UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA	)	
	)	
v.	)	Criminal No. 92-10369-Z
	)	
THOMAS A. SHAY	)	

GOVERNMENT'S SENTENCING MEMORANDUM

The United States of America hereby submits this memorandum presenting its views and arguments on relevant sentencing issues, consistent with the evidence and the law in the case.

I. THE PERTINENT SENTENCING FACTS NEED ONLY BE ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE

Shay Jr. asks that the Court determine the relevant sentencing facts "in the context of the full panoply of procedural protections, based on admissible evidence, and subject to proof beyond a reasonable doubt." Defendant's Memorandum at pg. 3. In making this request, Shay Jr. relies principally upon a case which has not been followed in this circuit, appears to be in conflict with the overwhelming majority of other circuits, and is factually and legally distinguishable. United States v. Kikumura, 918 F.2d 1084, 1098-1102 (3rd. Cir. 1990).[1] Shay Jr. not only relies upon Kikumura (which established a "clear and

[1] Kikumura, supra, involved a district court's decision to significantly depart upwards from the guideline range. After finding the degree of departure remarkable (a "330 month departure" from the guideline range, 918 F.2d at 1102) the appeals court decided to impose a "clear and convincing" standard of proof for departures. We are not dealing with a "departure" situation here. The Government seeks the sentence outlined in the PSI, which is consistent with the sentencing guidelines.

convincing" standard of proof for upward departures in the Third Circuit), but wishes this Court to go beyond it and find that a "reasonable doubt" standard should be applied in resolving all disputed factual issues at sentencing.

While Shay Jr.'s attorneys are, as always, to be commended for their creativity and effort, the law in this circuit has been firmly established. The Government need not establish facts used for sentencing beyond a reasonable doubt; a "preponderance of the evidence" standard satisfies due process. United States v. Lowden, 955 F.2d 128, 130 (1st Cir. 1992); United States v. Wright, 873 F.2d 437, 441 (1st Cir. 1989) (citing McMillan v. Pennsylvania, 477 U.S. 79 (1986); see also United States v. Carrozza, No. 92-1789 at 26 (1st Cir. decided September 16, 1993) ("sentencing factors, including the applicability of relevant conduct, need only be proven by a preponderance of the evidence, not beyond a reasonable doubt"). Therefore, counsel is plainly wrong in asserting that Shay Jr.'s state of mind "is constitutionally required to be proved by the Government beyond a reasonable doubt." Defendant's Memorandum at pg. 8. If it is constitutionally permissible for the Court to consider relevant conduct, including uncharged or acquitted conduct, by a preponderance standard in sentencing, Carrozza, supra; United States v. Mocciola, 891 F.2d 13, 16-17 (1st Cir. 1989), certainly the Court may resolve factual issues necessary to determining Shay Jr.'s appropriate offense level by the same standard.

II. OFFENSE LEVEL COMPUTATION - FIRST DEGREE MURDER

The defendant Thomas A. Shay ("Shay Jr.") was convicted of conspiracy, 18 U.S.C. § 371, and aiding and abetting the attempted malicious destruction of property by means of explosives, 18 U.S.C. § 844(i) and 2, resulting in the death of Boston Police Officer Jeremiah Hurley and the maiming of Boston Police Officer Francis Foley.

The superseding indictment charges in Count One that Shay Jr. "knowingly and willfully" conspired with a Alfred W. Trenkler ("Trenkler") to receive explosives "with the knowledge and intent that the same would be used to kill, injure and intimidate another individual [i.e., Thomas L. Shay ("Shay Sr.")]", and that he conspired with Trenkler to attempt to maliciously destroy, by means of explosive, "an automobile used in an affecting interstate commerce [i.e., Shay Sr.'s 1986 Buick]."[2] The indictment charges in Count Three that Shay Jr. knowingly aided and abetted Trenkler's attempt "to maliciously damage and destroy, by means of fire and explosive, a 1986 Buick automobile which was owned by [Shay Sr.]." Count Three further charges that this wilful and intentional conduct by Shay Jr. "directly and proximately caused the death of Jeremiah Hurley and serious injury to Francis Foley, both public safety officers who were performing their official duties."

