

A P P E N D I C E S

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APPENDIX I.—COMMITTEE CORRESPONDENCE

DAN BURTON (INDIANA)  
 CHAIRMAN  
 BIL FRANKS (GEORGIA) NEW YORK  
 CONSTANCE A. MORELLA (MICHIGAN)  
 DAN Rostenkowski (ILLINOIS) COMMERCIAL  
 VERN Riffe (OHIO) FLORIDA  
 JOHNNY MCCOY (MISSOURI) NEW YORK  
 STEPHEN J. TOON (CALIFORNIA)  
 JOHN L. MICA (FLORIDA)  
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 JERRY SCOFIELD (FLORIDA)  
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 DAVE WELLS (FLORIDA)  
 FRANK CANNON (TEXAS)  
 FRANK W. PATTON (FLORIDA)  
 P. L. NUTT (MISSISSIPPI) OHIO  
 LEONARD L. SCHWARTZ (NY)

ONE HUNDRED SEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
 COMMITTEE ON GOVERNMENT REFORM  
 2157 HAYBURN HOUSE OFFICE BUILDING  
 WASHINGTON, DC 20515-6143

NUMBER 1207 (201-5054)  
 NUMBER 1202 (201-5044)  
 TTY 202-555-4803  
 www.house.gov/etom

NIKKI A. HORN (CALIFORNIA)  
 RANKING MEMBER  
 TOM LANTOS (CALIFORNIA)  
 MAURICE CLARKE (NEW YORK)  
 EDGAR SNYDER (NEW YORK)  
 PAUL E. HANCOCK (VIRGINIA)  
 PATTY T. JANE, (TEXAS)  
 CAROLINE MALONEY (NEW YORK)  
 ELEANOR HOLMES NORTON  
 DISTRICT OF COLUMBIA  
 SHERIE L. LUMMUS (MONTANA)  
 JENNIFER HATHORN (OHIO)  
 BOB R. JOHNSON (MISSOURI)  
 DANIEL R. BATES (MISSOURI)  
 JERRY DEAN (MISSISSIPPI)  
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 JAMES D. SCRAMONSON (ILLINOIS)  
 PHILIP L. CLAY (MISSOURI)

DEBRA HOEHL (VIRGINIA)  
 VICE-CHAIRMAN

March 30, 2001

The Honorable John Ashcroft  
 Attorney General  
 U.S. Department of Justice  
 Tenth and Constitution Avenue, N.W.  
 Washington, D.C. 20530

Re: Request for Documents

Dear General Ashcroft:

Pursuant to its authority under Rules X and XI of the Rules of the House of Representatives, the Committee on Government Reform hereby requests certain records.

Definitions and Instructions

1. For the purposes of this request, the word "record" or "records" shall include, but shall not be limited to, any and all originals and identical copies of any item whether written, typed, printed, recorded, redacted or unredacted, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all activity reports, agendas, analyses, announcements, appointment books, briefing materials, bulletins, cables, calendars, card files, computer disks, cover sheets or routing cover sheets, drawings, computer entries, computer printouts, computer tapes, contracts, external and internal correspondence, diagrams, diaries, documents, electronic mail (e-mail), facsimiles, journal entries, letters, manuals, memoranda, messages, minutes, notes, notices, opinions, statements or charts of organization, plans, press releases, recordings, reports, Rolodexes, statements of procedure and policy, studies, summaries, talking points, tapes, telephone bills, telephone logs, telephone message slips, records or evidence of incoming and outgoing telephone calls, telegrams, telexes, transcripts, or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include all other records, documents, data and information of a like and similar nature not listed above.

2. For purposes of this request, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, mentions, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

3. This request calls for the production of records, documents and compilations of data and information that are currently in your possession, care, custody or control, including, but not limited to, all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession, or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the subpoena includes all documents to the present.

4. The conjunctions "or" and "and" are to be read interchangeably in the manner that gives this subpoena the broadest reading.

5. No records, documents, data or information called for by this request shall be destroyed, modified, redacted, removed or otherwise made inaccessible to the Committee.

6. If you have knowledge that any requested record, document, data or information has been destroyed, discarded or lost, identify the subpoenaed records, documents data or information and provide an explanation of the destruction, discarding, loss, deposit or disposal.

