

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

* * * * *
UNITED STATES OF AMERICA *
*
vs. *
*
THOMAS A. SHAY *
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CRIMINAL ACTION
No. 92-10369

BEFORE THE HONORABLE EDWARD F. HARRINGTON
UNITED STATES DISTRICT JUDGE
CHANGE OF PLEA AND DISPOSITION

A P P E A R A N C E S

OFFICE OF THE UNITED STATES ATTORNEY
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Courtroom No. 19
1 Courthouse Way
Boston, Massachusetts 02210
October 29, 1998
2:35 p.m.

CAROL LYNN SCOTT, CSR, RMR
Official Court Reporter
1 Courthouse Way, Suite 3507
Boston, Massachusetts 02210
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P R O C E E D I N G S

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THE CLERK: All rise.

Court is open. Please be seated.

Criminal No. 92-10369, United States versus Thomas A. Shay.

THE COURT: I'll hear from the government.

MR. APFEL: Good afternoon, Your Honor. We are here today for a change of plea on the part of Mr. Shay. We have a plea agreement and our understanding is that Mr. Shay intends to plead guilty to Counts 1 and 3 of the superseding indictment in this case.

THE COURT: Set forth then the essential terms of the plea agreement.

MR. APFEL: Yes, Your Honor. Shall I hand up a copy of the plea agreement? This is the original that I'm handing up to the clerk right now.

The essential terms of the plea agreement are that -- is that Mr. Shay will plead guilty to Counts 1 and 3. And the parties will jointly recommend a guideline sentence for Mr. Shay of twelve years imprisonment, five years supervised release and a mandatory special assessment of \$100, which as I understand it Mr. Shay has already paid.

Those are the essential terms of the agreement, Your Honor.

THE COURT: Mr. Shay, have you had an

1 opportunity to read this plea agreement?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And do you understand it?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And have you consulted with your
6 attorney --

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: -- prior to signing it?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: And you have signed it?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: The plea agreement may be filed.

13 One question. What was the sentence imposed on
14 Mr. Shay in the prior case?

15 MR. APFEL: Mr. Shay, Your Honor, was tried
16 before Judge Zobel of this court in 1993. At the conclusion
17 of the trial the jury found him not guilty on Count 2 of the
18 superseding indictment, guilty on Counts 1 and 3; imposed an
19 abrogate sentence of fifteen years, eight months.

20 THE COURT: And Count 1 sounded in what?

21 MR. APFEL: Count 1 is a conspiracy count, Your
22 Honor.

23 THE COURT: And Count 2?

24 MR. APFEL: Count 2 is brought under 18 U.S.C.,
25 Section 844(d). I don't know whether Your Honor has a copy

1 right now of the superseding indictment but I can hand it up
2 to the Court if you'd like.

3 THE COURT: Have you got it?

4 THE CLERK: I have it.

5 THE COURT: What I wanted on the record is what
6 is Count 2?

7 MR. APFEL: Count 2 was 18 U.S.C. Section 844(d)
8 charging Mr. Shay with receipt of explosives in interstate
9 commerce resulting in the death and injury to a public safety
10 officer. The two public safety officers in question here
11 being Bomb Squad Officer Jeremiah Hurley and Bomb Squad
12 Officer Francis Foley.

13 And then Count 3, Your Honor, of which Mr. Shay was
14 found guilty was -- is brought under Title 18 of the United
15 States Code, Section 844(i) which charged him with attempted
16 malicious destruction of property used in and affecting
17 interstate commerce by means of fire and explosives resulting
18 in death and injury to public safety officers. The property
19 in question being a Buick automobile which was owned by
20 Mr. Shay's father at the time, also named Thomas Shay.

21 THE COURT: With respect to Count 1, which is an
22 alleged violation of 18 U.S.C., Section 371, conspiracy, what
23 is the object of that conspiracy?