---

[2] Count One specifically alleges that "it was part of the conspiracy that the conspirators discussed and agreed to kill [Shay Sr.]."

The Presentence Investigation Report ("PSI") correctly refers to the sentencing guidelines for "Homicide" (Chapter Two, Part A) in computing Shay Jr.'s applicable offense level. The conspiracy guideline, U.S.S.G. § 2X1.1, directs the use of the guideline applicable to the substantive offense. The substantive offense guideline -- here, attempted malicious destruction by means of explosive, 18 U.S.C. § 844(i) -- U.S.S.G. § 2K1.4, provides that "if death resulted . . . apply the most analogous guideline from Chapter, Part A (Offenses Against the Person)." Section 2K1.4(c)(1).

Relying upon the jury's verdict, the express charging language of the superseding indictment, the evidence at trial, and relevant statutory provisions, the PSI concludes that "the details of this offense fit the definition provided by Title 18 U.S.C. § 1111(a), and the most analogous guideline from Chapter Two, Part A is U.S.S.G. § 2A1.1, First Degree Murder." PSI at 11.[3] There can be no denying that this is the correct offense level application for this case. See, e.g., United States v. Depew, 932 F.2d 324, 329 (4th Cir. 1991) (upholding the district court's use of analogous kidnapping and murder offense guidelines where defendant was convicted of conspiracy to kidnap minor child, even though child was not murdered).

---

[3] The First Circuit has instructed that the applicable guideline should be determined by "looking to the charge of which the offender was convicted." United States v. Blanco, 88 F.2d 907, 910 (1st Cir. 1989).

Section 2A1.1 defines "first degree murder" as including "premeditated killing", and "death [resulting] from the commission of certain felonies". Application Note 1. "Murder is defined statutorily as:

> the unlawful killing of a human being with malice aforethought. Every murder perpetrated by poison, lying in wait, or any other kind of willful, deliberate, malicious, and premeditated killing; or committed in the perpetration of, or attempt to perpetrate, any arson, escape, murder, kidnapping, treason, espionage, sabotage, aggravated sexual abuse or sexual abuse, burglary, or robbery; or perpetrated from a premeditated design unlawfully and maliciously to effect the death of any human being other than him who is killed, is murder in the first degree.

18 U.S.C. § 1111(a). The underlined portion of the statute (above) constitutes legislative recognition of the doctrine of "transferred intent" in the context of first degree murder. As applied here, Shay Jr. was charged and convicted of being involved in a "premeditated design" or plot, with Trenkler, to effect the death of his father, Shay Sr., for personal and financial reasons. Due to a combination of unusual circumstances, instead of killing Shay Sr., he and Trenkler killed Jeremiah Hurley, an innocent victim who was simply doing his job as a police officer. Had the plot succeeded, and Shay Sr. been killed, no reasonable argument could be made that this conduct did not constitute first degree murder. As a matter of law, Shay Jr. and Trenkler are not to be rewarded for missing their intended target, due to circumstances which were not

foreseen. A life was violently taken by Shay Jr.'s knowing and wilful conduct, and it is still "first degree murder."[4]

Shay Jr.'s argument that the PSI is wrong and that the most analogous guideline is that for "involuntary manslaughter," U.S.S.G. § 2A1.4, is specious. In advancing this argument, Shay Jr. first attempts to blind the Court to the fact that the jury found him guilty of the entire conspiracy count -- including the charge that he engaged in the conduct alleged "with the knowledge and intent the [explosives] would be used to kill, injure and intimidate." Shay Jr. next seeks acceptance by the Court of the following fanciful factual propositions:

1. That he "did not act with malice aforethought or participate in a premeditated design to kill his father." Defendant's Memorandum at pg. 31.