7. When invoking a privilege as to any responsive record, document, data or information as a ground for withholding such record, document, data or information, list each record, document, compilation of data or information by date, type, addressee, author (and if different, the preparer and signatory), general subject matter, and indicated or known circulation. Also, indicate the privilege asserted with respect to each record, document, compilation of data or information in sufficient detail to ascertain the validity of the claim of privilege.

8. This request is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto.

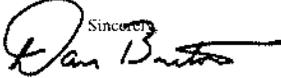
9. Please provide a printed and, where possible, an electronic version of records. Electronic information may be stored on 3½ inch diskettes in ASCII format. In addition, please provide the Committee's Minority staff with an identical copy of all records provided.

Requested Items

Please produce to the Committee the following items:

1. All records relating to Joseph Salvati; and
2. All records relating to the March 12, 1965, murder of Edward "Teddy" Deegan.

Please produce the requested items by April 14, 2001. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member

DAN BURTON, INDIANA  
 CHAIRMAN  
 BEN RAYBURN, NEW YORK  
 CONSTANCE A. AMIELLE, MASSACHUSETTS  
 LINDA SMITH, CONNECTICUT  
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 DANIEL PETERSON, FLORIDA  
 CHRIS GARDIN, UTAH  
 ADAM B. FISHMAN, FLORIDA  
 CLYDE WATSON, ILLINOIS  
 RONALD L. SCHMIDT, VA  
 \*\*\*\*\*

ONE HUNDRED SEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
 COMMITTEE ON GOVERNMENT REFORM  
 2157 RAYBURN HOUSE OFFICE BUILDING  
 WASHINGTON, DC 20515-6143

PHONE: 1001-22-1074  
 FAX: 1001-22-2601  
 TV: 1001-225-6802  
[www.house.gov/reform](http://www.house.gov/reform)  
 May 10, 2001

HENRY A. WAXMAN, CALIFORNIA  
 RANKING MEMBER  
 HOWARD COHEN, CALIFORNIA  
 MICHAEL R. CAHILL, NEW YORK  
 SCOTT FRISVOLD, ILLINOIS  
 PAUL E. MANVOSS, PENNSYLVANIA  
 PATRICK M. LEAHY, VERMONT  
 CAROLYN B. MALONEY, NEW YORK  
 F. FREDERICK WORTHEN  
 DISTRICT OF COLUMBIA  
 EDWARD J. SCHWARTZ, MASSACHUSETTS  
 DANIEL J. Rostenkowski, ILLINOIS  
 ROBERT W. GIBBS, MISSISSIPPI  
 JERRY S. TERRY, MASSACHUSETTS  
 JIM TURNER, IOWA  
 THOMAS H. ALLEN, MAINE  
 MICHAEL D. SCHWARTZ, ILLINOIS  
 HOWARD COHEN, CALIFORNIA  
 \*\*\*\*\*  
 HOWARD COHEN, CALIFORNIA  
 RANKING MEMBER

The Honorable John Ashcroft  
 Attorney General of the United States  
 Department of Justice  
 900 Pennsylvania Avenue NW  
 Washington, DC 20530

Re: Request for Documents

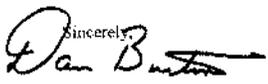
Dear General Ashcroft:

Pursuant to its authority under Rules X and XI of the Rules of the House of Representatives, the Committee on Government Reform is examining the FBI's handling of organized crime investigations in Boston and related matters. The Committee hereby requests certain records.

Please produce to the Committee all records relating to:

1. Commutation requests regarding Joseph Salvati;
2. Responses to commutation requests regarding Joseph Salvati;
3. Deliberations regarding commutation requests regarding Joseph Salvati; and
4. The parole of Joseph Salvati.