24 MR. APFEL: The object of the conspiracy --
25 there are two objects in the conspiracy and those are the two

1 substantive counts of the indictment that are found at Counts
2 2 and 3.

3 The two objects of the conspiracy were, one, to
4 receive explosives in interstate commerce with intent to kill
5 Mr. Shay's father.

6 The second object was to attempt or to maliciously
7 destroy an automobile by means of an explosive device.

8 THE COURT: Just so the record is clear,
9 Mr. Shay was convicted on Counts 1 and 3 and acquitted on
10 Count 2?

11 MR. APFEL: That's correct, Your Honor. And one
12 other thing that should be clear for the record is that when
13 the conspiracy count went to the jury in the first trial,
14 there were no special questions. It was not broken down in
15 any way so that the verdict of guilty on Count 1 was a general
16 verdict of guilty. And there was no way of telling at least
17 from the verdict on its face whether the jury had found
18 Mr. Shay guilty of the first object of the conspiracy, the
19 second object of the conspiracy or both objects of the
20 conspiracy.

21 THE COURT: He's been convicted on Counts 1 and
22 3. And he was sentenced to fifteen years, eight months. What
23 is the joint reason for a recommendation now that his sentence
24 be reduced from fifteen years, eight months to twelve years?

25 MR. APFEL: The first reason, Your Honor, is

1 that one difference between the situation now as opposed to
2 1993 when Mr. Shay was first tried is that Mr. Shay then was
3 found guilty after trial. He did not accept responsibility
4 for his conduct. And he was sentenced by Judge Zobel under
5 the second degree murder guideline which brought with it a
6 sentencing range of 151 to 188 months. 188 months being
7 fifteen years, eight months which he -- which Judge Zobel
8 imposed as a sentence.

9 We have agreed that, really that since it's been
10 dictated in large measure by Judge Zobel's findings that that
11 is the correct guideline range for Mr. Shay.

12 Given that, the situation is different now in that
13 Mr. Shay is now accepting responsibility or we anticipate that
14 he will accept responsibility today in court and acknowledge
15 his wrongdoing in this case. And to the extent that he does
16 that, under the guidelines he receives two points off for
17 acceptance of responsibility which puts him in a different
18 guideline range.

19 Unlike the 151 to 188 months that applied back in
20 '93, the new guideline range would be 121 to 151 months.

21 THE COURT: 121 to what?

22 MR. APFEL: 121 at the low end to 151 at the
23 high end. And so 151 is twelve years and seven months.

24 And the parties have agreed rather than have a debate
25 in court about where in the guideline -- where in that range

1 Mr. Shay should fall and unnecessarily complicate this
2 proceeding, we've agreed to a sentence that is squarely within
3 the range, albeit at the high end of that range, a sentence of
4 twelve years, which in real terms will mean that even if
5 Mr. Shay gets all of the good time credit that prisoners in
6 the federal system ordinarily get, he will still serve more
7 than ten years in prison in toto.

8 THE COURT: All right. Then at this time I'll
9 take the plea.

10 Prior to accepting any plea that might be offered, I
11 wish to advise you as to certain rights and ask you certain
12 questions.

13 First of all, I want to advise you that you have a
14 constitutional right to a speedy and public trial by jury. Do
15 you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: You have a constitutional right to
18 see and hear the evidence against you and to cross-examine
19 witnesses against you. Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: You have a constitutional right to
22 the processes of this court to compel the attendance of
23 witnesses in your own behalf. Do you understand that?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: You have a constitutional right to

1 the assistance of counsel which right you have exercised. And
2 you have a constitutional right to remain silent and not be
3 compelled to incriminate yourself. Do you understand that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: That in pleading guilty you are
6 giving up all of those constitutional rights with the
7 exception of the right to counsel. Do you understand that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: I wish also to advise you that you
10 are not required to establish your innocence but it is
11 incumbent upon the government to prove your guilt beyond a
12 reasonable doubt. Do you understand that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: That in pleading guilty you are
15 giving up so-called presumption of innocence; do you
16 understand that?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Have you told your lawyers all the
19 circumstances surrounding the charges pending against you?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Has your attorney advised you as to
22 the nature of those charges and any possible defense you might
23 have?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: What is the penalty provided by

1 statute for the offenses to which the defendant is offering
2 his plea of guilty and what is the guideline range applicable
3 to this case?

