support Of Defendant's Motion
To Revoke December 24, 1992 Detention Order Of Magistrate Judge

I, Terry Philip Segal, hereby depose and say as follows:

1. On December 18, 1992, in my presence, just prior to the detention hearing in this case, Judy Oxford of Pretrial Services interviewed John Cates who confirmed Alfred Trenkler lived at 133 Atlantic Avenue Quincy with him for a period of time, and in fact resided at said address on the date of his arrest.

2. Subsequent to December 18th, Ms. Oxford indicated to me that she had also verified defendant's Quincy address with defendant's mother.

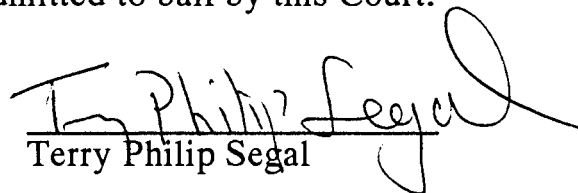
3. On December 23, I received from the government approximately 6300 pages of material pursuant to Mr. Kelly's automatic discovery letter of December 23, 1992 (copy attached). In addition to the 6300 pages, I am informed that I will receive at least 7 videotapes and tapes of intercepted oral and wire communications.

4. To review this material at the Plymouth House of Correction with my client in a case the government estimates will involve 50-60 witnesses and 5-6 weeks of trial time, will be difficult at best.

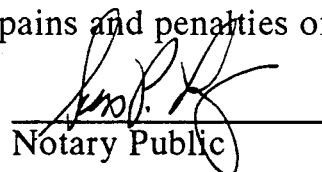
5. On December 29th, I spoke by telephone with David Sawyer who handles electronic monitoring for Federal Pretrial Services. Mr. Sawyer indicated that while he knows of one case where a defendant was double jointed and was somehow able to slip out of the bracelet, he knows of no cases where the monitoring system has been electronically defeated, and believes the transmitter worn by a defendant on his ankle is basically tamper proof. Mr. Sawyer did indicate he is aware of a handful of cases where defendants have simply fled while on bracelets.

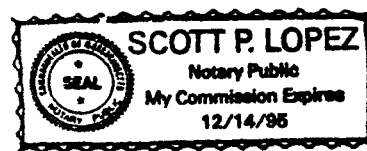
6. It is my understanding that the bracelet is more useful in guarding against danger to the community than flight. In this case, based on the evidence and exhibits submitted at the December 18th detention hearing, I submit there is no danger to the community if Mr. Trenkler is released under a program involving third party supervision by his parents, living at his parents' residence, and wearing a bracelet with conditions which would permit him to leave his parents' home to, under closely supervised conditions, visit his attorney, assist in the preparation of his defense, visit doctors, and work.

7. Based on the evidence and exhibits submitted to the Magistrate Judge at the December 18th detention hearing, I submit, particularly in light of his staying in MA over the past 9 months after being publicly named as a leading suspect and target, his parents' willingness to post the family residence as security, and his 36 year ties to this area, Alfred Trenkler poses no risk of flight if admitted to bail by this Court.


Terry Philip Segal

Signed and sworn to, before me, under the pains and penalties of perjury
this 29th day of December, 1992.


Notary Public





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.¹

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

The materials produced will not include statements or admissions by either defendant to non-law enforcement witnesses as recorded in written investigative reports or grand jury testimony.² This material would appear to be covered by 18 U.S.C. §3500 and Fed. R. Crim. P. 16(a)(1)(A).

2. Reports Of Examinations And Tests

Copies of all evidence-gathering and forensic reports which are currently reduced to a written form will be provided. We expect further such reports, possibly including reports by explosives experts and engineers, to be reduced to writing prior to trial. As we receive such reports and materials, they will be forthwith provided to counsel.

4. Documents And Tangible Objects

All books, papers, documents, and tangible items which the government intends to use at the trial of this case may be examined by contacting the undersigned and making an appointment to view the same at a mutually convenient time. This material is expected to include the following items, among others:

- a. photographs;
- b. videotapes;
- c. various pieces of physical evidence gathered at the crime scene;
- d. evidence seized pursuant to search warrants or consent searches;
- e. diagrams;
- f. re-creations and demonstrative evidence;
- g. letters, receipts and other papers.

5. Exculpatory Evidence

The government recognizes and understands its duty to supply any exculpatory evidence within the meaning of Brady v. Maryland, 373 U.S. 83 (1963) Giles v. Maryland, 386 U.S. 66 (1967), or Giglio v. United States, 405 U.S. 150 (1972). The government will provide all such materials within its possession, custody or control, and agrees to furnish any additional such materials if and when the government becomes aware of the same.

² The government has voluntarily included some letters and investigative reports that do include certain statements and admissions of Shay Jr. and Trenkler to non-law enforcement witnesses.

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.³

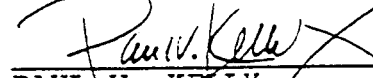
- f. Jennifer Powers - As per the documents provided, Powers was arrested pursuant to a criminal complaint for failure to comply with a grand jury subpoena on February 14, 1992. That complaint was dismissed on or about February 20, 1992, after Powers agreed to comply with the subpoena and testify before 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

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