Please produce the requested items by May 23, 2001. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
 Dan Burton  
 Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member

DAN BURTON, INDIANA  
 CLAYTON  
 BENJAMIN L. GEARIN, NEW YORK  
 CONSTANCE A. MOREL LA MANTON  
 CHRISTOPHER J. DAVIS, CONNECTICUT  
 DEAN RICE, PENNSYLVANIA  
 JOHN M. MURPHY, NEW YORK  
 STEPHEN HATCH, CALIFORNIA  
 JOHN L. MCCAIG, VIRGINIA  
 THOMAS W. BRADY, VIRGINIA  
 MARK E. SOBELOFF, MONTANA  
 JUSTICE BRIDGES, FLORIDA  
 STEVEN C. LACROIX, TEXAS  
 BOB BARR, CALIFORNIA  
 DAN MILLER, FLORIDA  
 LEO JOSE, CALIFORNIA  
 RON LEUNG, KENTUCKY  
 J. AMY DAVIS, VIRGINIA  
 TERRY RUSSELL PLATTS, WEST VIRGINIA  
 DAN F. RYAN, FLORIDA  
 CHRIS CRANE, UTAH  
 ADAM P. SMITH, MICHIGAN  
 CLYDE W. STENNER, IOWA  
 EDWARD L. SCHWARTZ, VIRGINIA

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 CITY: (202) 225-5074  
 www.house.gov/govreform  
 May 23, 2001

HENRY A. WAXMAN, CALIFORNIA  
 Ranking Minority Member  
 DON LAMON, CALIFORNIA  
 MALCOLM W. CRANE, NEW YORK  
 SCOTT W. LIPPERT, NEW YORK  
 PAUL E. HATHORN, PENNSYLVANIA  
 PATRICK J. SCHUMER, NEW YORK  
 CHARLES W. STAGGER, NEW YORK  
 J. MARK ROSEN, NEW YORK  
 DISTRICT OF COLUMBIA  
 CLAYTON  
 THOMAS W. BRADY, MARYLAND  
 GREGORY J. KING, MISSISSIPPI  
 TODD W. BLANCHARD, ALABAMA  
 DANIEL E. LIPPERT, MISSISSIPPI  
 JOHN R. THORNTON, TEXAS  
 THOMAS E. ALTMAN, ARIZONA  
 JAMES E. DEAN, ARIZONA  
 PHILIP L. HAYES, MISSOURI

The Honorable John Ashcroft  
 Attorney General of the United States  
 Department of Justice  
 900 Pennsylvania Avenue NW  
 Washington, DC 20530

Re: Request for Documents

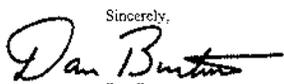
Dear General Ashcroft:

Pursuant to its authority under Rules X and XI of the Rules of the House of Representatives, the Committee on Government Reform is examining the F.B.I.'s handling of organized crime investigations in Boston and related matters. The Committee hereby requests certain records.

Please produce to the Committee all records relating to:

1. Commutation requests regarding Peter Joseph Limone, Henry Tameleo, and Lewis Grieco (or Lewis Greco);
2. Responses to commutation requests regarding Peter Joseph Limone, Henry Tameleo, and Lewis Grieco (or Lewis Greco);
3. Deliberations regarding commutation requests regarding Peter Joseph Limone, Henry Tameleo, and Lewis Grieco (or Lewis Greco); and
4. The parole of Peter Joseph Limone.

Please produce the requested items by June 5, 2001. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
 Dan Burton  
 Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member

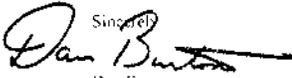


6. All records relating to H. Paul Rico's recall from retirement and subsequent involvement in the investigation of former U.S. District Court Judge Alcee Hastings.
7. All records relating to the involvement of the Department of Justice and the Federal Bureau of Investigation in *People of the State of California v. Joseph Bentley, a.k.a. Joseph Baron Barboza, a.k.a. Joseph Barboza Baron*, Criminal Action No. 6407-C, in the Superior Court of California, Sonoma County;
8. All records relating to contacts between the Federal Bureau of Investigation or its employees and the following individuals after their retirement from the Federal Bureau of Investigation
  - a. H. Paul Rico (retired in 1975);
  - b. Dennis Condon (retired in 1977); and
  - c. John J. Connolly Jr. (retired in 1990);

