

1 MR. KELLY: Nothing further, your Honor.

2 MS. GERTNER: Nothing further, your Honor.

3 THE COURT: Who is next?

4 MR. LIBBY: Your Honor, the United States calls
5 Attorney Alan Pransky.

6 Alan Pransky, sworn

7 Direct Examination by Mr. Libby

8 Q Good afternoon, sir. Would you state your name, spelling
9 your last name for the reporter, please.

10 A My name is Alan Pransky, P R A N S K Y.

11 Q Where do you live, sir?

12 A I live in Needham.

13 Q You are a practicing attorney, sir?

14 A Yes, I am.

15 Q How long have you been admitted to the bar of the
16 Commonwealth of Massachusetts?

17 A I was admitted in 1978.

18 Q Where do you practice, sir?

19 A In Dedham.

20 Q The name of your firm, please?

21 A Devito, Pransky and Stavros, P.A.

22 Q Where in Dedham, sir?

23 A 133 East Street.

24 Q And how long have you been at those offices?

25 A I think five years.

1 Q What's the nature of your practice, sir, very brief?

2 A It's a general practice, civil, criminal litigation,
3 domestic relations, real estate.

4 Q Would you describe very briefly for the Court and jury,
5 please, the nature of the businesses approximately down the
6 street from your offices?

7 A We're right next to the Dedham Mall which has Sears,
8 Sears automotive, Bradleys, on Washington Street which is
9 we're at the corner of Washington Street, there's a number of
10 small shops.

11 Q Is the Dedham Service Center across the street?

12 A Yes, it is.

13 Q Thank you, sir. Now, you're subpoenaed to appear here
14 today?

15 A Yes, I was.

16 Q Are you familiar with the gentleman by the name of Thomas
17 Shay, Sr.?

18 A Yes.

19 Q And how are you familiar with him, sir?

20 A He's my client.

21 Q Where does he reside, please?

22 A Eastbourne Street in Roslindale.

23 Q When did your attorney/client relationship begin with
24 Shay, Sr.?

25 A 1989.

1 Q Now, as Shay, Sr.'s attorney, sir, you are precluded, are
2 you not, from divulging certain things?

3 A Yes.

4 Q What things are those?

5 A Communications between my client and myself in private.

6 Q So, in connection with your appearance here today, you
7 may, however, speak to certain matters; is that right?

8 A Yes.

9 Q And what are those matters, please?

10 A I can speak to anything that is not privileged, anything
11 that was not communicated in private between my client and
12 myself and I also have another privilege, the attorney work
13 product privilege.

14 Q Very briefly, what is the attorney work product
15 privilege?

16 A Any of my thought processes and my own individual work
17 including research.

18 Q Were you ever the attorney for Thomas Shay, Jr., Mr.
19 Pransky?

20 A No, I was not.

21 Q All right. Now, let's go back to 1989, when you say your
22 attorney client relationship began with Shay, Sr., did you
23 interview Shay, Sr. at that time?

24 A Yes, I did.

25 Q And in connection with what, sir, if you may?

1 A In connection with a lawsuit against Dedham Service
2 Center, the name is Bergiam, Inc. and Bergiam antitrust.

3 Q When did you commence that lawsuit, sir?

4 A In 1990.

5 Q In what court?

6 A Suffolk Superior Court.

7 Q Would you name the defendants of that lawsuit, please?

8 A Jeffrey Berry, Bergiam Inc., Bergiam Realty Trust,
9 Anthony Giamarco.

10 Q Would you describe briefly the relationship of those
11 defendants and the Dedham Service Center?

12 A The Dedham Service Center is a garage and it's operated
13 by Lou Giamarco and Jeffrey Berry. They were the landlords of
14 Thomas Shay who ran a body shop out of the same location.

15 Q And without commenting on privileged communications,
16 would you describe for the Court and jury, please, the nature
17 of the lawsuit that you commenced?

18 A In October of 1987, there was an explosion at the gas
19 station, someone put a quarter stick of dynamite into a barrel
20 which exploded. At the time of the explosion, Tom Shay was
21 sitting in his premises and he was injured by the concussion,
22 concussive force of the explosion.