2. That he only "recklessly told Trenkler about his history of abuse and neglect, and purchased a toggle switch for Trenkler, and failed to ascertain or understand the gravity of the situation." Id.

These arguments were obviously rejected by the jury, and should likewise be rejected by the Court. As the PSI concisely states in responding to defense counsel's objections, "if defense counsel's argument had been accepted by the jury, the defendant would have been acquitted." Addendum to PSI at 14 (Response to Objection No. 16).

---

[4] Had Shay Jr. been charged under 18 U.S.C. § 1111(a), assuming proper jurisdiction, the court would be required to sentence him to life imprisonment without parole, with no opportunity for any consideration of a downward departure. See United States v. Gonzales, 922 F.2d 1044, 1048-51 (2d Cir. 1991), United States v. Donley, 878 F.2d 735, 739-741 (3rd Cir. 1989).

The guideline for involuntary manslaughter, U.S.S.G. § 2A1.4, refers the reader to the statutory provisions found in 18 U.S.C. § 1112. Section 1112 defines "involuntary manslaughter" as the "unlawful killing of a human being without malice"

> in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death.[5]

The Government submits that no rationale finder of fact could describe Shay Jr.'s conduct in this case as even remotely approximating the above definition. This case was not about "recklessness," or "negligence", or any lack of "due caution and circumspection." Rather, the charges and the evidence here painted a picture, accepted by the jury beyond a reasonable doubt, of calculated, premeditated, intentional and malicious conduct by both Shay Jr. and Trenkler. The scheme was to kill, and the result was the death of one human being, and the severe and permanent injuring of another.[6]

---

[5] This statutory definition of "involuntary manslaughter" is virtually identical to the definition of this term as found in Black's Law Dictionary (Rev. 4th ed. 1968).

[6] Shay Jr.'s attorneys have dutifully attempted to relitigate their case many times since the jury returned its guilty verdict. Counsel filed a lengthy motion for a new trial and motion for judgment of acquittal. Both motions were recently denied by the Court. Counsel then filed extensive objections to the PSI, again raising several of the same factual arguments that were included in their post-trial motions. Counsel has now devoted at least ten (10) pages of their sentencing memorandum to yet another repetition of the same factual contentions. Defendant's Memorandum at pgs. 11-20. The Government has previously responded to these arguments, the Probation Department has recently considered these claims (without changing the PSI), and the Court has considered and rejected these same issues and

III. SHAY JR. IS NOT ENTITLED TO REDUCTION OF OFFENSE LEVEL FOR "ACCEPTANCE OF RESPONSIBILITY"

The Government notes that Shay Jr.'s sentencing memorandum is not suggesting that he is entitled to any credit for acceptance of responsibility, Defendant's Memorandum at pgs. 34-35. Hence, the Government will not dwell on the issue, other than to say that Shay Jr. has not shown any remorse or acceptance of responsibility within the meaning of the Guidelines. U.S.S.G. § 3E1.1. See, e.g., United States v. Garcia, 917 F.2d 13780 (5th Cir. 1990) ("refusal to admit factual guilt . . . is inconsistent with acceptance of responsibility when such refusal is not based on a legal or technical defense.") Moreover, a credible argument can be made that Shay Jr. has not only not admitted his guilt or accepted responsibility, but that he made material false statements to law enforcement that significantly impeded the investigation of this matter. U.S.S.G. § 3C1.1.