Please exclude routine post-employment correspondence and information pertaining to pension arrangements.
9. All records, including audiotape recordings and transcripts, relating to the following individuals:
  - a. Vincent James Flemmi (a.k.a. Vincent John Flemmi; a.k.a. Vincent Michael Flemmi; a.k.a. James J. Romano, a.k.a. James Flemm, a.k.a. Fred C. Napolitano);
  - b. Stephen Joseph Flemmi (a.k.a. Stevie Flemmi) from 1960 to 1971;
  - c. Joseph Barboza (a.k.a. Joseph Baron Barboza; a.k.a. Joseph Baron, a.k.a. Joe Bentley), and
  - d. John S. Kelley;
10. All records relating to contacts between Joseph Barboza (a.k.a. Joseph Baron Barboza, a.k.a. Joseph Baron; a.k.a. Joe Bentley) and the following individuals:
  - a. H. Paul Rico;
  - b. Dennis Condon;
  - c. Edward F. Harrington;
  - d. John Doyle;

- e. Frank L. Walsh;
  - f. Jack I. Zalkind;
  - g. William R. Geraway; and
  - h. Lawrence Patrick Hughes.
11. All records relating to contacts between the following individuals and any other individual regarding Joseph Barboza (a.k.a. Joseph Baron Barboza; a.k.a. Joseph Baron; a.k.a. Joe Bentley).
- a. H. Paul Raco;
  - b. Dennis Condon.
  - c. Edward F. Harrington;
  - d. John Doyle;
  - e. Frank L. Walsh;
  - f. Jack I. Zalkind;
  - g. William R. Geraway; and
  - h. Lawrence Patrick Hughes.
12. All internal memoranda, policy statements, and U.S. Department of Justice and FBI guidelines relating to the Top Hoodlum Program and the Top Echelon Program and other past and present programs regarding the use of confidential informants.
13. Unredacted copies of all records which were provided in redacted form pursuant to the Committee's March 30, 2001, request.

Please produce the requested items by June 19, 2001. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member



U.S. Department of Justice  
Federal Bureau of Investigation

---

Office of the Director

Washington, D.C. 20535

June 7, 2001

Honorable Dan Burton  
Chairman  
Committee on Government Reform  
House of Representatives  
Washington, D.C. 20515

Re: Request for Documents concerning Joseph Salvati, et al.

Dear Mr. Chairman:

This is in response to the House Government Reform Committee's request for FBI documents in connection with its examination of the FBI's handling of organized crime investigations in Boston, Massachusetts and related matters. Specifically, by letter dated May 10, 2001 to Special Agent in Charge (SAC) Charles Prouty, FBI Boston, the Committee requested all records relating to commutation requests regarding Joseph Salvati; responses to commutation requests regarding Joseph Salvati; deliberations regarding commutation requests regarding Joseph Salvati; and the parole of Joseph Salvati. Similarly, by letter dated May 23, 2001 to SAC Prouty, the Committee requested all records relating to commutation requests regarding Peter Joseph Limone, Henry Tantele, and Lewis Grieco (or Lewis Greco); responses to commutation requests regarding these individuals; deliberations regarding commutation requests regarding these individuals; and the parole of Peter Joseph Limone. The Committee also sent letters to the Attorney General requesting the same information.

In order to identify material responsive to the Committee's request, the FBI is undertaking a two step process. Initially, the FBI conducted manual and automated indices searches of the FBI's Boston and Headquarters files for information concerning these four individuals. After potentially responsive files are identified, the files are manually searched to retrieve information

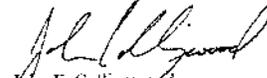
Honorable Dan Burton

pertaining to the commutation issue. This two step process is necessary because documents responsive to the Committee's request do not fall within any of the FBI's investigative filing classifications. As a result, responsive documents cannot be readily identified based on an indices search and each potentially responsive record must be located and manually reviewed to determine if it relates to commutation or parole. Our indices searches revealed several hundred references that are potentially responsive to the Committee's requests. The FBI's search for and review of potentially responsive material is ongoing.

The enclosed documents are responsive to the Committee's request for information pertaining to commutation requests and related matters concerning Joseph Salvati, Peter Joseph Limone and Henry Tameleo. Specifically, enclosed is a copy of a Boston main file concerning an illegal gambling investigation of Salvati, Tameleo and other individuals while serving sentences in the Framingham Correctional Institution. Also enclosed are references from various Boston investigative files that concern the commutation requests of Salvati and Limone. Information has been redacted from these documents. An explanation sheet setting forth the basis for the redactions is also enclosed.

