



U.S. Department of Justice

*United States Attorney
District of Massachusetts*

Main Reception: (617) 748-3100

United States Courthouse, Suite 9200
1 Courthouse Way
Boston, Massachusetts 02210

October 15, 1998

William H. Kettlewell, Esq.
Kathy B. Weinman, Esq.
Amy Baron-Evans, Esq.
Dwyer & Collora, LLP
Federal Reserve Plaza
600 Atlantic Avenue
Boston, Massachusetts 02210-2211

Re: United States v. Thomas A. Shay,
Criminal No. 92-10369-EFH
Plea Agreement

Dear Counsel:

This letter sets forth the Agreement entered into between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Thomas A. Shay ("Defendant") in the above-captioned case. The Agreement is as follows:

1. Change of Plea

At the earliest practicable date, Defendant shall plead guilty to Counts One and Three of the above-captioned Superseding Indictment. Defendant will admit that he in fact committed the crimes charged in Counts One and Three of the Superseding Indictment, and is in fact guilty of those offenses.

At the plea hearing, Defendant will agree to the following statement of facts:

- i. In the fall of 1991, in the District of Massachusetts, Defendant conspired and agreed with Alfred W. Trenkler to commit certain offenses against the United States including receipt of

explosives in interstate commerce with the intent and knowledge that the explosives would be used to damage and destroy a Buick automobile owned and operated by Defendant's father, Thomas L. Shay Sr. ("Shay Sr.).

- ii. Defendant and Trenkler agreed that they would use a remote-controlled explosive device in furtherance of their conspiracy.
- iii. On October 18, 1991, Defendant purchased certain electrical components, including a toggle switch, needed for the construction and testing of the explosive device. Defendant purchased these components at a Radio Shack located at 197 Massachusetts Avenue, Boston, MA.
- iv. In October 1991, Trenkler built a remote-controlled explosive device consisting of dynamite, blasting caps, and other materials, including the toggle switch that Defendant had purchased from Radio Shack on October 18, 1991.
- v. On or about October 27, 1991, in the District of Massachusetts, the explosive device was affixed to the undercarriage of a 1986 Buick automobile owned and operated by Shay Sr. The Buick automobile was used by Shay Sr. in interstate commerce and in activities affecting interstate commerce.
- vi. On October 28, 1991, the explosive device exploded, killing Boston Police Bomb Squad Officer Jeremiah Hurley and seriously injuring his partner, Boston Police Bomb Squad Officer Francis Foley.

2. Penalties

Defendant faces the following maximum penalties on the two Counts to which he is pleading guilty:

Count One -- Five years' imprisonment; \$250,000 fine; restitution; three years' supervised release; mandatory special assessment of \$50.

Count Three -- Imprisonment for any term of years, or life imprisonment; \$250,000 fine; restitution; five years' supervised release; mandatory special assessment of \$50.

3. Sentencing Guidelines

The parties agree, for purposes of this Agreement, to jointly take the following positions at sentencing with regard to the Defendant's offense conduct, adjustments and criminal history under the United States Sentencing Guidelines:

- a. As to Count One, the applicable guideline provision is U.S.S.G. §2X1.1, and as to Count Three, the applicable provision is U.S.S.G. §2K1.4.
- b. The U.S.S.G. §2K1.4(c)(1) cross reference applies in this case because death resulted from the Count Three offense to which Defendant is pleading guilty.
- c. Pursuant to Defendant's guilty plea in this case, and based upon the facts to which Defendant is pleading guilty, Defendant's base offense level is 33 pursuant to U.S.S.G. §2A1.2(a).
- d. Pursuant to U.S.S.G. §3E1.1, Defendant is entitled to a 2 level reduction in his offense level for acceptance of responsibility.
- e. Defendant's aggregate offense level is 31.
- f. Defendant's criminal history category is II.
- g. With an offense level of 31 and a criminal history category of II, Defendant's guideline imprisonment range is 121-151 months.

4. Agreed Disposition

The U.S. Attorney and Defendant agree, pursuant to Fed. R. Crim. P. 11(e)(1)(C), that the following is the appropriate disposition of this case:

- a. Incarceration for a period of 144 months;
- b. A mandatory special assessment of \$100.00;
- c. A period of supervised release of three to five years, which may be served outside the District of Massachusetts if Defendant and the Chief United States Probation Officer reach an agreement to that effect. The government shall argue for a five year term of supervised release, and Defendant shall argue for a three year term. The parties agree to be bound by the

Court's determination of the appropriate term of supervised release between three and five years.