23 Q On whose behalf did you commence that lawsuit, who were
24 the plaintiffs?

25 A The plaintiff, the original was Thomas Shay, Sr. It was

1 subsequently amended to include a consortium claim for his
2 daughter Crysten.

3 Q Now, you were counsel of record when you commenced that
4 lawsuit, yes?

5 A Yes.

6 Q Did you remain counsel of record throughout?

7 A No.

8 Q Would you describe for the Court and jury very briefly
9 why that is so?

10 A I had interviewed one of the defendants Jeffrey Berry,
11 and he gave certain statements. He then changed his testimony
12 at a deposition and under the rules of court, if I was to
13 testify as to the changed statements, I would have to withdraw
14 as attorney which I did.

15 Q Did you maintain any further attorney-client relationship
16 with Shay, Sr. thereafter?

17 A Yes, I did.

18 Q You withdrew?

19 A Yes, I did.

20 Q Do you recall when you withdrew as counsel of record,
21 sir?

22 A September of 1991.

23 Q Now, did you interview Thomas Shay, Jr. in connection
24 with the prosecution of that civil lawsuit, Mr. Pransky?

25 A Yes, I did.

1 Q Do you recall when you did?

2 A March of 1990 was the first time.

3 Q Do you recognize Thomas Shay, Jr. in the courtroom today?

4 A Yes, I do.

5 Q Would you point him out and describe him for the record,
6 please?

7 A He's sitting at the table wearing a white shirt, blue
8 tie.

9 MR. LIBBY: Your Honor, may the record, please,
10 reflect that the witness has correctly identified Thomas Shay,
11 Jr.

12 THE COURT: Yes.

13 Q Now, was there discussion between the lawyers in the
14 civil lawsuit with respect to Shay, Jr. giving a deposition?

15 A Yes.

16 Q When was that discussion commenced, please.

17 A Well, it was an ongoing discussion, I don't remember when
18 they first sought the deposition. We tried on a number of
19 occasions to arrange for it.

20 Q What was Shay, Jr.'s role in connection with first the
21 incident?

22 A He was a witness. He was there at the time of the
23 explosion.

24 Q Will you describe for us, please, the efforts which you
25 undertook or those in your office undertook to secure Shay,

1 Jr.'s appearance at a deposition?

2 A He was originally subpoenaed and received a phone call
3 that he was out of state, so the subpoena was rescheduled. We
4 made numerous phone calls to --

5 Q First, would you tell us when, if you recall, when that
6 first subpoena was served?

7 A I don't recall the date. It could have been in the
8 beginning of 1991.

9 Q Please continue.

10 A We made a number of phone calls trying to arrange for his
11 presence at the deposition. I know I called him out of state
12 on at least one occasion. Most of the contact was through his
13 mother and every time we tried to arrange it, and again
14 getting the attorneys and stenographer together, the
15 scheduling just seemed to fall apart.

16 Q Were there any occasions where you, in fact, had a
17 deposition scheduled, but did not go through because Shay, Jr.
18 failed to appear?

19 A Yes, the first one.

20 Q I'm sorry?

21 A At least the first one, yes.

22 Q Do you recall when that first one was scheduled?

23 A No, I don't. That was the first notice that we received
24 a call from his mother that he was out of state.

25 Q But again it was set up, everyone else appeared but Shay,

1 Jr.; is that right?

2 A People did not appear, it was cancelled in advance.

3 Q Was there a second occasion?

4 THE COURT: Why do we need to get into this detail?

5 MS. GERTNER: I have no objection.

6 THE COURT: Somebody tried to take the deposition.

7 MS. GERTNER: I have no objection to the detail, your
8 Honor.

9 THE COURT: I do. If it's not relevant, then why
10 spend time on it.

11 MR. LIBBY: That will be my last question on this
12 line.

13 A We spent a series of phone calls. We never actually got
14 a deposition scheduled which everybody confirmed that they
15 could be at.