As set forth above, this is a preliminary release of information responsive to the Committee's request. We will supplement this production as additional responsive material is identified.

Sincerely yours,



John E. Collingwood  
Assistant Director  
Office of Public and  
Congressional Affairs

Enclosures (2)



U.S. Department of Justice  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

June 12, 2001

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letters, dated May 10, 2001 and May 23, 2001, which requested documents relating to commutations requests of Joseph Salvati, Peter Limone, Henry Tarnaleo, and Lewis Greico.

Enclosed are the records provided by the Federal Bureau of Investigation in response to your request, including a cover letter signed by John Collingwood, Assistant Director in the FBI Office of Public and Congressional Affairs, which explains the Bureau's search procedure relating to your request.

I hope that this information is helpful. Please do not hesitate to contact me if you would like assistance regarding any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Bryant".

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

**RECEIVED**

JUN 14 2001

HOUSE COMMITTEE ON  
GOVERNMENT REFORM



U.S. Department of Justice  
Federal Bureau of Investigation

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Washington, D.C. 20535  
June 18, 2001

Honorable Dan Burton  
Chairman  
Committee on Government Reform  
House of Representatives  
Washington, D.C. 20515

Re: Request for Documents concerning Joseph Salvati, et al.

Dear Mr. Chairman:

The FBI has undertaken a review of documents in response to your letter dated June 5, 2001 to Attorney General Ashcroft. Specifically, the Committee requested certain records relating to organized crime investigations in Boston, Massachusetts as well as records concerning Joseph Barboza.

While working to identify material responsive to the Committee's request, the FBI located copies of documents that are responsive to the specific request for material relating to the wiretapping of Raymond Patriarca, Sr., from January 1, 1962 to December 31, 1996 (Item 3 in the Committee's June 5, 2001 letter). Enclosed are 12 volumes of documents reflecting summaries of information obtained as the result of the FBI's electronic surveillance of the offices of the National Cigarette Services at 168 Atwells Avenue, Providence, Rhode Island, between March 1962 and July 1965. The enclosed documents are copies of documents released to the Providence Journal under the Freedom of Information Act (FOIA) after the death of Raymond Patriarca Sr. and contain redactions made pursuant to the FOIA.<sup>1</sup> This material is being released to you with redactions as an interim measure in order to expedite the release of

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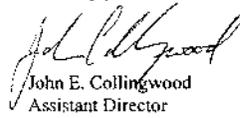
<sup>1</sup> Please be advised, the disclosure of these documents was litigated both before and after the FBI's original release of this material in 1987. As a result of the original lawsuit, the First Circuit Court of Appeals upheld the withholding of material derived from pre-Title III electronic surveillance under the FOIA because production of such material would constitute an unwarranted invasion of personal privacy. Consistent with that holding and in settlement of a subsequent lawsuit, the FBI agreed to withhold statements to, by or about Raymond J. Patriarca (the son of Patriarca Sr.) in any subsequent releases of the processed material.

150

Honorable Dan Burton

information requested by the Committee. We will undertake a review of the redacted material in order to release to the Committee additional information that was withheld from public disclosure in order to protect the privacy of individuals mentioned in the electronic surveillance reports. In addition, we continue to work to identify additional releasable material responsive to the Committee's pending request.

Sincerely yours,



John E. Collingwood  
Assistant Director  
Office of Public and  
Congressional Affairs

Enclosures (12)

2

**RECEIVED**

JUN 21 2001

HOUSE COMMITTEE ON  
GOVERNMENT REFORM



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 17, 2001

Honorable Dan Burton  
Chairman  
Committee on Government Reform  
United States House of Representatives  
Washington, DC 20515

**RE: REQUEST FOR DOCUMENTS**

Dear Mr. Chairman:

This responds to your letter, dated June 5, 2001, which requested FBI documents in connection with your oversight investigation of the FBI's handling of organized crime investigations in Boston, Massachusetts and related matters.