4 MR. APFEL: Your Honor, the penalties are
5 outlined in the plea, in the plea agreement in Section 2. And
6 they are for Count 1, the conspiracy count, the maximum
7 possible penalties under the statute are five years
8 imprisonment, a fine of \$250,000, restitution to the victims
9 in this case, three years supervised release and a mandatory
10 special assessment of \$50.

11 Under Count 3 at this time the mandatory possible
12 penalties for Mr. Shay if he were to proceed to trial would be
13 life imprisonment, \$250,000 fine, restitution to the victim
14 families, five years supervised release, and a mandatory
15 special assessment of \$50.

16 THE COURT: But under the context of this
17 guideline, in view of the fact that it had previously been
18 determined that his activity in this matter constituted second
19 degree murder --

20 MR. APFEL: That's correct, Your Honor.

21 THE COURT: -- that the guideline is between 121
22 and 151 months.

23 MR. APFEL: Between 121 and 151, under the terms
24 of the agreement where we agreed for purposes of the agreement
25 that the second degree murder guideline applies.

1 THE COURT: Do you understand that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Has anyone threatened you or
4 otherwise induced you to change your plea to guilty against
5 your will?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Is the plea that you're entering
8 here today entirely free and voluntary?

9 (The defendant consulted with his counsel.)

10 THE COURT: Is the plea entirely free and
11 voluntary?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: I'd ask the government to briefly
14 set forth the evidence which it would have introduced were
15 this case to have gone to trial.

16 MR. APFEL: Your Honor --

17 THE COURT: You may sit down, sir.

18 MR. APFEL: -- if the case had proceeded to
19 trial, the evidence would have shown a set of facts which were
20 also outlined in the plea agreement. And I will state those
21 facts from the plea agreement because it's our understanding
22 that Mr. Shay is prepared to and will today agree that this
23 is, in fact, what happened and what he did.

24 Those facts are as follows -- and this is what the
25 evidence would show and, indeed, Your Honor, what the evidence

1 did show back in 1993 when Mr. Shay was first tried.

2 First, that in the fall of 1991 in the District of
3 Massachusetts defendant Thomas Shay conspired and agreed with
4 an individual named Alfred W. Trenkler to commit certain
5 offenses against the United States, including receipt of
6 explosives in interstate commerce with the intent and
7 knowledge that the explosives would be used to damage and
8 destroy a Buick automobile owned and operated by Shay's father
9 Thomas L. Shay, Sr.

10 Second, that the defendant Thomas Shay and Alfred
11 Trenkler agreed that they would use a remote controlled
12 explosive device in furtherance of their conspiracy.

13 Third, on October 18 of 1991 defendant Thomas Shay
14 purchased certain electrical components including a toggle
15 switch needed for the construction and testing of the
16 explosive device. And defendant Shay purchased these
17 components at a Radio Shack located at 197 Massachusetts
18 Avenue here in Boston.

19 Fourth, in October of 1991 Alfred Trenkler built a
20 remote control explosive device consisting of dynamite,
21 blasting caps and other materials including the toggle switch
22 that defendant Thomas Shay had purchased from Radio Shack on
23 October 18 of 1991.

24 Fifth, on or about October 27 of 1991 in the District
25 of Massachusetts, the explosive device was affixed to the

1 undercarriage of the 1986 Buick automobile owned and operated
2 by Shay, Sr., Thomas Shay's father. The Buick automobile was
3 used by Shay, Sr. in interstate commerce and in activities
4 affecting interstate commerce.