16 Q All right. Shay, Jr. actually ultimately appeared at the
17 deposition, didn't he?

18 A Yes.

19 Q What date?

20 A September 13th, 1991.

21 Q And did anything else take place on that date that's not
22 on Shay, Jr.'s deposition?

23 A I was also deposed. That was a condition of my being
24 able to testify as a witness.

25 Q Would you describe -- strike that. Did you take any

1 steps that day to personally see to it that Tom Shay, Jr.
2 appeared for that deposition?

3 A I personally drove him. I called the other attorney, and
4 I said my deposition was scheduled. I said Tom Shay, the son,
5 is in town. Can you hold two depositions in one day, and
6 everybody agreed.

7 Q So the morning of 13th of September 1990, you drove
8 where, sir?

9 A I drove to Quincy to his mother's condominium to pick him
10 up.

11 Q Ultimately you did pick him up?

12 A Yes.

13 Q Where did you drive to?

14 A To Charlestown at the offices of Gallagher and Gallagher.

15 Q Is it fair to say that Shay, Jr. in fact was deposed and
16 then you were deposed?

17 A Yes.

18 Q And then what happened?

19 A I drove him home.

20 Q Were the two of you alone in your car?

21 A Yes.

22 Q Would you describe for us, please, as you were leaving,
23 you're leaving Charlestown and you want to go to Quincy,
24 right?

25 A Right.

1 Q Do you know how to do that on your own?

2 A Yes, but it was rush hour and he indicated that he knew a
3 faster way than sitting on the Southeast Expressway.

4 Q Which way, did he give you directions?

5 A Yes.

6 Q Which way did he take you?

7 A I'm not real sure of the names, but we were on the
8 Southeast Expressway for a while. We got off around
9 Dorchester. We went down along the water near Quincy over to
10 his mother's condo.

11 Q Is that the Quincy Shore Drive?

12 A I believe that's the name.

13 Q At some point you stopped?

14 A Yes, I needed gas.

15 Q You then had a meeting Mr. Pransky with Shay, Jr.?

16 A Yes.

17 Q Would you state for us, please, you recall about that
18 conversation starting with a question that Mr. Shay, Jr. posed
19 to you?

20 A He asked me if I was aware that they were planning on
21 killing his father -- I'm sorry. He asked me if I was aware
22 that his father thought they might kill him.

23 Q Did you have an understanding as to what the term "they"
24 pertained to?

25 A Yes.

1 Q And how did you get that understanding, sir?

2 A We had been discussing generally the lawsuit Bergiam, and
3 we referred to the other side as they, them.

4 Q Did you have a response for Shay, Jr. at that time?

5 A Yes.

6 Q What did you say?

7 A I said I'm aware of that.

8 Q Did you say anything further?

9 A He asked me if I was concerned about it, and I said, No,
10 I'm not. He then asked me, Why not? And I said, Because
11 there's no point to it. He said, What do you mean? I said,
12 If they killed his father Tom Shay, Sr., the lawsuit would
13 continue. We had already taken his deposition. In theory, we
14 could proceed without his being present.

15 Q At that time did Shay, Jr. have any question about any
16 recovery?

17 A Well, he asked me who would own the lawsuit if we
18 proceeded.

19 Q Is that the term he used, "own the lawsuit" or did he say
20 something else about money in general?

21 A Well, he said, Where would the money go?

22 Q And what did you say?

23 A I said, It would go to the estate of Thomas Shay the
24 father.

25 Q Then what did Tom, Jr. say?

1 A He said, Well, who has the estate? I said, It would
2 depend. If he had a will, it would be whatever the will
3 specified as his heirs. And if not, if he had no will,
4 intestate, it would be his four children.

5 Q And did you describe who those children were?

6 A I said, four children of which he is one of the four.

7 Q The others being whom, sir?

8 A Crysten Flanagan, and he has two sisters. There are a
9 number of Shay girls. I can't say the first names of them.

10 Q Was there any discussion there after about your
11 assessment of the value of that civil lawsuit, Mr. Pransky?

12 A Yes.

13 Q Would you tell us how that conversation unfolded?

14 A He asked me how much the lawsuit was worth, and I said to
15 him that I can't tell that I don't know what the lawsuit is
16 worth. I said, Of course, we tell the other side. It's worth
17 a lot of money, but we really can't put any value on it.