IV. SHAY JR. IS NOT ENTITLED TO ANY REDUCTION FOR HIS ROLE IN THE OFFENSE

Shay Jr. argues that he is entitled to a three-level reduction of his offense level as a "minor" or "minimal" participant. U.S.S.G. § 3B1.2. Shay Jr. was not a limited participant in the criminal conduct which was charged and proven in this case. The evidence at trial demonstrated that Shay Jr. was an equal participant with Trenkler in the sinister plot. While both defendants had different roles, neither may be

---

contentions. It would serve no purpose to restate here the Government's interpretations of the facts or evidence at issue.

considered more or less culpable than the other.[7] Based on the evidence presented, Shay Jr. actually planted the original seeds of this unlawful venture. He possessed the personal and financial motive to kill his father. He recruited Trenkler into the scheme. He knowingly assisted Trenkler in consummating the plan by purchasing some of the electronic components needed for the deadly bomb. The fact that Trenkler possessed the expertise and experience necessary to design and assemble the explosive device should not diminish Shay Jr.'s essential role in the concerted activity. See United States v. Valencia-Lucena, 925 F.2d 506 (1st Cir. 1991) (defendant involved in initial planning of drug smuggle not entitled to adjustment as minimal participant).

Shay Jr. is not "less culpable" than Trenkler, and is therefore not a "minor participant." U.S.S.G. § 3B1.2(b) (Application Note 3). Shay Jr. is also not a "minimal participant" in the sense that he lacked the "knowledge or understanding of the scope and structure of the [criminal] enterprise." U.S.S.G. § 3B1.2(a) (Application Notes 1 and 2). No downward adjustments for mitigating role are applicable under the guidelines.

---

[7] The Government would concede that a bomb maker (i.e., Trenkler) poses a greater menace and potential future risk to society which, were life imprisonment not the guideline sentence, would arguably warrant an upward departure.

V. NO DOWNWARD DEPARTURE FROM THE GUIDELINES IS WARRANTED

The First Circuit has said that the "basic theory" of the sentencing guidelines is a simple one. United States v. Rivera, 994 F.2d 942, 946 (1st Cir. 1993). In order to lessen the degree to which different judges impose different sentences in comparable cases (i.e., sentencing disparity) an expert Sentencing Commission would write guidelines applicable to "most ordinary sentencing situations." Id. Should a judge face a sentencing situation that was "not ordinary," the judge can depart from the guidelines, provided the judge sets forth the reasons for the departure. Id.

The Court has also said, however, that departures are to be the "exception, not the rule". United States v. Diaz-Villafane, 874 F.2d 43, 52 (1st Cir. 1989). Thus, the Court has said, departures are limited to those cases which (1) are "markedly atypical", id.; (2) involve "idiosyncratic circumstances" which result in there being something "special" about the offender or the offense which distinguishes the case "from the mine-run for that offense," United States v. Aguilar-Pena, 887 F.2d 347, 349-50 (1st Cir. 1989); (3) are "bottomed on meaningful atypicality; in other words, the circumstances triggering a departure must be truly "unusual", United States v. Williams, 891 F.2d 962, 967 (1st Cir. 1989); (4) are "exceptional", United States v. Studley, 907 F.2d 254, 258 (1st Cir. 1990); and (5) involve those "few instances" where some substantial atypicality can be demonstrated which is "sufficiently portentous to move the case out of the

heartland of the offense of conviction." United States v. Sklar, 920 F.2d 107, 115-116 and n.7 (1st Cir. 1990).

Based on the foregoing legal principles, the Court should find that this case falls within the "heartland" of cases to which the arson/explosives guideline was intended to apply. U.S.S.G. § 2K1.4. This guideline provision applies to conduct involving the use of fire or bombs that creates a "substantial risk of death or serious bodily injury to any person other than a participant in the offense." The guideline contemplates that with this type of criminal conduct death may result, and has taken this foreseeable consequence into account. U.S.S.G. § 2K1.4(c)(1). In this area of dangerous criminal activity, the "norm", it would appear, is the knowing use of fire or explosives to kill, or injure, or destroy property. That is this case. The facts and circumstances here, while containing some peculiar and interesting twists and relationships, are not "markedly atypical" or meaningfully different from most arson or bombing cases. See, e.g. United States v. Day, 943 F.2d 1306 (11th Cir. 1991); United States v. Paden, 908 F.2d 1229 (5th Cir. 1990); United States v. Foster, 898 F.2d 25 (4th Cir. 1990).