5 Finally, the sixth point that Mr. Shay is prepared to
6 agree to is that on October 28, 1991, the explosive device
7 exploded killing Boston Police Bomb Squad Officer Jeremiah
8 Hurley and seriously injuring his partner Boston Police Bomb
9 Squad Officer Francis Foley.

10 The evidence in the case would conclusively show all
11 of those facts, Your Honor.

12 THE COURT: You have heard the government
13 represent evidence that they would have introduced were the
14 case to have gone to trial. Do you contest any of those
15 representations?

16 THE DEFENDANT: No, Your Honor.

17 THE COURT: Do you agree to them?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Are you presently under a doctor's
20 care?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Have you taken any medicine or drugs
23 or pills today?

24 THE DEFENDANT: No, Your Honor.

25 THE COURT: Have you ever been under psychiatric

1 care?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And what is the nature of that?

4 MR. KETTLEWELL: Your Honor, the defendant's
5 history in that regard is fairly lengthy. You probably have
6 seen the PSI. It dates back to his days as a child. More
7 recently he has not been under the care of a psychiatrist
8 however.

9 THE COURT: Well, basically what I'm getting at,
10 do you understand the nature of these proceedings?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: You understand that you have pled
13 guilty?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: That you are getting ready to plead
16 guilty to Counts 1 and 3 of the superseding indictment?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You understand that there will be no
21 trial?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Counsel, do you know any reason why
24 the court should not accept any plea of guilty?

25 MR. KETTLEWELL: No, Your Honor.

1 THE COURT: All right. Take the plea.

2 THE CLERK: Thomas A. Shay, the grand jury for
3 the District of Massachusetts charges in Counts 1 and 3 of the
4 superseding criminal indictment, charging you with conspiracy
5 and attempted malicious destruction of property used in and
6 affecting interstate commerce, by means of fire and
7 explosives, resulting in death and injury of public -- two
8 public safety officers, and with aiding and abetting, those in
9 violation of Title 18, United States Code, Section 371, 844(i)
10 and Section 2.

11 What say you to each count of this indictment as
12 charged at this time, guilty or not guilty?

13 THE DEFENDANT: I plead guilty.

14 THE COURT: Again, counsel, do you know any
15 reason why the Court should not accept the plea of guilty?

16 MR. KETTLEWELL: No, I do not, Your Honor.

17 THE COURT: Mr. Shay, have you had sufficient
18 time to discuss this matter with your attorneys?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And are you satisfied with their
21 representation of you?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: I will accept the plea of guilty. I
24 find that the plea has been voluntarily and knowledgeably
25 offered with an understanding of its possible consequences.

1 I further find that there is an independent basis in
2 fact for accepting the plea and, therefore, accept the plea of
3 guilty and order that it be entered in this case.

4 I'd ask the government to make its recommendation.

5 MR. APFEL: Your Honor, the government
6 recommends that Your Honor impose a sentence on Thomas Shay of
7 144 months imprisonment -- that's twelve years -- to be
8 followed by five years of supervised release, with all of the
9 standard conditions and other conditions originally set forth
10 by Judge Zobel; and that Mr. Shay pay a \$100 mandatory special
11 assessment. My understanding again is that he's already paid
12 that -- paid that mandatory special assessment.

13 And with the Court's permission, I would ask to
14 briefly explain, not -- I have really already explained how
15 the government arrives at this sentence but to explain why the
16 government regards this as the appropriate sentence in this
17 case.

18 THE COURT: I was going to ask you a question.
19 And I'd like special reference to what is the attitude of the
20 families of the victims and what is the attitude of the Boston
21 Police Department, if you can make any representations in that
22 regard.

23 MR. APFEL: First of all, Your Honor, obviously
24 this is -- this event that brings us all together today is an
25 awful, horrendous, painful, tragic, tragic event which

1 resulted in the death of Jeremiah Hurley and very serious
2 injuries to Frank Foley. It's also caused permanent and
3 lasting pain to the families of both officers.

