

September 24, 1993

Ms. Janice Bridgeman
Probation Services
J W McCormick Post Office
and Courthouse Building, 9th floor
Boston, MA 02109

Dear Ms. Bridgeman:

This letter sets forth the objections which Thomas A. Shay ("Shay Jr.") has to the September 15, 1993, draft Presentence Report ("PSR") provided to counsel on September 15, 1993.

Objection No. 1, Cover Sheet:

Shay Jr. objects to the statement that he has been detained since 12/17/92. He has been detained since March 24, 1992, at the latest. He was first placed in custody as a result of the joint investigation of this case by the Boston police and the ATF on October 31, 1991. Shay Jr. has been in continuous custody as a direct result of the joint investigation of this case since March 24, 1992.

Objection No. 2, Cover Sheet:

The cover sheet omits the following as Defense Counsel: Amy Baron-Evans of Dwyer, Collora & Gertner, and Jefferson Bonne, Boone & Henkoff, 138 Brighton Ave., Suite 212, Allston, MA. 02134.

Objection No. 3, Paragraph 3:

The following should be added at the beginning of this paragraph:

The government sought a superseding indictment in response to a defense motion contending that the indictment returned on December 16, 1992, was multiplicitous and therefore in violation of the Double Jeopardy Clause of the Fifth Amendment to the Constitution of the United States.

Objection No. 4, Paragraph 12, 13:

Shay Jr. objects to Paragraph 12, Sentence 3, and Paragraph 13, Sentences 1 and 2. Shay Jr. resided in institutions until October of 1987, when he went to live with his father at the age of fifteen. Seven months later, in May of 1988, Shay Sr. and Shay Jr. moved in with Shay Sr.'s female companion, Mary Flanagan, at her home at 39 Eastbourne Street in Roslindale, MA. Shay Jr. continued to be under DSS supervision, to some extent, until he was eighteen years old.

Objection No. 5, Paragraph 14:

Shay Jr. objects to Sentence 3. There was no evidence that he pawned these items.

Shay Jr. objects to Sentences 4 and 5. Shay Sr. specifically testified at trial that he did not tell Shay Jr. that he would never be able to forgive him, but that he told him that Mary would never be able to forgive him, and indicated that he did forgive him. (Trial Transcript p. 7-119-120, hereinafter "T.p. __") This incident did not end the relationship between Shay Sr. and Shay Jr. They communicated by telephone and saw each other when Shay Jr. was in the area. (T.p. 7-120) In August of 1991, Shay Jr. returned to

the Commonwealth from New York, because his father urged him repeatedly to do so in order to give a deposition on his behalf in the lawsuit against the owners of the Dedham Service Center. (T.p. 7-121, 16-119-121)

The following should be added at the end of Paragraph 14:

Shay Jr. was happier and more stable than he had ever been while living alone with his father. The theft and his departure were Shay Jr.'s childishly disturbed way of acting out his disappointment at having to share his father's long-awaited companionship and attention with Mary Flanagan. Shay Jr. expressed remorse to his father, his sister Nancy, and other family members, and more recently to this representative of the Probation Office, about taking Mary Flanagan's sentimental belongings.

Objection No. 6, Paragraph 16

Shay Jr. objects to Sentences 2, 3 and 4. These sentences should be omitted. There was no evidence of prostitution at trial. Reference to these matters can be for purposes of prejudice only.

Objection No. 7, Paragraph 17

Shay Jr. objects to Sentence 1. No statements by Alfred Trenkler concerning an acquaintanceship between himself and Shay Jr. were in evidence.

Shay Jr. objects to Sentence 2. There was no evidence that Shay Jr. met Trenkler at the Ramrod Lounge. During the Channel 56 interview, Shay Jr. stated that he met Trenkler in a bar in late 1989 or early 1990.