Defendant's plea will be tendered pursuant to Fed. R. Crim. P. 11(e)(1)(C). Defendant cannot withdraw his plea of guilty unless the sentencing judge rejects this Agreement. If the sentencing judge rejects this Agreement, this Agreement shall be null and void at the option of either the United States or the Defendant. In this regard, the Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

The U.S. Attorney has agreed to the appropriateness of the disposition outlined above based, in part, upon Defendant's acceptance of responsibility for the offenses in this case. Defendant shall be in breach of this Agreement, if Defendant:

- (1) Fails to admit the factual basis for the plea (as detailed above in ¶¶1.i-vi) at the time the plea is entered;
- (2) Prior to sentencing, denies criminal responsibility for the conduct charged in the offenses specified in paragraph one;
- (3) At any time, gives false or misleading testimony, or engages in acts which form a basis for finding that Defendant has obstructed or impeded the administration of justice under U.S.S.G. § 3C1.1, in any legal proceeding relating to the criminal conduct charged in this case;
- (4) Prior to sentencing, attempts to withdraw his guilty plea, or at any time acts in a manner which is materially inconsistent with acceptance of responsibility for either of the offenses to which he is pleading guilty.

5. Payment of Mandatory Special Assessment

Defendant paid the mandatory special assessment due in this case after judgment originally entered in 1993, and he, therefore, has no further obligations in this regard.

6. Waiver of Right to Appeal and to Bring Collateral Challenge

Defendant understands that 18 U.S.C. § 3742 gives him a limited right to appeal the sentence to be imposed, and that

other federal statutes give Defendant the right to appeal other aspects of his conviction and/or sentence. Nevertheless, to the full extent permissible by law, and consistent with ethical standards applicable to undersigned lawyers, Defendant knowingly and voluntarily waives his right to appeal or collaterally attack:

- (a) His convictions (after guilty pleas) on Counts One and Three of the Superseding Indictment; and
- (b) The imposition of the sentence agreed upon by the parties in ¶4 above.

7. Waiver of Hyde Amendment Claim

Defendant is aware that 111 Stat. 2440, 2520 (1997), the so-called "Hyde Amendment," authorizes courts in criminal cases to award to certain prevailing defendants attorneys' fees and other litigation expenses. In exchange for concessions made by the U.S. Attorney in this Agreement, Defendant voluntarily and knowingly waives any claim that he might assert under this statute.

8. Probation Department Not Bound By Agreement

The sentencing disposition agreed upon by the parties and their respective calculations under the Sentencing Guidelines are not binding upon the United States Probation Office.

9. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil liability, including but not limited to any tax liability, which Defendant may have incurred or may incur as a result of his conduct and his plea of guilty to the charges specified in paragraph one of this Agreement.

10. Withdrawal of Plea By Defendant

Should Defendant move to withdraw his guilty plea at any time other than after the Court's rejection of this Fed. R. Crim. P. 11(e)(1)(C) plea agreement, this Agreement shall be null and void at the option of the U.S. Attorney.

11. Breach of Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Agreement, has violated any condition of pretrial release, or has committed any crime following his execution of this Agreement, the U.S. Attorney may, at his sole option, be released from his commitments under this Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to him under the law, irrespective of whether he elects to be released from his commitments under this Agreement. Further, the U.S. Attorney may pursue any and all charges which have been, or are to be, dismissed pursuant to this Agreement. Defendant recognizes that no such breach by him of an obligation under this Agreement shall give rise to grounds for withdrawal of his guilty plea. Defendant understands that, should he breach any provision of this Agreement, the U.S. Attorney will have the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements which he may make and any information, materials, documents or objects which he may provide to the government subsequent to this Agreement without any limitation. In this regard, Defendant hereby waives any defense to any charges which he might otherwise have under any statute of limitations or the Speedy Trial Act.

12. Who Is Bound By Agreement

This Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

13. Bureau of Prisons Placement

The U.S. Attorney agrees not to object to a motion by Defendant for a judicial recommendation that Defendant be designated to a particular high or medium security prison within the United States Bureau of Prisons' system.

14. Complete Agreement

This letter contains the complete and only agreement between the parties relating to the disposition of this case. No promises, representations or agreements have been made other than those set forth in this letter. This Agreement supersedes prior

understandings, if any, of the parties, whether written or oral. This Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court.

If this letter accurately reflects the Agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as

Witness. Return the original of this letter to Assistant U.S. Attorney David J. Apfel or Assistant U.S. Attorney Kevin P. McGrath.

Very truly yours,

DONALD K. STERN
United States Attorney

By: *James B. Farmer*
JAMES B. FARMER
Assistant U.S. Attorney
Chief, Criminal Division

KEVIN P. McGRATH
DAVID J. APFEL
Assistant U.S. Attorneys

ACKNOWLEDGMENT OF PLEA AGREEMENT

I have read this Agreement in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter. I am entering into this Agreement freely, voluntarily and knowingly because I am guilty of the offenses to which I am pleading guilty, and I believe this Agreement is in my best interest.

Thomas A. Shay
THOMAS A. SHAY
Defendant

Date: 10-15-98

I certify that Thomas A. Shay has read this Agreement, and that he has stated to me that he understands its terms and legal consequences. I believe Thomas A. Shay is entering into this Agreement freely, voluntarily, and knowingly.

William H. Kettlewell
WILLIAM H. KETTLEWELL, Esq.
Attorney for Defendant

Date: 10/15/98