

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

United States of America )  
 )  
 V. )  
 ) Criminal No. 92-10369-Z  
 Thomas A. Shay )  
 Alfred W. Trenkler )  
 )

**Defendant Alfred Trenkler's Motion For Specific Exculpatory Evidence And/Or Evidence "Material To The Preparation Of The Defense" Pursuant To Rules 16(a)(1)(C) and 16(a)(1)(D)**

Now comes defendant, by his attorney, and pursuant to Brady v. Maryland, 373 U.S. 83 (1963); U.S. v. Bagley, 473 U.S. 667 (1985); Giglio v. United States, 405 U.S. 150 (1972), and U.S. v. Augurs, 427 U.S. 97 (1976); makes the following specific requests for disclosure of exculpatory evidence. Defendant notes that in many cases said requests not only seek exculpatory evidence but also items "material to the preparation of the defense" pursuant to Rule 16(a)(1)(C) and (D):

1. ATF Form 3270.1 which was sent to the TEC in connection with a watch placed on the 8 people listed in ATF Report #E63212-92-21.

2. All reports, mock-ups and diagrams showing how the bomb which exploded on October 28, 1991, works.

3. All the reports, notes and writings of Larry McCune, an explosives enforcement expert with ATF, made in connection with the investigation of this case. More

particularly, any writings or material of Mr. McCune which relate in any way to the material discussed by Special Agent Jeff S. Kerr at paragraphs 33-35 of his "Second Affidavit" executed before the United States District Court on March 12, 1992.

4. All photographs, reports, police notes, lab reports, etc., which relate in any way to the damage caused to a truck on September 1, 1986, in Quincy, MA. More particularly, defendant seeks all material in the possession of ATF, the Quincy Police Department and the MA Department of Public Safety which relates in any way to said incident which incident is more particularly described in paragraphs 23-24 of the Kerr affidavit referred to in paragraph 3 of this motion.

5. All notes, diaries, reports of interview and activity of the ATF and BPD personnel who participated in this investigation.

6. All ATF profiling reports, including said reports involving Thomas Shay, Jr., defendant, and Thomas Shay, Sr.

7. All ATF forensic lab reports concerning explosives, wood, paint, wire, and electrical components in connection with the investigation of the explosion on October 28, 1991.

8. All notes and reports written by the ATF National Response Team.

9. All photos taken by ATF or BPD in connection with the investigation of the 1991 explosion.

10. All ATF and BPD polygraphs conducted on subjects in this investigation, and data used by the ATF polygrapher to determine "deceptiveness" of subjects tested.

11. All photos and diagrams of mock-up devices.

12. All diagrams of circuits and photos of the explosive device which were circulated to members of the International Association of Bomb Technicians and Investigators.

13. All notes, reports and writings of ATF Forensic chemist Cynthia Wallace in connection with her work on the investigation of the 1991 explosion.

14. All ATF and BPD collateral investigation requests and replies received.

15. The results of any tests conducted as a consequence of defendant producing handwriting samples.

16. The results of any BPD or ATF tests which did not connect defendant to the 1991 explosion. For example, the results of the fingerprint tests done on the auto and house of Thomas Shay, Sr.

17. The results of any tests conducted using defendant's voice exemplars.

18. The specific efforts the government and BPD made to corroborate Shay's "proffer" of October 6 and 9, 1992. More particularly, what aspects was ATF or BPD able to corroborate and what aspects were determined to be untrue.

19. Whether ATF or the BPD was able to corroborate any aspects of the Shay "proffer" as it related to implicating Trenkler, what efforts were made to attempt to corroborate said aspects, with what results.

20. The basis for the statement in the November 12, 1992, letter to Shay's counsel that, "I am unable to conclude he has been entirely truthful and cooperative concerning the offense under investigation."

21. The history of all contacts by ATF or BPD with Donna Shea, her husband or James Harding after October 28, 1991.

22. Any memos, notes, etc. of ATF, BPD or the U.S. Attorney's office reflecting contacts with Donna Shea, John Shea or James Harding after October 28, 1991.

