



U.S. Department of Justice

*United States Attorney  
District of Massachusetts*

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*1107 J.W. McCormack Post Office and Courthouse  
Boston, Massachusetts 02109*

December 30, 1992

Terry Philip Segal, Esquire  
Segal & Feinberg  
210 Commercial Street  
Boston, Massachusetts 02109

**Re: United States v. Thomas A. Shay and Alfred W. Trenkler  
Criminal No. 92-10369-Z**

Dear Mr. Segal:

This letter is a follow-up to my automatic discovery letter dated December 23, 1992. I am writing at this time to more fully describe the interaction between James Harding and the government during the course of this investigation.

Let me preface this discussion by informing you at this point, it is highly unlikely that the government will call Mr. Harding as a witness against your client at the trial of this matter. Obviously, a final decision on this issue will be made at a later point, closer to the trial date.

The government first learned of James Harding on or about February 13, 1992 when Donna Shea disclosed to us that she and Harding had a three-way conversation with Al Trenkler sometime within the previous two months, and that Harding had recorded the conversation by means of a concealed recorder.

On February 18, 1992, a federal grand jury subpoena was served on Harding compelling him to appear before the grand jury on February 20, 1992 and to produce all tape recordings of any conversations he may have had with Trenkler.

Harding appeared at the federal courthouse on February 20, 1992. After a brief interview, AUSA Frank Libby, postponed Harding's appearance until March 5, 1992.

On March 4, 1992, Harding appeared again at the federal courthouse to be interviewed by AUSA Frank Libby. During the interview, Harding denied the existence of any tapes. He was

instructed by AUSA Libby to appear before the grand jury the following morning, as previously agreed.

Harding appeared again at the federal courthouse on March 5, 1992. At that time he acknowledged that he had brought with him a microcassette of the three-way conversation between he, Donna Shea and Trenkler, but then he refused to produce it (apparently out of concern that he could be prosecuted by state authorities for recording the conversation without Trenkler's knowledge or consent). He was warned by AUSA Kelly that unless he produced the tape forthwith, he would be immediately arrested for obstruction of justice. He continued his refusal to produce the tape and he was, in fact, arrested for willfully concealing objects subpoenaed by a grand jury, in violation of 18 U.S.C. §1503. See Criminal Complaint dated March 5, 1992 for further details.

Following Harding's arrest, a search of the lobby area of the federal courthouse resulted in the discovery of a microcassette of the above-described three-way conversation (a copy of which is being produced to you).<sup>1</sup>

Shortly after his arrest, Harding retained counsel (James S. Gallagher, Esq.) and, through counsel, express his willingness to cooperate and testify. A proffer was taken from Harding on March 9, 1992, pursuant to the terms of the government's standard proffer letter. Satisfied that Harding had now been truthful and forthcoming, the government dismissed the criminal complaint against Harding on or about March 23, 1992.

Harding was further interviewed by AUSA Libby on April 1, 1992, and later testified before the grand jury on April 23, 1992.

The government had little or no contact with Harding between late April and early October, 1992. There may have been isolated telephone calls by Harding to one of the investigators, but nothing of substance.

Beginning in or about mid-October, 1992, and continuing until early December 1992, Harding began making periodic telephone calls (every week or so) to SA Jeff Kerr, BPD Detective Brendan Craven or AUSA Kelly to pass along unsolicited pieces of information concerning Trenkler and his activities. There was no formal relationship between the government and Harding during this time. In fact, Harding was repeatedly advised that he was

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<sup>1</sup> The audibility of this tape is extremely poor. Enhancement has been attempted, without much success. A partial transcript of the audible portions has also been produced to you.

not an agent of the government, that the government was not seeking any information from him, and that if he wanted to volunteer information to law enforcement that was his business.

On or about November 20, 1992, Harding disclosed to the government that he had recently taped some conversations between himself and Trenkler. He was advised that such conduct likely violated state law, and was strongly discouraged from any further such activities. At or about this time, the USAO requested that ATF consider the possibility of using Harding as a CI and supervising the recording of discussions between he and Trenkler.

On or about December 2, 1992, Harding produced to investigators three (3) microcassettes containing unsupervised (and undated) recorded conversations between himself and Trenkler. He informed the government of his desire to have a further conversation with Trenkler that evening. After completing its legal research concerning the propriety of allowing Harding to work as a CI, and after consulting with officials at the Department of Justice about this issue, the USAO authorized ATF's use of Harding as a CI. The USAO specifically cautioned ATF to instruct Harding to avoid any mention or interception of attorney-client matters in his discussions with Trenkler. Additional measures were taken to avoid permitting AUSA's Kelly or Libby from listening to any such conversation by Trenkler in the event that attorney-client matters were recorded. Harding subsequently recorded a conversation between himself and Trenkler that evening.

On December 9, 1992, ATF agents had further contact with Harding to discuss the investigative direction they desired him to follow. During this session, it became apparent to investigators that Harding was not fully amenable to supervision and instruction.

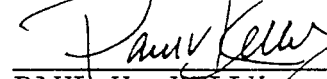
On December 12, 1992, ATF terminated Harding as a CI and rescinded his authority to electronically monitor any further conversations with Trenkler, for the reason that his "methods of operation conflicted with ATF's investigative philosophy and were not acceptable to the agents."

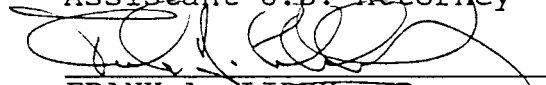
Harding's activities, and the recordings which he made of various conversations with Trenkler, played no role in the government's decision to seek an indictment in this case.

Very truly yours,

A. JOHN PAPPALARDO  
United States Attorney

By:

  
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PAUL V. KELLY  
Assistant U.S. Attorney

  
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FRANK A. LIBBY, JR.  
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