DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	CRIMINAL NO	00-10260 5
v.	,	CRIMINAL NO.	92-10369-2
)		
THOMAS A. SHAY)		

AFFIDAVIT OF AMY BARON-EVANS IN SUPPORT OF MOTION TO SUPPRESS

- I, Amy Baron-Evans, depose and say and follows:
- 1. On or about November 4, 1991, Shay Jr. was charged by the Commonwealth of Massachusetts with communicating a false bomb threat in violation of M.G.L. c. 269 § 14.
- 2. On January 3, 1992, Shay Jr., upon the advice of Attorney William McPhee, executed a release in favor of Suffolk County Assistant District Attorney Hugh Curran, for the limited purpose of assisting Mr. Curran in determining whether to seek a reduction of the charge. See Letter from William McPhee to ADA Curran, Exhibit I; Release, Exhibit II.
- 3. That is the only release of psychiatric or social history records executed by Shay Jr. in favor of anyone but his own attorneys.
- 4. Sometime before mid-April 1992, the government obtained an <u>ex parte</u> order for Shay Jr.'s social services and psychiatric records.
- 5. Since Shay Jr. never waived or released his rights and privacy interests in these documents, the federal government's access to them was in violation of his right to privacy under the Due Process Clause and his right against self-incrimination, both guaranteed by the Fifth Amendment to the Constitution of the

United States; and in violation of his right of privacy under M.G.L. c. 214 §1B, the patient/psychotherapist privilege under M.G.L. c. 233 § 20B, the client/social worker privilege under M.G.L. c. 112 § 135 et seq., and the fair information practices act, M.G.L. c. 66A § 1 et seq.

6. In addition, the use the government now seeks to put the records to -- to prove motive to commit the charged offenses in Shay Jr.'s upcoming trial -- exceeds Judge Wolf's order. While we have been unable to access the order itself, AUSA Kelly described it as follows in a letter to William McPhee dated April 24, 1992, and attached as Exhibit III:

The Court's order authorizing disclosure of your client's medical, psychiatric and social service records to my office prohibits disclosure beyond the grand jury, Boston Police Department, ATF, Suffolk County District Attorney's Office, and any duly authorized medical or mental health expert retained by my office. "No further dissemination of the records may be made." (MBD No. 92-10247, United States District Judge Mark L. Wolf).

Signed under the pains and penalties of perjury this 24th day of June, 1993.

Amy Baron-Evans

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WILLIAM C. McPHEE

ATTORNEY AT LAW
21 McGrath Highway, Suite 403
P.O. Box 229
Quincy, Massachusetts 02269

William C. McPhee Katie J. Silverman

TEL: 617-471-9307 FAX: 617-471-8383

January 7, 1992

Hugh Curran, Asst. District Attorney Suffolk County District Attorney's Office New Courthouse Pemberton Square Boston, MA 02108

RE: Commonwealth vs. Thomas Shay

Dear Mr. Curran:

This letter will confirm our understandings reached at the Boston Municipal Court on January 3, 1992. On that date, we made a joint recommendation to Judge Richard Chin that my client, Mr. Thomas Shay, be released on \$10,000.00 personal recognizance on the following conditions:

- 1. That he report by telephone daily to Ms. Moy of the Boston Municipal Court Probation Department;
- That he meet with Ms. Moy on a weekly basis;
- 3. That he attend at least one Alcoholics Anonymous meeting each day;
- 4. That he present himself to the Quincy Mental Health Center for out-patient treatment.

I understand that my client has been complying with those court orders.

In addition, I provided you with a signed release to enable the Suffolk County District Attorney's Office to obtain the psychiatric records of my client to aid you in determining whether or not the this District Attorney's Office should seek a reduction in the charge so that the matter be kept in the District Court process as opposed to requiring a probable cause hearing and indictment by a Grand Jury.

We also filed a joint motion to continue the case for status on January 17, 1992 at 9:00 a.m.

Lastly, I understand you will be forwarding a copy of the motion and the release to my attention at your earliest convenience and will be forwarding any and all medical records and reports received by your office relating to my client when they are received.

Thank you for your anticipated cooperation.

Very truly yours,

William C. McPhee

WCM: mpk

cc: Mr. Thomas Shay

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Commonwealth of researchusetts
vo.
Thomas Shay

Bostin Municipal Conf Indet # 91 CR 10189

Release

I, Thomas Shay, hereby release and authorize any and all physicians, health come facilities, psychiatric facilities and other mental health organizations to release any and all records, report and alter document relating to my in-patient and out-patient treatment, diagnosess and prognoseis to the Suffell County District attenny's office in their use of the above-captioned case.

William Mother Wilman

Carlo Maria

Commonwealth of massachaette Doslon Municipal Cour Docket # 91 CK 10189 Thomas Shay Motivi for Continuance and Rhuse of Suformation Now Comes the Commonwealth and the defendant in the about-captionie case and hereby agree to further continue this for evaluation and review until 1-17-92. It is further aguel that it defendant levely agrees to provide a release to the Suffolk County District attorney's affice to oblain any and all psychiatric records, report or other documents relevant to to their review of this case. The following locations are hereby included in said defendants release for access to records:

1. Budgewater State Argental

2. Jackles House sonwood Hospital

7. Willesley Hills (Pr. Damil Weis) to Market Weis)

8. Stolian Home For Little 1.

9. Any other visitalions as discovered at a further date.

Respectfully Submitted
For the Commonwealls,
Aligh R Curran, 101

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Minne & May

CLERK MACISTRATE



U.S. Department of Justice

United States Attorney

New England Drug Task Force

1009 J.W. McCormack POCH Boston, Massachusetts 02109

April 24, 1992

BY TELEFAX (471-8383)

William C. McPhee, Esquire 21 McGrath Highway, Suite 403 P.O. Box 229 Quincy, Massachusetts 02269

Re: Thomas Shay

Dear Mr. McPhee:

This will reply to your telefax letter of April 23, 1992.

The Court's order authorizing disclosure of your client's medical, psychiatric and social service records to my office prohibits disclosure beyond the grand jury, Boston Police Department, ATF, Suffolk County District Attorney's Office, and any duly authorized medical or mental health expert retained by my office. "No further dissemination of the records may be made" (MBD No. 92-10247, United States District Judge Mark L. Wolf). Therefore, I will not be able to comply with your request. As a practical matter, a signed release from Mr. Shay to the various institutions will achieve the same result.

As to the recent alleged telephonic bomb threat by Mr. Shay, it was my understanding that no criminal charges would be filed. Now you see how much clout I have!

Finally, as my letter of April 20th points out, it is not my intention to accept any further calls from your client. I will, however, be happy to talk further with you (and your client together) concerning the matters we discussed on Wednesday by telephone.

Very truly yours,

A. JOHN PAPPALARDO United States Attorney

By:

PAUL W. KELLY

Assistant U.S. Attorney