18 Q What, if anything, did he say in response to that?

19 A He said, My father thinks that it's worth. I think he
20 said 300. In my mind it's confusing, between 300 to 400,000.
21 He said, My father thinks it's 300,000.

22 Q What did you say in response to that?

23 A I told him that that's the value of the insurance that
24 we've uncovered, that that is not a value of the lawsuit.

25 Q At some point thereafter, was there any further

1 discussion about a question asked to whether Shay, Sr. had a
2 will?

3 A Yes.

4 Q Would you describe that to the Court and jury, please.

5 A A little later on he asked me if his father had a will,
6 and I answered, I couldn't answer that question; that would be
7 privileged information.

8 Q Was any conversation about your belief, your assessment
9 as to whether the lawsuit would prevail, whether it would
10 succeed?

11 A Yes, he asked me if I thought his father would win the
12 lawsuit. I said, yes, I did, I wouldn't be involved in the
13 lawsuit unless I thought he would win.

14 Q At the time this conversation is happening, you're going
15 down Quincy Shore Drive en route to the mother's condo?

16 A Yes.

17 Q What then takes place?

18 A We got to his mother's condo and I drop him off.

19 Q Is that the last time you had in person conversation with
20 Tom, Jr.

21 A That's the last time. I had telephone conversation with
22 him after that.

23 Q Now, directing your attention to Monday, the 28th of
24 ~~October~~, Mr. Pransky,, Shay, Sr. is still your client that
25 day?

1 A Yes.

2 Q And at some point, sir, you heard that an explosion had
3 taken place, at your client's residence in Roslindale,
4 correct?

5 A Yes.

6 Q What did you do when you got notice of the explosion?

7 A I called Tom's house.

8 Q And as a result of calling Tom Shay, Sr.'s house, what
9 did you do?

10 A I drove over to the house, I picked up my file of the
11 Bergiam case and drove over to his house.

12 Q About what time did you arrive, if you recall?

13 A About 6 o'clock in the evening.

14 Q Is it fair to say, sir, when you got there, there were a
15 number of law officers present?

16 A Yes.

17 Q And at some point inside the house, you were present with
18 Shay, Sr. and Mary Flanagan and various Boston police homicide
19 detectives present, correct?

20 A Yes.

21 Q And there were various other ATF agents on the scene as
22 well?

23 A Yes.

24 Q And for several ensuing hours you sat through some
25 interviews with Shay, Sr.?

1 A Yes.

2 Q Conducted by the members of the Boston homicide unit,
3 correct?

4 A Yes.

5 Q And there was a consent search that took place --

6 A Yes.

7 Q -- that evening that you were present for? And at some
8 point you viewed the case file materials with members of the
9 Boston Homicide?

10 A The Bergiam case, yes.

11 Q Very briefly with respect to the Boston Homicide
12 interview where were you, who was present?

13 A We were in the dining room of the house. Mary Flanagan
14 was present, Tom Shay, Sr., was present, I was present, Peter
15 O'Malley was present, and a number of other Boston police
16 officers.

17 Q You understood Peter O'Malley to be a Boston homicide
18 detective?

19 A Yes.

20 Q Roughly how many homicide detectives present?

21 A They were floating in and out, I couldn't gather how
22 many.

23 Q Members of the homicide unit taking notes?

24 A Yes.

25 Q At some point Shay, Sr. in fact submitted to questioning

1 by these gentlemen?

2 A Yes.

3 Q Before he did that, did you have a conversation with
4 Shay, Sr.?

5 A Yes.

6 Q How long did that interview process last, sir?

7 A Of Shay, Sr.?

8 Q Yes.

9 A Well, it was ongoing. We had a half-hour or so
10 initially, then we did something else, came back and asked
11 more questions.

12 Q Roughly an hour, hour and a half all told?

13 A Probably.

14 Q Did Shay, Sr. Refuse to answer any questions put to him
15 at that time?

16 A Not a single one.

17 Q Would you describe for the Court and jury, please, Shay,
18 Sr.'s demeanor throughout that interview process?

19 A He was very upset. He was disturbed that he had been the
20 victim of this bombing.

21 Q Now, moving on Mr. Pransky, after that interview process
22 Mary Flanagan and Shay, Sr. each executed a consent search
23 form; is that correct?