Shay Jr. objects to Sentence 3. There was no evidence that there was intimate contact between Shay Jr. and Trenkler or that

any such contact continued until the fall of 1991. During the year before the explosion, Trenkler had a steady relationship with and lived with John Cates. (T.p. 13-15, 17) The relationship between Shay Jr. and Trenkler was a casual one. Carrion testified that Shay Jr. told him they were "just friends." (T.p. 11-65) John Cates described Shay Jr.'s relationship to Trenkler as that of acquaintances. (T.p. 13-16) Cates testified that Shay Jr. attempted to contact Trenkler a couple of times on his pager during September and October of 1991. On one of those occasions, Shay Jr. left a message inviting Cates and Trenkler to Scott Critcher's Halloween party on the weekend before the bombing. Cates and Trenkler did not go the party. (T.p. 13-11-15, 26)

Trenkler's parents, John and Josephine Wallace, testified that although their son Alfred often visited their home and spent time working in their garage, and that they were at home most evenings and in and out frequently during the day, they never met Shay Jr. (T.p. 17-31, 41, 42)

Russ Bonnano testified that during the two months preceding and the two days after the explosion, during which time Shay Jr. lived with him or was in contact with him, the only relationship Shay Jr. mentioned was a lover in New York. Bonnano did not recall any mention of Alfred Trenkler. (T.p. 12-82-84)

Shay Jr. stated during the Channel 56 interview that Trenkler was "an acquaintance, not like a very good friend."

Objection No. 8, Paragraph 18:

Shay Jr. objects to the statement that Shay Sr. alleged that a "large firecracker" had been tossed into a fifty gallon drum.

Shay Sr. characterized it as a "half stick" of dynamite.

Objection No. 9, Paragraph 19:

Shay Jr. objects to Sentences 2, 3, 4, and 5 as inaccurate and misleading. Alan Pransky testified that after the deposition, at a gas station where they had stopped on the way home, Shay Jr. asked Pransky if he was aware that his father thought the owners of the Dedham Service Center might kill him. Pransky stated his opinion at trial that it seemed to him that Shay Jr. "was asking out of concern for his father." (T.p. 16-63) Pransky testified that he informed Shay Jr. that he was not concerned about it, since the lawsuit would continue in the event of his father's death. He testified that he then informed Shay Jr. that the money would go to his heirs through a will or to his four children if there was no will. He testified that he did not tell Shay Jr. whether or not there was a will.

Pransky did not testify that he told Shay Jr. there was \$400,000 worth of insurance coverage at issue. He testified that Shay Jr. told him his father thought there was \$300,000 worth of coverage, and that he (Pransky) informed Shay Jr. that the value of the insurance coverage was not the value of the lawsuit. (T.p. 15-123-126)

The following should be added at the end of Paragraph 19:

Alan Pransky did not relay this purported conversation to the police until four days into an intensive investigation of Shay Sr., during most of which he was present. Pransky had an interest in the lawsuit, which would fail if Shay Sr. were to be charged with the bombing. (T.p. 16-53, 55, 59-62)

Shay Jr. showed no interest in the lawsuit, except to placate his father by giving a deposition. Although Shay Jr. had some injury from the explosion at Dedham Service Center, and Pransky invited him to join the lawsuit as a plaintiff, Shay Jr. declined. (T.p. 16-22) Thereafter, it required a number of phone calls to get Shay Jr. back from New York for a deposition, and even then he failed to show for at least one of them. (T.p. 16-119-121; 13-151-53)

There was no evidence that Shay Jr. had any reason to believe he would get any money from this lawsuit if his father were to die. Shay Jr. told his mother that he was getting fifty dollars from his father for going to the deposition, but did not mention getting money from an insurance policy or any other source due to the lawsuit. (T.p. 13-155) Shay Jr. said during the Channel 56 interview that it was his belief that the only type of lawsuit which survives the death of the victim is one involving a car accident. If there was a will, Shay Jr. would not collect under it, since Shay Sr. had disowned Shay Jr. according to the government's assertion at paragraph 14. Pransky testified that he did not tell Shay Jr. whether or not his father had a will. (T.p. 15-126)

Objection No. 10, Paragraph 20:

Shay Jr. objects to Paragraph 20, Sentence 2. The dental "appointment" was not scheduled for any particular time--Shay Sr. planned to take Shay Jr. to Tufts, which takes dental patients on a walk-in basis. Although Shay Sr. "got very upset" at Shay Jr. for calling him later than planned, they did meet that afternoon,

and Shay Sr. gave Shay Jr. \$120 for the dental treatment. (T.p. 7-130-131)