4 And, in fact, three of the family members have asked,
5 which I believe is their right in this context, to address the
6 Court by way of making a victim witness impact statement
7 before the Court. And I would suggest that this is the
8 appropriate time to do that.

9 THE COURT: All right. Then call those family
10 members.

11 MR. APFEL: The first individual who has
12 requested permission of the Court to make such a statement is
13 Doris Hurley who is the sister of former Boston Police Bomb
14 Squad Officer Jerry Hurley who was killed in this event.

15 Where would you like Ms. Hurley?

16 THE COURT: Any place where she feels
17 comfortable. Do you want to sit over there at the witness
18 box?

19 MS. DORIS HURLEY: Sheets of paper spread before
20 me with words, phrases, sentences and paragraphs trying to
21 convey the pain that invaded our lives on October 28, 1991. I
22 was not able to do it seven years ago and I can't do it now.
23 The feelings are consuming. They physically hurt. My heart
24 pounds. My mouth is dry. My hands shake. I am nauseous. I
25 cannot sleep. I cannot concentrate. My thoughts are random

1 and unconnected. I am angry, sad, numb, nervous and
2 overwhelmed.

3 I am frustrated that there aren't any adjectives to
4 adequately express myself. Flashes of events jump out at me
5 and in no order. This is frightening. I have no control.
6 There is nothing I can do to change what has happened.

7 I cannot bear to see these emotions reflected in the
8 family that my brother loved so much.

9 The facts are that a bomb was placed under a car in a
10 neighborhood across the street from a school. The bomb went
11 off and my brother was killed.

12 Thomas Shay was convicted in U.S. District Court of
13 conspiracy to plant a bomb under his father's car. This was a
14 bomb in a neighborhood close to a school.

15 In passing sentence U.S. District Court Judge Rya
16 Zobel ruled that -- and I quote, "Evidence showed Shay did not
17 intend to kill his father." Ignoring the evidence presented
18 and instead of life, a sentence of fifteen years was imposed.
19 This was outrageous. This was not justice. What about the
20 sentence that Tom Shay's actions imposed on us?

21 Now once again this family, friends and the law
22 enforcement community must relive the pain of this injustice.
23 I am not willing to hear what you have to say to this Court,
24 Thomas Shay. Nothing will ever change or excuse your
25 responsibility for my brother's death. Instead I will focus

1 on the commitment of the men and women who have spent
2 countless months and years of investigation that led to your
3 conviction.

4 I will focus on the strength of our family and will
5 continue to be awe of Cynthia, Lisa, Leanne and David. No
6 wonder Jerry loved you so much.

7 We will not lose sight of the loving Jerry that was
8 part of our lives. We will continue to celebrate Jerry's
9 life.

10 The message carved on the National Law Enforcement
11 Memorial says, "It is not how these officers died that made
12 them heroes, it is how they lived."

13 Thank you.

14 THE COURT: Call your next witness.

15 MR. APFEL: Your Honor, the second person who
16 has asked to make a statement is Lisa Hurley, the daughter of
17 slain officer Jerry Hurley who herself is a Boston Police
18 Officer.

19 MS. LISA HURLEY: You not only killed the most
20 important man in the world, you killed everybody's life who
21 knew him.

22 You deprived everyone that knew him and everyone that
23 didn't get to meet him. You deprived my father of living a
24 long and happy life with his family he loved so much. You
25 deprived my mother of growing old with her husband. You

1 deprived my brothers of a wonderful friendship with my father.
2 You deprived myself and my sister of having a hero who walks
3 us down the aisle on our wedding day.

4 Most important you deprived my nephews and my
5 father's future grandchildren of ever meeting the most
6 wonderful man in the world.

7 Thank you.

8 THE COURT: Call your next witness.

9 MR. APFEL: Your Honor, the last person who
10 wants to make a statement is Cynthia Hurley, the wife of Jerry
11 Hurley.

