

AFFIDAVIT

Boston, Massachusetts
March 5, 1992

I, Francis W. Armstrong, Jr., being duly sworn, hereby
depose and state:

1. I am a Boston Police Department ("BPD") Detective assigned to the Homicide Unit and a Special Deputized U. S. Marshal.

2. On February 18, 1992 a subpoena was issued on application of the United States of America by the United States Attorney for the District of Massachusetts to James Harding of 32 Ledgewood Road, Braintree, MA, commanding his appearance before a federal grand jury on February 20, 1992 at 10:00 a.m. This subpoena further required that Harding bring with him to the grand jury "any and all audio recordings containing the voices of Alfred Trenkler, Donna Shea and/or James Harding." This grand jury was investigating the death of Boston Police Officer Jeremiah Hurley, and the maiming of Boston Police Francis Foley, by means of an explosive device which detonated on October 28, 1991.

3. James Harding appeared on February 20, 1992 pursuant to the above subpoena, and, after a brief interview conducted outside the grand jury room by Assistant U.S. Attorney Frank A.

Libby, Jr., the decision was made to postpone Mr. Harding's appearance before the grand jury pending further debriefing by the Assistant U.S. Attorneys involved in this investigation.

4. On Wednesday, March 4, 1992, James Harding appeared at the offices of the United States Attorney and was interviewed extensively in my presence and in the presence of Boston Police Detective Brendan Craven, and Assistant U.S. Attorney Frank A. Libby, Jr. On this occasion, AUSA Libby asked Harding whether there existed any tape recording of any conversation had between and among Harding, Donna Shea and Alfred W. Trenkler at any time. Harding responded that while he and Donna Shea agreed beforehand to go together to Trenkler's place of business for the purpose of tape recording a conversation between them, and further, that while Harding provided a hand-held micro-cassette tape recorder and, further, while Donna Shea provided the actual tape to be used for this purpose, Harding stated that he did not activate the tape recorder at the time that the planned conversation took place.

5. At the conclusion of the March 4, 1992 interview, Harding was advised to appear at the Federal Post Office and Courthouse Building, 13th floor, on the following day, Thursday, March 5, 1992 to appear before the Grand Jury.

6. At approximately 10:00 a.m. March 5, 1992, I spoke by telephone with James Harding. During this conversation, Mr. Harding stated that he would bring any such tape called for

within the above-described subpoena only on three conditions:

1. that he not be held accountable for any statements made previously to any federal, state or local law enforcement officer regarding the existence, or not, of any such tape;
2. That he not be subject to any prosecution for the making of any such tape;
3. That he was going to seek a gun permit, because "they are going to blow my balls off."

7. Harding appeared at the offices of the U.S. Attorney on Thursday, March 5, 1992 at approximately 12:30 p.m. At that time, AUSA Frank A. Libby, Jr. and AUSA Paul Kelly again advised James Harding that any such tape recording fell within the scope of the above-described subpoena and that it should be produced. After a brief discussion on the matter, Mr. Harding exited AUSA Kelly's office stating "I'll see you on the 13th floor".

8. Thereafter, I spoke with James Harding on the ground floor level of the federal courthouse. At that time, I accompanied Mr. Harding outside the courthouse towards the Quincy Square Market. During our walk, Mr. Harding stopped at a parking lot attendant's booth reaching inside, produced a small cassette tape. Mr. Harding proceeded to place this tape in his overcoat pocket and we returned to the courthouse.

9. At approximately 2:30 p.m. Detective Craven and I outside the grand jury room, demanded that Harding turn over the tape, which I had previously seen him obtain in the Quincy Market area. Harding refused.

10. At this time, and under the exigent circumstances described above, and in the reasonable belief that the above-described tape would be concealed, destroyed or otherwise placed beyond the reach of the above subpoena issued in connection with this ongoing investigation, Mr. Harding was placed under arrest for obstruction of justice and was taken to the U.S. Marshal's Office (Post Office Courthouse, 15th floor).

Francis W. Armstrong, Jr.
Boston Police Detective
Special Deputy U.S. Marshall

Sworn to and subscribed before me this _____ day of
March, 1992.

Joyce London Alexander
U.S. Magistrate Judge