Shay Jr. objects to Paragraph 20 in that it presents only part of the picture of his relationship with his father in the period just prior to the bombing. The following should be added at the end of the paragraph:

Shay Sr. testified that he saw his son approximately four times between Shay Jr.'s return in August of 1991 and October 28, 1991. (T.p. 7-133) After the two incidents in which Shay Sr. became upset with Shay Jr., on October 12, 1991, Shay Jr. went with his father to the race track and to the Franklin Cafe. When he left the Franklin Cafe later that night, Shay Jr. handed his father a note which said:

Dad, thanks for a real fun time. I hope that we can do this much more often. It's like old times being here with the guys and you. I will go over a friend's house tonight and go home tomorrow. I can walk from here. Dad thanks (for being my dad again). I will call about David's car tomorrow and I will see you Tuesday or Wednesday, see you, love, Tommy.

(T.p. 7-124-128; Government Exhibit 25) Nancy Shay testified that Shay Jr. was very happy about this outing with his father and that father and son were getting along well. (T.p. 14-39)

Objection No. 11, Paragraph 21:

Shay Jr. objects to Paragraphs 21 and 22 in their entirety, except that Shay Jr. did know that Trenkler was an electrical engineer. There was no evidence that Shay Jr. approached Trenkler or affirmatively sought his assistance in killing his father or asked Trenkler to build a bomb for him.

There was no credible evidence that Shay Jr. believed he would

receive any money from his father's lawsuit if his father was to die, or that he told Trenkler he would split insurance proceeds with him. There was no evidence that Trenkler's business was struggling before the bombing. Trenkler's business partner Richard Brown testified that the business was "lucrative," and that "this investigation is what actually caused the company a nose dive." (T.p. 13-103, 113)

Shay Jr. did not know about the device Trenkler built in 1986 at any time before the October 1991 explosion. The government has in its possession the audiotape surreptitiously made by James Harding and turned over to the government, in which Trenkler states that Shay Jr. had no knowledge of the 1986 device. During the Channel 56 interview, Shay Jr. stated that he knew nothing about it until after the bombing on October 28, 1991. There was a fierce controversy before and during trial over the admissibility of Trenkler's 1986 device against Shay Jr. A central issue raised by the defense and recognized by the Court in that controversy was that the 1986 device could not be relevant in Shay Jr.'s trial if he did not know of its existence. In its memorandum of law in support of its motion in limine to admit evidence of 1986 bombing, the government stated, "The government is aware of no evidence linking Shay Jr. to the 1986 bombing." Id. at 20. In spite of its importance to establishing the basic relevance of the device, the government could not produce a shred of evidence that Shay Jr. knew about that device before the explosion took place. The 1986 device was ruled inadmissible in the case against Shay Jr.

Objection No. 12, Paragraph 22:

Shay Jr. objects to Sentences 1 and 2. There was no evidence at all regarding who built the device. The evidence showed that the device was not sophisticated, but constructed of prefabricated parts. The receiver could have come from a toy remote control. (T.p. 6-46-47, 49; 7-11-12) There was no evidence at all regarding who obtained the dynamite and blasting caps which were in the device.

Shay Jr. objects to Sentence 3 to the extent it indicates he purchased a toggle switch with knowledge it would be used in a bomb. The only evidence that Shay Jr. bought the toggle switch was the Radio Shack receipt and Shay Jr.'s statements during the Channel 56 interview. Shay Jr. stated that he had purchased electronic parts for Trenkler, but did not know at the time what Trenkler meant to use the items for and thought they were intended for Trenkler's work. He stated that Trenkler had told him he was building him a surprise, but that he thought it was a remote control car. Shay Jr. stated that he did not know that Trenkler had built and placed a bomb until after the fact.

Shay Jr. stated that he had not seen Trenkler build the bomb, but that since the toggle switch and the AA battery holder which he bought for Trenkler were in the bomb, "Al Trenkler must have built it." Government witnesses testified that the AA battery holder listed on the same receipt with the toggle switch was not in the bomb. (T.p. 6-48)

Fred Burke's testimony indicated how little Shay Jr. knew. He testified that while Shay Jr. was in custody in San Francisco in March of 1992, when he asked Shay Jr. if he thought Trenkler had

anything to do with the bombing, Shay Jr. "said I don't know, very sadly, very resolutely, very quietly . . . I got the impression that he was fearful of this Alfred Trenkler person." (T.p. 15-67)

Objection No. 13, Paragraph 24:

Shay Jr. objects to the last sentence, as there was no evidence at trial that Trenkler had direct knowledge of the bomb and how it was designed to function.

