

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * *
UNITED STATES OF AMERICA

v.

THOMAS A. SHAY and
ALFRED N. TRENKLER

* * * * *

CASE NO. 92-10369-Z

James J. Dillon
BBO #124660

MOTION TO QUASH SUBPOENA FOR DOCUMENTS
DIRECTED TO WLVI-TV (CHANNEL 56)

On January 8, 1993, WLVI-TV (Channel 56) ("Channel 56") received a subpoena directing it to produce a complete videotape of an interview conducted by Karen Marinella, a "News at Ten" anchor, of Thomas A. Shay. The subpoena requests production at a detention hearing set for January 12, 1993 at 4:00 p.m. Portions of the interview were aired on November 13, 1992 and December 16, 1992; most of the interview has not been broadcast.

The subpoena should be quashed for these reasons:

1. Subpoena of newsgathering materials from Channel 56 implicates real and important First Amendment concerns; the media must not be annexed as an investigative arm of government. See United States of America v. The LaRouche Campaign, 841 F.2d 1176, 1182 (1st Cir. 1988).

2. Freedom of the press protections are embodied in Department of Justice regulations, 28 C.F.R. § 50.10, that permit subpoenas to media only in circumstances not present here, including

- (a) reasonable grounds to believe the information is essential to the case; peripheral, non-essential or speculative information may not be subpoenaed; and
- (b) attempts to obtain the information from non-media sources has proved unsuccessful.

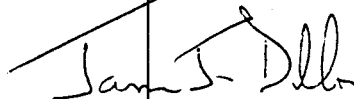
See 28 C.F.R. § 50.10(b), (f)(1), (3).

3. The interview of Mr. Shay cannot be treated as sufficiently likely to be essential, or even relevant, to the matters to be reviewed by the Court on the subject of bail or detention. See 18 U.S.C. § 3142(g).

These reasons, set out more fully in the accompanying memoranda, compel that the subpoena be quashed.

WLVI-TV (Channel 56)

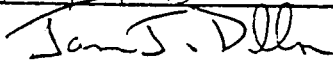
By its attorney,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon (each party appearing pro se and) the attorney of record for each (other) party ~~by mail~~ (by hand) on January 12, 1993



Dated: January 12, 1993

WP-0982/G