Enclosed is a copy of FBI file 92-HQ-9282. This file, comprised of three volumes, is captioned "Joseph Baron" and was opened in 1967 as an Anti-Racketeering investigation. Information contained in this file is responsive to several items requested in your letter, including records relating to the involvement of the Department of Justice and the FBI in a State of California criminal proceeding against Joseph Baron, (Item 7); records relating to Joseph Barboza (Item 9c); records relating to contacts between Joseph Barboza and specific individuals (Item 10); and records relating to contacts between specific individuals and any other individual regarding Joseph Barboza (Item 11). Information was redacted from these documents and an explanation sheet setting forth the basis for the redactions is included with each package. Please note, this file contains several pages indicating that documents from this file were removed and placed in other files. We are in the process of reviewing the other files to determine if they contain information responsive to the Committee's request.

By letter dated June 18, 2001, we provided twelve volumes of documents, responsive to your request for records pertaining to the FBI's electronic surveillance of the Raymond Patriarca, Sr. (Item 3), previously released to the Providence Journal under the Freedom of Information Act (FOIA). The FOIA release is being reviewed in order to provide the Committee with additional information that was withheld from public disclosure in order to protect the privacy of individuals mentioned in the electronic surveillance reports. Enclosed is one volume that has been reviewed and is appropriate for release in what will be a rolling production of this material.

**RECEIVED**

AUG 17 2001

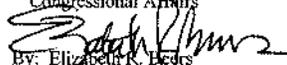
HOUSE COMMITTEE ON  
GOVERNMENT REFORM

Honorable Dan Burton

We continue to work to identify additional material responsive to the Committee's pending request and will supplement this production as releasable material becomes available.

Sincerely,

John E. Collingwood  
Assistant Director  
Office of Public and  
Congressional Affairs

  
By: Elizabeth R. Hays  
Special Counsel

Enclosures (4)

1 - Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
House of Representatives  
Washington, DC 20515





U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

August 27, 2001

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

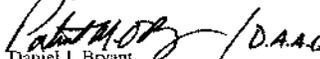
Dear Mr. Chairman:

This responds to your letter, dated August 27, 2001, which requested access to records that were previously made available to staff for the Senate Judiciary Committee in connection with that Committee's hearing on July 18, 2001. We understand that your request is made in connection with your Committee's oversight investigation relating to the Federal Bureau of Investigations (FBI).

Our public disclosure of most of the requested documents would be prohibited by the Privacy Act, but we are making them available for your review in response to the Committee's oversight request and in accordance with 5 U.S.C. 552a(b)(9). The documents implicate significant individual privacy interests. They include allegations of misconduct, which have not been established and could be unfounded or were, in fact, found to be unsubstantiated. We are prepared to make the records available for review by your Committee's staff pursuant to your agreement that the documents and their contents will not be disclosed outside of the Committee. This agreement does not apply to the redacted version of documents packaged as item 4, which has been redacted to protect our relationship with other law enforcement agencies. There are no restrictions on the Committee's use of this redacted item 4, which is enclosed.

Committee staff have indicated that they would like to review the documents at the Department, pursuant to that agreement, on August 28, 2001 and we will be pleased to make them available at that time. I hope that this arrangement is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

  
Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

RECEIVED

AUG 28 2001

HOUSE COMMITTEE ON  
GOVERNMENT REFORM

DAN BURTON INDIANA  
 BENJAMIN A. GILMAN NEW YORK  
 CHRISTOPHER A. MURKIN MARYLAND  
 CHRISTOPHER SMITH CONNECTICUT  
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ONE HUNDRED SEVENTH CONGRESS

**Congress of the United States**  
**House of Representatives**

COMMITTEE ON GOVERNMENT REFORM

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 HONORABLE

August 29, 2001

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Tenth Street & Constitution Avenue, N.W.  
 Washington, D.C. 20530

Dear General Ashcroft:

Over the past four years, the Committee on Government Reform has been one of the primary bodies conducting oversight of the Department of Justice. In the course of its oversight, the Committee has uncovered a number of troubling facts about the Justice Department's work. The Committee would not have been able to conduct vigorous oversight had it not obtained or reviewed a number of internal Justice Department documents. Indeed, I have repeatedly called Justice Department officials to public hearings, and the Committee even had to hold Attorney General Reno in contempt in order to vindicate the right of Congress to receive significant records.