The following should be added at the end of Paragraph 24:

The government failed to show that Trenkler was present in Shay Sr.'s neighborhood on October 28 or at any other time. While James McKernan saw a grayish blue car in the neighborhood on the morning of October 28, he could not identify Trenkler or his distinctive white car in photographic arrays. (T.p. 5-54-55, 70, 71; 13-8, 32, 33; 18-69) The evidence showed that Trenkler was with John Cates or at work during the October 25-27 time period. (T.p. 17-46-49)

During the three days prior to the explosion Shay Jr. was with Scott Critcher, Drew Starkey, and other friends or acquaintances at the Store 24 in Quincy and at Critcher's Halloween party, or was at home sleeping or watching television. (T.p. 14-40-43, 17-80-85, 17-101-104, 17-105-108, 18-57-61) The government produced no statement by Shay Jr. during this time period indicating he knew the bomb was being affixed to the undercarriage of the automobile.

Objection No. 14, Paragraph 25:

Shay Jr. objects to Sentence 4. Shay Sr. picked the device up and threw it on the ground at the side of the house. Later he picked it up again and tossed it on the driveway between a van and

a car.

Objection No. 15:

The following information regarding events after the bombing should be added between paragraphs 27 and 28:

Nancy Shay and David Shillalis testified that Shay Jr. was surprised and shocked when he learned about the explosion on the television news and was worried about his father and wished to see him. (T.p. 14-44; 18-62) Detective Miller Thomas testified that on October 29, Shay Jr. came to talk to the detectives because he had not been allowed to cross the police lines on Eastbourne Street and hoped that the detectives could help him see his father. Shay Jr. was concerned about his father's well-being, upset and agitated, what Detective Thomas termed "a normal reaction." (T.p. 10-19-20, 28)

Shay Jr. was aware that his father was the primary suspect, and he attempted to defend his father during interviews by the media and the police. (T.p. 12-65, 99; 10-79); see also videotapes of 10/29 and 10/31/91 press conference. On the night of October 31, Shay Jr. spoke to his father from the police station and told his father he loved him. Shay Sr. told his son he loved him and would stand by him. (T.p. 15-136) When the detectives told him that his father had called to say he still loved him, Shay Jr. said his father thought he had something to do with the bombing and began to cry. (T.p. 10-59) Shay Jr. told Karen Marinella of Channel 56 that his relationship with his father was good until his father thought he could do something like this.

Objection No. 16, Paragraph 28:

Shay Jr. objects to Paragraph 28 in its entirety:

Shay Jr. did not intend to kill Officer Hurley or his father, and did not premeditate or deliberate a killing. Shay Jr. did not participate in building the device, did not know it was being built, and did not understand what Trenkler was doing or discuss, understand or absorb any details of the scheme.

Shay Jr. acted recklessly in communicating his history of abuse and neglect to Trenkler and purchasing a toggle switch, unknowingly where an ordinary person under the same circumstances would have realized the consequences, or at most with recklessness as to consequences of which he was aware.

Objection No. 17, Paragraph 29:

Shay Jr. objects to Sentence 2. The evidence of the motives advanced by the government was weak and contradicted at trial. While the government produced evidence of two incidents in which Shay Sr. became upset at Shay Jr., there was also evidence that, in Shay Jr.'s mind, their relationship was improving rather than deteriorating. The money motive was discredited. The government presented no evidence that Shay Jr. was aware of Trenkler's prior device, and has no such evidence. The motive evidence was insufficient to support a theory of intentional premeditated murder. Accordingly, the jury found Shay Jr. not guilty of Count Two, which included as a possible element the intent to kill Shay Sr., but guilty of Count Three, which did not include intent to kill as an element. A reasonable explanation of the verdicts on the substantive counts is that the jury believed Shay Jr. did not intend to kill anyone.