23. All evidence seized pursuant to search warrants or consent searches and which the government does not plan to introduce at trial.

24. The dates on the reports turned over pursuant to the Automatic Discovery Order.

25. Records and reports of payments to all confidential informants used by ATF or BPD in the investigation.

26. Names and addresses of all witnesses listed in the 6300 pages of automatic discovery.

27. All photographs shown to any person by the BPD or ATF in the investigation.

28. The grand jury testimony and interview notes, statements, etc., of all persons who were either interviewed or testified before the grand jury and whom the government does not plan to call to testify at trial.

29. A full and complete statement of all details, terms and provisions of any and all plea bargains, agreements or arrangements, whether oral or written, formal or informal, expressed or implied, entered into between the government and any potential government witness, including but not limited to bargains, agreements or arrangements whereby potential or actual criminal charges against the witness or against anyone with whom the witness is or was closely associated were abandoned, delayed, altered or otherwise not pursued.

30. A full and complete statement of any and all criminal cases, investigations or potential prosecutions pending against any potential government witness, regardless of whether or not those cases, investigations or potential prosecutions have been the subject of an explicit promise, reward, or other inducement to the witness, including but not limited to such cases, investigations or potential prosecutions pending against government witnesses.

31. A full and complete statement of any and all criminal conduct, misconduct or "bad acts", whether or not the subject of criminal charges, which have been committed by any potential government witness, regardless of whether or not such conduct and/or "bad acts" have been the subject of

an explicit promise, reward, or other inducement to the witness, including but not limited to such conduct and/or bad acts committed by government witnesses.

32. A full and complete statement of any arrests, and/or criminal convictions of any potential government witness, and, if a witness has been convicted, a full and complete statement of the correctional, probationary or parole status of the witness.

33. A full and complete statement of, and any and all papers and memoranda relating to any and all promises, rewards, or inducements of any kind, including threats, expressed or implied, direct or indirect, made by the government or by any state or local agency, to encourage or induce the giving of testimony or information by any witness whom the government intends to produce at trial, or who has assisted the government in its investigation of this case, including any unindicted coconspirator, or witness who testified before the grand jury, including but not limited to:

- a. promises of non-prosecution of the witness;
- b. suggestions made to the witness that persons in certain categories or situations are not ordinarily made targets of a criminal prosecution;
- c. aid or assistance to the witness in procuring a job, more favorable correctional placement

or correctional programming, or similar benefit;

- d. promises that cooperation would be brought to the attention of judicial, correctional, parole or probation authorities for the benefit of the witness;
- e. statements to the effect that non-cooperation would be brought to the attention of judicial, correctional or parole or probation authorities, or that recommendations for prosecution or for sentencing or for parole or for correctional institution placement would be negatively influenced by a failure to cooperate; and or
- f. statements to the effect that the government has significant evidence of criminal conduct by the witness, including evidence of violations of false statement or false declaration laws and that the witness would be or would likely be indicted if the witness does not cooperate with the government.

34. A full and complete statement of any requests or authorizations for the payment of any sums of money, by the government or by any state agency, to any witness, whom the government intends to produce at trial, or who has assisted the government in its investigation of this case, or who

testified before the grand jury, and, if any such payments were made, any logs, records, or other documents relating to such payments.

35. Any other information which may be used to impeach or discredit government witnesses or any other potential government witnesses, including but not limited to:

- a. inconsistent statements of the witness or between the witness and other persons whom the government has interviewed in the course of its investigation of this case;
- b. statements by the witness evidencing bias or prejudice, grudge or animus against the defendant or against any friend, associate or relative of the defendant;
- c. admissions or other evidence of poor memory by the witness;
- d. evidence of drug or alcohol abuse by, or mental disease, defect or disorder of the witness;
- e. results of polygraph examinations or other tests purporting to examine the credibility of the witness which the government does or does not plan to use at trial; and/or
- f. information that the witness has made any false or inaccurate statements to the



government in the course of its investigation or preparation of this case;

- g. information that the witness suffers from any limitations in his or her ability to perceive events accurately and completely, including but not limited to diminished ability to hear, see or understand events.