Shay Jr. asserts that his case is "highly unusual", but does not explain why. Defendant's Memorandum at pg. 35. The conduct here -- conspiring with another to kill by means of a bomb for personal or financial reasons -- does not, however, "significantly differ from the norm" of explosives cases. U.S.S.G. Ch. 1, Part A, Intro. Comment (4)(b). The case is

therefore squarely within the "heartland" of typical explosives cases which result in death or injury. Rivera, supra.[8]

A. Shay Jr. Intended To Kill Shay Sr. And Acted Knowingly

Shay Jr. claims that he is entitled to a departure "because he did not cause the death intentionally or knowingly", citing Application Note 1 to U.S.S.G. § 2A1.1. Shay Jr. repeats his ludicrous assertion that his state of mind was no more than "recklessness." Again completely ignoring the charges, the evidence, and the jury's verdict, Shay Jr. maintains only that "he was reckless in failing to ascertain or pay attention to the likelihood that Trenkler was carrying out a dangerous scheme, to which he only contributed to a toggle switch." Defendant's Memorandum at pg. 36. This factual argument is wholly lacking in credibility and does not warrant substantive response.

Moreover, as the Government's sole objection to the PSI explained, the sentencing guidelines do not permit a departure in instances of premeditated murder, whether one kills one's intended victim or someone else. Application Note 1 to U.S.S.G. § 2A1.1 states: "The Commission has concluded that in the absence of capital punishment life imprisonment is the appropriate punishment for premeditated killing." The Application Note then

---

[8] To emphasize its view that departures should be the "exception, not the rule", Diaz-Villafane, 874 F.2d at 52, limited to substantially unusual cases, the First Circuit requires that district courts provide "a very deliberate discussion of the factors making the case unusual." United States v. Sclamo, No. 93-1089 at 8-9 (1st Cir. decided July 7, 1993).

goes on to discuss the second category of first degree murder cases covered by this provision, namely cases involving felony-murder. A reading of the note will indicate that the language cited and relied upon by Shay Jr. ("if the defendant did not cause the death intentionally or knowingly") is a qualifier for the second category of cases (felony-murder), not the first category (premeditated killings). Hence, only in felony murder situations -- which this case is not -- may a downward departure be considered.[9]

B. Departure Is Not Warranted Based On Shay Jr.'s Alleged Mental/Emotional Condition Or Disadvantaged Upbringing

The Sentencing Commission contemplated that "departures were to be exceptional and, absent an express finding to the contrary, the presumption is that the defendant's circumstances are not so unusual as to justify departure." United States v. Studley, 907 F.2d 254, 258-59 (1st Cir. 1990). The guidelines specifically provide that "mental and emotional conditions are not ordinarily relevant in determining whether a sentence should be outside the applicable guideline range, except as provided in Chapter Five, Part K, Subpart 2 (Other Grounds For Departure)."

---

[9] A common sense reading of the application notes supports the Government's view. The second paragraph of Application Note 1 indicates that the extent of any such departure should be based on, among other things, "the defendant's state of mind (e.g., recklessness or negligence), . . ." A fortiori, this inquiry has no application to premeditated killings, and therefore, the language appearing in the second paragraph of Note 1 can apply only to felony-murder cases.

U.S.S.G. § 5H1.3.[10] When reference is made to Chapter Five, Part K, Subpart 2, the Court will find the following policy statement:

> If the defendant committed a non-violent offense while suffering from significantly reduced mental capacity not resulting from voluntary use of drugs or other intoxicants, a lower sentence may be warranted to reflect the extent to which reduced mental capacity contributed to the commission of the offense, provided that the defendant's criminal history does not indicate a need for incarceration to protect the public.

