

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

THOMAS A. SHAY

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CRIMINAL NO. 92-10369-Z

GOVERNMENT'S OPPOSITION TO DEFENDANT'S MOTION
FOR HEARING ON EXTRANEOUS PREJUDICIAL INFORMATION

Thomas A. Shay ("Shay Jr.") moves under Fed. R. Evid 606(b) for a hearing at which his attorneys may question the trial jurors as to whether "extraneous prejudicial information" was improperly brought to their attention during the trial. The government opposes this motion as completely unwarranted.

Shay Jr., taking some liberty with the relevant facts and circumstances, argues that there is a "clear indication" that one or more jurors must have become aware of certain evidence that had been ruled inadmissible by the Court. He bases this argument upon a statement appearing in a Boston Globe article on Thursday, July 29, 1993, purportedly quoting two unnamed jurors. According to the article "both said the jury thought that evidence was suppressed that the jury should have been told about, but would not be more specific." Shay Jr.'s contention is obviously rather speculative. He is reading too much into what appears to be an innocent observation by certain jurors.¹

¹ It is more plausible, on its face, that the jurors were referring to their observation of the many sidebar conferences during the trial, or perhaps to certain testimony that was obviously being limited or "sanitized." For example, it was readily apparent to the jury that they were not being told about

The Court went to great lengths to insure that the undisputedly extensive media coverage of this case played no role whatsoever in the jury's deliberations. At the close of the seventeenth day of trial (July 21, 1993), the date on which the government rested and the defense began its case, the Court instructed the jury as follows:

I want to make it very clear to you that the closer we come to the end of the case, the more important it is that you avoid looking at any newspaper articles, avoid talking to anyone, if anyone should start to talk to you about the case, it is terribly important that you tell that person to shut up and go away and not to talk to you. It is important for you not to watch television. It is not a secret that there has been media interest in this case. So it is very, very important that you should decide the case entirely on the evidence that has been produced in court.

As you know, we operate under a lot of rules that tell us what is appropriate and what is not appropriate, and sometimes the inappropriate creeps into the press. So it is for that reason as well that I ask you not to read anything about it. . . . You are now excused until tomorrow morning at nine. . . .

T. 17-115-116.

At the close of all of the evidence, the Court asked the jury:

Can you all assure me that none of you have, to this time read anything about this case in any newspaper, or watched anything on television or heard anything on radio about it?

T. 18-70.

Having received an affirmative response from each member of

the circumstances surrounding Shay Jr.'s being expelled from the family home in May, 1988. As with any jury, there must have been certain facts that they were curious about; however, there is no reason to believe that they did not understand that there was a valid reason as to why the evidence was limited or suppressed, or that they were not true to their oath.

the jury, the Court went on to admonish the panel as follows:

Again, I ask you please to continue to adhere to that [procedure] and not to talk about it.

T. 18-70-71.

At the close of the first day's deliberations, the Court again admonished the jury:

I ask you most earnestly, please, not to think about the case, certainly not to talk about the case over the weekend. And again, I remind you, as you should be aware this morning, there is intense media interest in this case. Do not read anything about it, do not watch any television. Please ask your families to screen the radio, television, and newspapers for you. . . . I will try to arrange to give you at least some of the press that you are unable to read while you were serving as jurors about this case after it is all over. And I request in return, that you promise absolutely to adhere to this request on my part not to read anything in between and not to watch anything.

T. 19-116.

On the morning of the third day of deliberations (several hours before the verdict was returned), the Court again inquired of the jury:

Members of the jury, will you please assure me that none of you have read or listened or watched any media accounts of this trial?

T. 21-2. The Court then thanked the jury for their response, which was uniformly affirmative. Id.

Clearly, the jury discharged their duties solely by reference to the evidence in the case and without reference to any report carried in the media. "The jurors' assertions of continued impartiality, favorably appraised by the court, comprise testimonials that are not 'inherently suspect,' for a juror is 'well qualified to say whether he has an unbiased mind


in a certain matter.'" United States v. Boylan, 898 F.2d 230, 262 (1st Cir. 1990), quoting Dennis v. United States, 339 U.S. 162, 171 (1950); see also United States v. Angiulo, 897 F.2d 1169, 1186-87 (1st Cir. 1990) (trial court may rely on juror's statement of continued impartiality). The Court rightly concluded that the jury acted in full conformity with its instructions. There is no reason to believe that anything has changed since the trial concluded.

Shay Jr.'s motion should be denied.

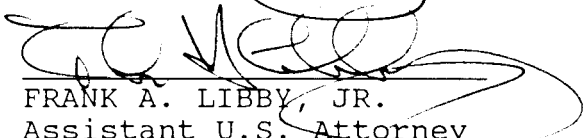
Respectfully submitted,

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
August 31, 1993

I, Paul V. Kelly, Assistant U.S. Attorney, do hereby certify that I have served the copy of the foregoing, by first-class mail, to Nancy Gertner, Esquire, Dwyer Collora and Gertner, 400 Atlantic Avenue, Boston, Massachusetts 02110 and Jefferson W. Boone, Esquire, Boone & Henkoff, 138 Brighton Avenue, Allston, Massachusetts 02134.



PAUL V. KELLY
Assistant U.S. Attorney