36. The identification of any witness who was interviewed by the government in the course of its investigation of this case, but whom the government chose not to present before the grand jury, for any reason, including but not limited to the reason that the information provided by the witness did not comport with other information in the government's possession.

37. Any and all information concerning whether any government agent connected with any investigation of the defendant, was or might have been involved in misconduct, or was or is under investigation for suspected violations of law, including but not limited to unlawful searches and seizures, unlawful entries upon the premises of citizens, fabrications of evidence, improper payments or inducements to informers or witnesses, use of threats, conflict of interest and the like.

38. Any information which may show or tend to show that the defendant was not involved in the allegedly illegal activity that is charged in the indictment in this case or

that may assist in the preparation or presentation of his defense to the charges:

- a. any statements Alfred W. Trenkler made to others consistent with his claim of innocence; and
- b. information concerning the circumstances that led any government witness to become a government witness, including but not limited to information as to whether or not he was confronted with evidence of his criminal conduct, when and under what circumstances he decided to cooperate, correspondence between the witness (or their attorneys) and the government, memoranda on the subject, and the like.

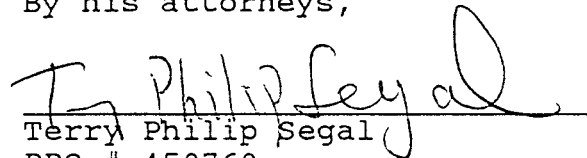
In support of this motion, defendant submits that evidence relevant to the credibility of the government's witnesses, evidence which may mitigate punishment, as well as evidence which directly rebuts proof of the guilt of the defendant, constitutes exculpatory evidence within the meaning of Brady v. Maryland, 373 U.S. 83 (1963) and its progeny, which must be disclosed pursuant to the mandate of the Due Process Clause of the Fifth Amendment to the United States Constitution. See, e.g., United States v. Bagley, 473 U.S. 667 (1985), Giglio v. United States, 405 U.S. 150 (1972). The Court in United States v. Agurs, 427 U.S. 97

(1976), underscored the importance of making specific requests for exculpatory evidence, and the defendant's motion does so. Many of the specific requests delineated in the motion seek information that other courts have already ruled exculpatory. See, e.g., United States v. McCrane, 527 F.2d 906 (3rd Cir. 1975) vacated and remanded 427 U.S. 909 (1976); United States v. Sutton, 542 F.2d 1239 (4th Cir. 1976); United States v. Libtrach, 520 F.2d 550 (8th Cir. 1976) (ordering disclosure of information as that requested in paragraphs 29-35 of this motion); United States v. Fried, 486 F.2d 201 (2nd Cir. 1973) (ordering disclosure of information like that requested in paragraph 30 of this motion); Moynahan v. Manson, 419 F.Supp. 1139 (D. Conn. 1976), aff'd 559 F.2d 1204 (2nd Cir. 1977), cert. denied, 434 U.S. 939 (ordering disclosure of information as that requested in paragraph 31 of this motion). United States v. Algarin, 504 F.2d 562 (1st Cir. 1978); United States v. DiCarlo, 575 F.2d 952 (1st Cir. 1978).

The defendant moves, further, that this information (except as to prior statements of government trial witnesses specifically governed by the Jencks Act, 18 U.S.C. Section 3500) be turned over forthwith, in order that he may prepare his defense. See Local Rule 116.1 (disclosure of exculpatory evidence "shall occur . . . in all events within fourteen (14) days after arraignment"); United States v. Luc Levasseur, 826 F.2d 158, 159 (1st Cir. 1987) (per curiam)

("[s]cheduling of matters, such as discovery disclosures, is within the scope of the district court's discretion"); United States v. Bryant, 439 F.2d 642 (D.C. Cir. 1971); United States v. Shoher, 555 F.Supp. 346, 352 (s.D.N.Y. 1983); United States v. Hubbard, 474 F.Supp. 64, 86 (D.D.C. 1979); United States v. Gleason, 265 F.Supp. 880, 887.

Respectfully submitted,  
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