U.S.S.G. § 5K2.13 (emphasis added). By its express terms, the diminished capacity guideline does not apply where the defendant committed a violent crime. Moreover, this guideline exception speaks to "significantly reduced mental capacity" as within its scope, and therefore unavailable as a basis for departure. Finally, the guideline notes the need to "protect the public" from potentially dangerous offenders. The Government submits that Shay Jr.'s involvement in this sinister plot to kill his own father, by grand and violent means, clearly indicates the serious danger which he poses to his father, other members of his family, and society at large.[11]

---

[10] Only when a defendant's mental condition is determined to be substantially or meaningfully "atypical", may a district court consider departure on this basis. Studley, 907 F.2d at 258; Rivera, supra.

[11] It is apparent from his memorandum that Shay Jr.'s principal aim in presenting psychiatric evidence at sentencing is to attempt to make a record of the "unlikelihood . . . that he acted with malice aforethought, intended to kill, or deliberately premeditated a murder." Defendant's Memorandum at pg. 22. Such evidence is completely irrelevant to the sentencing in this case, or to Shay Jr.'s effort to obtain a downward departure.

Shay Jr. also claims that he is entitled to a downward departure due to his history of parental abuse and neglect. Counsel erroneously asserts that "childhood abuse and neglect are not specifically addressed by the guidelines." Defendant's Memorandum at pg. 38, fn. 12. Contrary to this assertion, Section 5H1.12 specifically provides that "lack of guidance as a youth and similar circumstances indicating a disadvantaged upbringing are not relevant grounds for imposing a sentence outside the applicable guideline range." This provision was added by the Sentencing Commission in response to the Ninth Circuit's decision in United States v. Floyd, 959 F.2d 1096 (9th Cir. 1991), as amended 956 F.2d 203 (9th Cir. 1992), where the Court found that "lack of guidance" as a youth and "abandonment by parents" were mitigating circumstances warranting a downward departure. Id. at 1099. Accordingly, Shay Jr.'s claim of a disadvantaged youth and being a member of a prototypical "dysfunctional family" are not proper grounds for departure.

C. Departure Is Not Warranted Due To Shay Jr.'s Lack Of Sophistication Or Claimed Unlikelihood Of Future Criminality

Shay Jr. appears to be advancing the novel proposition that stupidity warrants a downward departure. There is no basis in the guidelines for this position, or legal support for the same. The case of United States v. Jagmohan, 909 F.2d 61,65 (2d Cir. 1990) is clearly distinguishable. In Jagmohan, the defendant bribed a city official with a personal check, while demanding a signed receipt. The Court took this fact (lack of criminal

sophistication) into account, along with other factors, and departed downward on the sentence. In this case, the Government never argued or proved that Shay Jr. was the builder of the bomb, or that he possessed any technical know-how or expertise. Shay Jr. was a knowing co-conspirator in the deadly plot, and an aider and abetter to its consummation by use of a bomb. His level of sophistication or lack thereof did not impact his knowing and wilful criminal conduct; likewise, it should not affect his sentence.

Defendant's further claim that this crime was an "aberrant act" is unfounded. The PSI lists three prior "criminal convictions" and miscellaneous "other criminal conduct" by Shay Jr. The PSI fails to list additional encounters with the law by Shay Jr. of which the Court may take judicial notice.[12] Shay Jr. was arrested in November, 1988 with possession of a stolen motor vehicle in Manchester, New Hampshire; he was arrested and convicted of possession of a stolen motor vehicle in May, 1989 in Milton, Massachusetts; and he was arrested in September, 1990 charged with possession of stolen property in Seattle, Washington. According to the PSI, pages 17-20, Shay Jr. has also threatened or attempted suicide on various occasions within the past two years. To say that Shay Jr.'s history "does not predict

---

[12] The criminal history report by the Pretrial Services Agency is part of the court record in this case.

future violence" or criminal behavior, Defendant's Memorandum at pg. 40, is an overstatement at best.[13]