The fundamental question now before us is relatively simple: how does Congress conduct oversight of investigations conducted by the Justice Department without access to deliberative material? An inflexible adherence to the position that Congress should never receive such material eviscerates a very important duty required of Congress by the Constitution. I do understand the underlying concerns of the Department of Justice. That is precisely why I attempted to reach an accommodation regarding the Committee's requests for the Conrad memorandum and two declination memoranda. Unfortunately, rather than meet me halfway -- as other Administrations have done and as you yourself have demanded in the past -- you have elected to follow a course that makes Congress subservient to the Executive branch. This I cannot accept.

I have great confidence in the integrity and ability of you and your staff, and I am optimistic that the Department of Justice will not have the same problems which plagued it

The Honorable John Ashcroft  
Page 2 of 7

during the tenure of Attorney General Reno.<sup>1</sup> However, my personal confidence in you does not diminish the responsibility of this Committee to conduct vigorous oversight of the Department of Justice. Similarly, it does not lessen the Committee's need to obtain records from the Department.

It is with great concern, therefore, that I address your refusal to produce records requested and subpoenaed by the Committee. On May 22, 2001, the Committee subpoenaed all declination memoranda relating to an investigation of former DEA Special Agent in Charge Ernest Howard.<sup>2</sup> On May 21, 2001, the Committee requested all declination memoranda relating to former Clinton White House aide Mark Middleton. In addition, I have brought to your attention my subpoena for the memoranda by former Campaign Financing Task Force Chief Robert Conrad regarding the decision to appoint a Special Counsel for various campaign fundraising abuses, and all related memoranda, which I originally subpoenaed on August 24, 2000.

In a meeting on July 18, 2001, Assistant Attorney General Michael Chertoff informed me that the Department would not produce any internal, deliberative materials to the Committee, and as a result, would not produce the Conrad memorandum, or the Howard or Middleton declination memoranda to the Committee.<sup>3</sup> His position was cast in absolute, inflexible terms. I know that the decision to withhold these documents was not an easy one for you, and I know that you have made it with the best of intentions. However, the decision to establish an inflexible policy to withhold deliberative materials from Congress is the wrong one, for both legal and prudential reasons. As I indicated earlier, it is unfortunate that we have not been able to reach an accommodation.

The legal right of Congress to review declination memoranda, or other internal deliberative Justice Department materials like the Conrad, Freeh, or La Bella memoranda, cannot be seriously disputed. The Committee spent a great deal of time reviewing applicable legal precedent during its two-year long effort to obtain the Freeh and La Bella memoranda. The relevant cases made it clear that absent a valid claim of executive privilege,<sup>4</sup> Congress has a right to obtain these materials, a right which has been exercised frequently over the years. I have outlined these precedents in detail in both the Committee's August 1998 contempt report<sup>5</sup> as well

<sup>1</sup> I hold this optimistic view despite public statements from individuals affiliated with the Bush Justice Department transition effort, who indicated that the new Administration would not follow up on investigations relating to the Clinton Administration. After James Riosky was sentenced in January 2001, *The New York Times* reported that: "[I]t is unclear what might happen to the investigation of campaign finance abuses after George W. Bush becomes President on Jan. 20. Some advisers to the Bush transition team have said the new administration will let it come to a close." It was highly troubling that anyone associated with the Bush transition would suggest that the Administration should ignore evidence of illegal activity in the interest of "moving on." I would have objected if Al Gore's advisers had made this suggestion, and I object just as strongly when such suggestions are made by the current Administration or its advisers.

<sup>2</sup> While the Committee initially made a letter request for these documents, it was at your staff's suggestion that a subpoena was issued. It is, at a minimum, disturbing that your Department would suggest that Congress issue a subpoena and then deliberately fail to produce the subpoenaed material.

<sup>3</sup> Your staff has provided very helpful briefings on the declinations of the Howard and Middleton cases. However, your staff has refused to provide any access to the declination memoranda themselves.

<sup>4</sup> No claim of Executive Privilege has been made over any of the three categories of records currently being sought by the Committee, nor could such a claim properly be made, given the nature of these records.

<sup>5</sup> Attachment 1.

