

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY and
ALFRED W. TRENKLER

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Crim. No. 92-10369-Z

GOVERNMENT'S MOTION FOR ORDER DIRECTING
WLVI-TV (CHANNEL 56) TO PRODUCE VIDEOTAPED
INTERVIEW WITH DEFENDANT THOMAS A. SHAY
(Fed. R. Crim. P. 17(c))

The government respectfully requests, pursuant to Rule 17(c) of the Federal Rules of Criminal Procedure, that the Court issue an order directing WLVI-TV of Boston, Massachusetts ("Channel 56") to produce, for in camera review and, on further proceedings, for disclosure to all parties in this matter, a copy of a videotape containing an interview conducted by Channel 56 with defendant Thomas A. Shay in October, 1992 at the Plymouth County House of Correction (the "Interview"). In support hereof, the government states as follows:

1) The Interview was given in a county corrections facility by a (then) known target in a highly-publicized police homicide case, videotaped by a cameraman in the presence of a corrections officer.

2) As is presently determinable from the brief portions aired thus far, the Interview depicts Shay, on film, making statements and admissions relating to activities which are the subject of the Indictment.

3) The government's proposed Order is no "fishing expedition" but is specific to a particular item of undisputable evidentiary value and therefore complies fully with the "specificity, relevancy and admissibility" requirements of Rule 17(c) of the Federal Rules of Criminal Procedure.

4) Moreover, because the scales tip decisively in favor of in camera review when balancing Channel 56's and the government's competing interests, disclosure also comports with the requirements of the First Amendment. Production of the Interview in these circumstances poses no real or apparent threat to the newsgathering function or any other concern grounded in the First Amendment, i.e., by this proposed Order, the government seeks neither reporter's notes nor information or materials given in confidence or which would identify or otherwise disclose a confidential source.

5) Production, on the other hand, advances the clear and significantly weightier public interest in effective law enforcement and fair administration of justice. See Branzburg v. Hayes, 408 U.S. 665, 690-91 (1972).

WHEREFORE, the government respectfully requests that this Court order (proposed Order attached) that: the Interview be produced for in camera review; and the parties thereafter appear to be heard on the government's continuing demand that the Interview be disclosed to all parties for trial and trial preparation purposes. In further support hereof, the government relies upon its Memorandum of Law, submitted herewith.

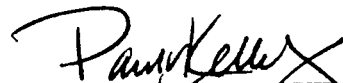
REQUEST FOR ORAL ARGUMENT

As provided within L.R. 7.1(d), the government wishes to be heard on this matter and respectfully requests oral argument.


Respectfully submitted,

A. JOHN PAPPALARDO
United States Attorney

By:



PAUL V. KELLY
Assistant U.S. Attorney




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

CERTIFICATE OF SERVICE

Suffolk, ss.

Boston, Massachusetts
January 28, 1993

I, FRANK A. LIBBY, JR., Assistant U.S. Attorney, do hereby certify that I have this day served, by first-class mail, postage prepaid, a copy of the foregoing Government's Motion for Order, to counsel of record.



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

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ORDER

THIS MATTER having come before the Court on the government's motion in this behalf; and after having reviewed the briefs submitted by the parties and heard argument of all counsel in this regard;

It is hereby ORDERED, ADJUDGED and DECREED that:

(1) The Motion to Quash Subpoena For Documents Directed To WLVI-TV (Channel 56), dated and submitted January 12, 1993 is DENIED; and

(2) WLVI-TV shall forthwith produce to the Court for in camera review a true and complete videotape copy of the interview conducted in or about October, 1992, at the Plymouth County House of Correction between Channel 56's Karen Marinella and Thomas A. Shay, Jr., defendant (the "Interview").

The Clerk will notify all parties as to scheduling for

further proceedings on the government's continuing demand for pre-trial production of the Interview to all parties.

DATED: _____

Rya W. Zobel
U.S. District Judge