24 A Yes.

25 Q Did you describe for them, did you explain to them what

1 that entailed?

2 A Yes.

3 Q They signed those forms?

4 A Yes.

5 Q You witnessed those forms?

6 A Yes, I did.

7 Q You were present when that search took place?

8 A Yes.

9 Q Where did it start?

10 A It started in the basement and they worked their way up
11 through the house.

12 Q Who conducted the search, who was present?

13 A There was a tremendous number of police officers
14 present. Two bomb squad officers actually moved the items and
15 looked through the house. Everybody else watched the bomb
16 squad.

17 Q Where did it move after the basement, please?

18 A It moved to the first floor which is the kitchen, dining
19 room, living room area.

20 Q Do you recall anything in particular as to what, how the
21 detectives or rather the bomb squad members were conducting
22 the search?

23 A I remember a number of details about it. I remember
24 moving from room to room very methodically. I remember in the
25 kitchen they took things out of the kitchen cabinets. They

1 moved the cans of food; they moved the plates; they were
2 behind things.

3 MR. LIBBY: If I may, your Honor, approach the
4 witness.

5 Q I show you Government's Exhibit 48 B. I'm going to ask
6 you whether you recognize that form, sir? Do you recognize
7 that form, Mr. Pransky?

8 A Yes, I do.

9 Q What is it, please?

10 A Actually, no, this is one I did not see. This is a
11 consent for the roof, exterior walls and the furnaces. I did
12 not see this one.

13 Q Okay. Mr. Pransky, the consent search forms, what date
14 were they executed?

15 A That was on the day of the explosion.

16 Q If I may have defendant's exhibits please, the numbers
17 were 4 -- let me show you Exhibits 4 and 5, Mr. Pransky and
18 ask if you recognize those?

19 A I recognize 4.

20 Q What do you recognize 4 to be, please?

21 A It's a consent form for searching of the premises.

22 Q Signed by whom, sir?

23 A It is signed by Thomas Shay and I witnessed it as a
24 witness.

25 Q Same question for Exhibit 5, please. Do you recognize

1 that?

2 A No, I don't.

3 Q Okay. With respect to the search, as it proceeded
4 through the house, sir, do you recall the search in the attic?

5 A Yes.

6 Q Do you recall what was found in the attic, please?

7 A Under the eaves, well under, the officer had crawled
8 under. He found a very heavy tool box.

9 Q And what was in the tool box ultimately?

10 A Coin.

11 MS. GERTNER: Objection, your Honor. He's not the
12 finder of the tool box.

13 MR. LIBBY: Were you present when it was found?

14 A Yes.

15 Q Were you present when it was opened?

16 A Yes.

17 Q What did it contain?

18 A A coin collection.

19 Q Will you describe for us how long this search took all
20 told?

21 A Hour, maybe an hour and a half.

22 Q What then took place?

23 A After that they sat down and talked to me about the
24 contents of my civil case.

25 Q Would you tell us, please, what contents you described or

1 explained to the detectives?

2 A I explained to them what the lawsuit was about, the
3 nature of the explosion. I showed them photographs of the
4 layout of Dedham Service Center. I showed them portions of
5 the depositions that had been taken in the case.

6 Q Did you share any of your work product with the
7 detectives that evening?

8 A No.

9 Q Did you ever share any attorney client privileged
10 communication?

11 A No.

12 Q Were you asked to, Mr. Pransky?

13 A No, I was not.

14 Q Now, what time did you leave that evening?

15 A 9 or 9:30.

16 Q Were you there the next evening?

17 A Yes, I was.

18 Q How long, please?

19 A Three or four hours.

20 Q Again, who was present, if you recall-- without names,
21 how many investigators were present?

22 A I couldn't tell you how many, they were floating in and
23 out of the house. They were around the outside of the house.