12 MRS. CYNTHIA HURLEY: Judge Harrington, I was
13 asked a few days ago to make a statement here today. For
14 hours I thought and thought. I started to write and ripped up
15 the papers, then tried to express how I feel. And honestly
16 there are no words to describe my feelings.

17 Seven years ago today I was planning my husband's
18 funeral. It's been an agonizing seven years. I want to
19 publicly thank my children. If it weren't for them, for their
20 unending support and love and being there every month for me,
21 I don't know where I would be today.

22 Secondly, I'd like to thank the federal government
23 and the U.S. Attorneys Office for their unending support,
24 endless hours of works to close this case. I want everybody
25 in this room to realize that we did make the -- my family and

1 I agree to accept this plea for a lesser sentence. We could
2 not sit through another trial.

3 And, Thomas Shay, I hope in your remaining years of
4 your sentence you can get help and the repentance (ph.) that
5 you need.

6 MR. APFEL: Your Honor, obviously the sentence
7 that we are recommending if imposed by the Court is not going
8 to end the suffering in this case, the pain in this case. But
9 what it will do is bring some measure of peace to the
10 families, will bring at least closure to the legal aspect of
11 this case and will avoid the necessity and the trauma and the
12 inevitable uncertainty of yet another trial in this matter.

13 All of the people, Your Honor, who have had any
14 involvement, major or minimal involvement in this case,
15 support this resolution. The families, as Mrs. Hurley just
16 mentioned, as well as the lawyers on the government side who
17 have been involved from day one. Special Assistant U.S.
18 Attorney Frank Libby who's here today, former Assistant United
19 States Attorney Paul Kelly who's sitting in the front row
20 right there who are the two individuals who prosecuted both
21 Mr. Shay and Mr. Trenkler and spearheaded -- were involved in
22 spearheading the investigation leading to this indictment in
23 late '92 and then trials in '93.

24 I have supported it. My partner here, Assistant U.S.
25 Attorney Kevin McGrath supports it. The families do.

1 Commissioner Evans of the Boston Police who's here in
2 court today, I have spoken with him personally. He also
3 supports this outcome, this resolution to this case as do
4 members of the Boston Police Bomb Squad, members of the Boston
5 Homicide Unit, the agents in the Bureau of Alcohol, Tobacco
6 and Firearms. And some, in some ways as important -- not as
7 important but close to the importance is the family support.
8 This is for all of the law enforcement officers who worked so
9 tirelessly to solve this very difficult case and bring
10 Mr. Shay and Mr. Trenkler to justice.

11 I have in mind specifically the members of ATF and
12 the Boston Bomb Squad and the Homicide Unit who really were
13 the individuals who were involved doing the day-to-day work
14 that solved this case, which was a case that was very, very
15 tough to solve.

16 And so, Your Honor, given all of this and given that
17 this does seem to be the way of ending at least the legal
18 chapter in this sad, sad case, the sentence urged upon the
19 Court is an appropriate sentence. And I not only urge it upon
20 the Court, I urge the Court to impose it.

21 Thank you.

22 THE COURT: I'd ask counsel for the defendant to
23 make any statement he desires.

24 MR. KETTLEWELL: Very briefly, Your Honor, as
25 you know, this is a negotiated plea. We believe that this

1 outcome is in the best interests of everyone. And we ask that
2 you impose the recommended sentence.

3 THE COURT: I'd ask the defendant Shay if he
4 wishes to say anything in his own behalf?

5 THE DEFENDANT: No, Your Honor.

6 THE CLERK: Stand up, sir.

7 THE COURT: I am going to accept the joint
8 recommendation of the parties. And the basis for the
9 acceptance is the plea made by the United States Attorneys
10 Office that it is in conformity with the wishes of the family
11 and with the approval of the Boston Police Department.

12 I am going to impose the following sentence:

13 A term of imprisonment of 144 months, credit for time
14 served; 60 months supervised release; \$100 special assessment.

