

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIM. NO. 92-10369-Z
)
 ALFRED W. TRENKLER)

**GOVERNMENT'S MOTION *IN LIMINE* TO ADMIT IN EVIDENCE SHAY JR.'S
STATEMENTS AGAINST PENAL INTEREST**

The government hereby moves, in limine, for leave to adduce -- at trial against Trenkler -- certain statements made by Shay Jr. Particularly, the government expects to call certain witnesses (Detective Miller Thomas; Mr. Robert Evans; Mr. Lawrence Plant; Special Agent Dennis Leahy; and Shay Jr., by means of his videotaped interview of October 17, 1992 with Channel 56) to adduce in evidence certain statements made by Shay Jr., as well as the circumstances surrounding their making, so as to clearly place such statements within the Rule 804(b)(3) "declaration against penal interest" exception to the hearsay rule, where the declarant -- Shay Jr. -- may be unavailable.¹

Moreover, as the Memorandum of Law accompanying this Motion demonstrates, each of the statements made by Shay Jr. which the government now proposes to offer (summarized, by testifying witness, in Part I of the government's Memorandum, submitted

¹ To the extent that, while appearing as a witness called by the government in United States v. Trenkler, Shay Jr. "(2) persists in refusing to testify concerning the subject matter of the declarant's statement, despite an order of the court to do so; or (3) testifies to a lack of memory of the subject matter of the declarant's statement," Shay Jr. is "unavailable" as that term has meaning under Rule 804(b)(3).

herewith) contains no reference or allusion to Trenkler, and thus steers clear of any Bruton issue under the Sixth Amendment.

In further support whereof, the government relies upon its Memorandum of Law and the materials attached thereto.

Respectfully submitted,

A. JOHN PAPPALARDO
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By:



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FRANK A. LIBBY, JR.
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
November 1, 1993

I, Paul V. Kelly, Assistant U.S. Attorney, do hereby certify that I have served a copy of the foregoing Government's Motion In Limine to Terry Segal, Esquire, Segal and Feinberg, 210 Atlantic Avenue, Boston, Massachusetts 02110.



PAUL V. KELLY
Assistant U.S. Attorney