24 Q More questioning of Shay, Sr.?

25 A Yes.

1 Q In the kitchen or dining room?

2 A Dining room.

3 Q Anyone taking notes?

4 A Yes.

5 Q Several investigators taking notes?

6 A Yes.

7 Q Wednesday 30th of October, sir, were you present again?

8 A Yes.

9 Q At 39 Eastbourne, Roslindale?

10 A Yes.

11 Q Again more questioning of Shay, Sr. that evening?

12 A Yes.

13 Q Detectives present?

14 A Yes.

15 Q Taking notes?

16 A Yes.

17 Q How long did you stay?

18 A Probably about an hour and a half, two hours.

19 Q Now, on Thursday, the 31st, Halloween evening, do you
20 recall that, sir?

21 A Yes.

22 Q Did you in the first instance go to 39 Eastbourne that
23 evening?

24 A No, I did not.

25 Q Received a telephone call?

1 A Yes.

2 Q What did you learn sir, from that telephone call?

3 A I was asked to go down to Tom Sr.'s house.

4 Q Do you recall that was the Boston detective that asked
5 you to do that?

6 A Yes.

7 Q About what time did you arrive at 39 Eastbourne Street?

8 A Around midnight.

9 Q How many detectives present?

10 A There were three.

11 Q And who else was present?

12 A Well, one of the they may have been ATF, I'm not sure.

13 Q Who else was present?

14 A Tom Shay and Mary Flanagan.

15 Q And at that time, sir, what was the conversation about?

16 A They explained, they believed that Tom, Jr. --

17 MS. GERTNER: Objection, your Honor.

18 THE COURT: How is this admissible?

19 Q Rather than, if you would Attorney Pransky, rather than
20 directing your answer as to what people said, could you tell
21 us the substance of the conversation or rather the topic of
22 the conversation?

23 MS. GERTNER: Objection, your Honor.

24 THE COURT: Well, I don't see how we can get into any
25 of that.

1 MR. LIBBY: All right.

2 Q Did -- strike that. At one point, Mr. Pransky, did you
3 see a telephone call -- strike that. Did you see Shay, Sr.
4 speak on the telephone?

5 A Yes, I did.

6 Q What was your understanding as to whom he was speaking?

7 A His son.

8 Q Was he asked to speak on the telephone on that occasion?

9 A Yes.

10 Q Did the detectives ask him to do that?

11 A Yes.

12 Q Did he refuse to do that?

13 A No.

14 Q Were you present during that conversation?

15 A Yes, I was.

16 Q How long did it last?

17 A About three minutes.

18 Q Do you recall what Shay, Sr. said?

19 A He said that he loved his son, that he would stand by
20 him, and that he wanted his son to do what was right.

21 Q Following that conversation, about what time did you
22 leave, Mr. Pransky?

23 A About 2:30.

24 Q Do you have any further conversation with the Boston
25 police detectives following that parting at 39 Eastbourne?

1 A Yes.

2 Q Tell us what you told the detectives on that
3 investigation?

4 A When I left the house, they asked me to talk to them some
5 more, and they took me down to the station and I told him
6 about the conversation I had with Tom, Jr. on September 13th
7 when I was driving home from the deposition.

8 MR. LIBBY: Your Honor, I have nothing further of
9 Mr. Pransky.

10 MR. KELLY: Your Honor, with the court's permission,
11 counsel would like to suspend cross-examination until first
12 thing tomorrow morning by agreement.

13 MS. GERTNER: We've gone through the witness a little
14 more quickly than anticipated.

15 THE COURT: I'm sorry?

16 MS. GERTNER: Our files are back at our office.

17 THE COURT: Every time I think we're moving ahead, we
18 then have to stop, and go backwards.

19 MR. KELLY: We're doing great. We're ahead of
20 schedule.

21 THE COURT: We'll suspend until 9 o'clock tomorrow
22 morning, members of the jury, and you are excused with the
23 usual admonition.

24 THE CLERK: All rise.

25 [Whereupon, the jury left the courtroom.]

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THE COURT: Mr. Pransky, you're excused until
9 o'clock tomorrow morning as well.

THE WITNESS: Thank you, your Honor.

THE COURT: Court is in recess until 2.

[Recess taken.]