15 The special conditions of the supervised release are
16 as follows:

17 Defendant is prohibited from possessing a firearm or
18 other dangerous weapon. And the defendant is to participate
19 in a mental health program as directed by the United States
20 Probation Office.

21 Although you are only going to have to serve twelve
22 years for this vicious and heinous offense, you are going to
23 have to live your whole life with the realization that you
24 have killed a man, a father, and a police officer. Innocent.
25 Was only doing his duty. Just to live with that has to be

1 punishment enough.

2 Is there anything further?

3 MR. APFEL: Yes. There is one matter, Your
4 Honor, that Mr. Kettlewell and I discussed just very briefly
5 before we came in. And it has been raised literally within
6 the last hour. But let me bring it to the Court's attention.

7 There is a concern on the part of the government, on
8 the part of the victim families that Mr. Shay not profit in
9 any way from his conduct in this case. And we believe that
10 Your Honor has the power to prevent him from profiting in any
11 way by issuing an order of restitution that in effect would
12 say any profits that Mr. Shay should ever make by selling his
13 story to Hollywood or going on TV would be automatically
14 turned over to the victim families. That's not a precise
15 wording but that's the gist of it.

16 And since we do have that in agreement, a plea
17 agreement and this is not part of it, I just want to raise it
18 with the Court right now. We have just started discussing it.
19 I intend to file a motion to this effect at some point within
20 the next week or ten days.

21 THE COURT: Here's what I'd ask you to do.
22 Since it comes as a surprise and it was not within the
23 confines of the plea agreement or any previous discussions,
24 I'd ask the United States Attorney to file a motion to that
25 effect, serve it on counsel for the defendant and I will rule

1 thereon. If I need a hearing subsequent to this time, I will
2 set it. But I won't rule on it at this time.

3 MR. APFEL: That's fine, Your Honor.

4 MR. KETTLEWELL: The only other matter, Your
5 Honor, is next week -- the agreement deals with the motion for
6 request for judicial recommendation of designation. And we
7 would be bringing something before the Court's attention next
8 week in writing with regard to that.

9 THE COURT: In what respect?

10 MR. KETTLEWELL: With respect to an appropriate
11 institution for Mr. Shay.

12 THE COURT: Well then, again, you file a motion,
13 serve it on the United States and I will rule on it.

14 MR. KETTLEWELL: Thank you, Your Honor.

15 MR. APFEL: One last thing, Your Honor, just --
16 Mr. Libby has brought to my attention. It is in the plea
17 agreement but we just want to state in open court that one of
18 the terms of the agreement is a waiver on the part of Mr. Shay
19 of his appellate rights to the extent that he can legally
20 waive those rights.

21 THE COURT: Well, I was going to advise him that
22 he has a right to appeal.

23 Do you understand that, you have a right to appeal?
24 It's been indicated to me that as part of the plea agreement
25 that you have waived that right. But I will hear from

1 counsel, what is --

2 MR. KETTLEWELL: No, that is correct. That was
3 part of the negotiation that preceded this agreement. And we
4 have agreed to the extent that the law permits that Mr. Shay
5 has waived his right to appeal this sentence.

6 THE COURT: Do you understand that, Mr. Shay?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: All right. Anything further?

9 MR. KETTLEWELL: No, Your Honor.

10 THE COURT: These proceedings are concluded.

11 THE CLERK: All rise.

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13 (WHEREUPON, the proceedings were recessed at 3:10

14 p.m.)

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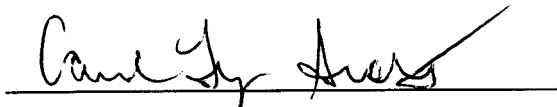
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C E R T I F I C A T E

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5 I, Carol Lynn Scott, Official Court Reporter for the
6 United States District Court for the District of
7 Massachusetts, do hereby certify that the foregoing pages are
8 a true and accurate transcription of my shorthand notes taken
9 in the aforementioned matter to the best of my skill and
10 ability.
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14
15



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