D. Vulnerability In Prison Should Not Be A Basis For Departure

It cannot be denied that a young, openly gay male, convicted of killing a police officer, will be a target for others in prison. The Court, however, may account for this by directing (or recommending) that the Bureau of Prisons take precautionary measures in placement, etc., rather than by reducing the duration of any such defendant's sentence. The Bureau of Prisons regularly deals with highly vulnerable inmates and protected inmate-witnesses. There is no reason to believe that steps cannot be taken to insure Shay Jr.'s safety and security while incarcerated.[14] Those who engage in serious and violent criminal activity should not be treated differently than others due simply to their sexual orientation or physical appearance.

VI. GOVERNMENT'S SENTENCE RECOMMENDATION

Based on the foregoing, the Government believes that the PSI accurately calculates Shay Jr.'s offense level and corresponding guideline range, and that no departure from that range is

---

[13] Obviously, the Government does not believe that Shay Jr.'s criminal history category "over-represents" the seriousness of his criminal history, as claimed. Category II fairly represents, if not under-represents, Shay Jr.'s criminal history, for the reasons stated above.

[14] The Government would not object to a placement of Shay Jr. in a Bureau of Prisons facility, such as FCI-Springfield or FCI-Butner (both hospital settings), at which his security is less likely to be threatened, and where he may receive treatment or counselling for whatever alleged mental or emotional condition he may have.

warranted or appropriate. The Government thus recommends sentencing Shay Jr. in accordance with the guideline range, that is, life imprisonment.

Apart from the guideline considerations, which are reasoned and thorough, the following additional factors warrant a sentence of life imprisonment:

1. The killing of a police officer, even when a defendant intended to kill someone else, must be considered among the most serious of criminal offenses, which strikes at the very foundation of a civilized society. For his part in this plot, Shay Jr. could have faced the death penalty.

2. The use of a powerful (two to three sticks of dynamite) remote-controlled explosive device here (characterized by the Government at trial as an "indiscriminate weapon of terror") potentially endangered the lives of many innocent persons, including children. This bomb detonated in a residential neighborhood less than 100 yards from an elementary school, while school was in session.

3. The autopsy photographs and medical records in this case are shocking. They reveal that Jeremiah Hurley suffered a particularly violent, painful and agonizing death, ultimately succumbing to his injuries several hours after the explosion. Officer Hurley was conscious and in extreme pain for at least an hour after the blast.

4. Officer Francis Foley survived this tragic event, but is a living reminder of the callousness of the perpetrators. He

lost an eye, lost his hearing in one ear, sustained multiple blast injuries to his head, face, arms, legs and torso, and is now permanently disabled from his life's work. Officer Foley not only lost a major part of his life, and his livelihood, but he also lost his long-time partner and close friend.

5. The members of the Hurley and Foley families, as well the Shay family, have had their lives tragically, profoundly and permanently changed as a result of the conduct of Shay Jr. and Trenkler. Many of the victims have submitted thoughtful, poignant letters to the Court reflecting their continuing pain and loss. The Government is confident that the Court will read and consider these submissions.

6. A family has lost a loving father and husband. A police department has lost the services of two loyal and highly-

skilled veteran officers. A city has lost a dedicated public servant and hero. The case cries out for justice to be served, for deterrence to be emphasized, and for the public to be protected. Imposition of a life sentence is the only just result.

Respectfully submitted,

By its attorneys,

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
October 5, 1993

I, PAUL V. KELLY, Assistant U.S. Attorney, do hereby certify that I have served the copy of the foregoing, by hand delivery, to: Nancy Gertner, Esq., Dwyer, Collora and Gertner, 400 Atlantic Avenue, Boston, Massachusetts and Jefferson W. Boone, Esq., Boone & Henkoff, 138 Brighton Avenue, Allston, Massachusetts.

_____
PAUL V. KELLY
Assistant U.S. Attorney