The Honorable John Ashcroft  
Page 3 of 7

as in the Committee's December 2000 report regarding the Justice Department.<sup>6</sup> These cases, ranging from the Palmer Raids investigation in the 1920s to the Iran-Contra investigation in the 1980s, establish the right of Congress to receive internal deliberative materials from the Department of Justice. Indeed, you yourself understood this principle when you served in the United States Senate. In August 1998, you appeared on CNN Late Edition, and were asked if you thought that this Committee was right to hold Attorney General Reno in contempt over her refusal to provide the Committee with the Freeh and La Bella memoranda. An exchange between Wolf Blitzer and yourself on national television went as follows:

Blitzer: You know that in the House of Representatives, Congressman Dan Burton and others are moving with contempt proceedings against Attorney General Janet Reno. For refusing to hand over certain FBI documents, and others involving allegations of Democratic campaign fund-raising abuses during the '96 campaign. Do you want to see this kind of contempt charge against Attorney General Janet Reno?

Senator Ashcroft: No, I would like to see her deliver the documents, these are appropriately requested [and] there are only two reasons the House doesn't have a lot of options here in my judgment. [There are] only two reasons why a person can fail to respond to a subpoena from the House. One is that there is no jurisdiction in the committee, this committee clearly has jurisdiction here. Secondly, executive privilege would be asserted. Neither of those items has been raised by the Attorney General. The Attorney General has just learned from the President a technique we call stonewalling, and I don't think the House has much option. I think the House simply has to say, either our subpoenas are respected, or they are challenged on appropriate grounds. And if they are not, stonewalling won't do it, we have to say, contempt is the appropriate citation, it is regrettable, we need the information.

Your position in 1998 was unambiguous and it was correct. Thus, I am at a loss as to why you would take a contradictory position just a few years later.

As you probably also know, recent precedent also clearly confirms Congress' right to receive these materials. During the past six years alone, the Committee has received or reviewed 10 different declination memoranda. While the Committee has usually reached an accommodation with the Department whereby the memoranda are reviewed by Committee staff, rather than physically produced to the Committee, at least one declination memorandum has been produced to the Committee and published in a Committee report.<sup>7</sup> The precedent on other deliberative documents is just as clear. The Committee began its efforts to obtain the Freeh, La Bella, and other related memoranda in December 1997. In August 1998, the Committee held Attorney General Reno in contempt over this precise issue. Finally, in May 2000, the Committee received the memoranda which it had subpoenaed. All of these documents were subsequently made public. The Committee obtained these records from Attorney General Reno, who was

<sup>6</sup> Attachment 2.

<sup>7</sup> This document was obtained and made public by Chairman Clinger during the 104<sup>th</sup> Congress.

The Honorable John Ashcroft  
Page 4 of 7

widely recognized as one of the most recalcitrant Attorneys General in recent memory. You have now staked out a position that is even more restrictive than Attorney General Reno's.

At the same time that you are attempting to erect a restrictive new policy shielding deliberative Justice Department documents from Congressional scrutiny, you have already departed from that policy by providing deliberative Justice Department documents to the Senate Judiciary Committee. Indeed, you appear to have done so after the head of the Criminal Division provided me with a clear statement of the Justice Department's new policy. In July 2001, you provided staff of the Senate Judiciary Committee with access to records relating to Justice Department investigations of allegations relating to improper actions by FBI officials in the Ruby Ridge and Waco matters. Included in the materials which you provided to the Senate Judiciary Committee are internal, deliberative memoranda discussing investigations of Justice Department personnel. These memoranda are indistinguishable from the materials you are withholding from this Committee.<sup>8</sup> Obviously, I am concerned that you have embarked upon a course that sets different standards for different Congressional committees.

The practical concerns you have outlined regarding the Committee's access to deliberative documents like the Conrad memorandum or declination memoranda are serious, but they do not outweigh the need of the Committee to review this information. Again, this is why I have attempted to reach an accommodation. The only concern that you or your staff have articulated as a reason to withhold these records from Congress is that the production of the records will have a chilling effect on the ability of Department personnel to share their opinion with their superiors. When this argument was first made by Attorney General Reno, in response to the Committee's subpoenas for the Freeh and La Bella memoranda, the Committee examined it, and rejected it. The Department has never produced any evidence that Congressional review of deliberative documents has a chilling effect on Department personnel. Rather, there is every indication that Justice Department personnel have continued to offer their candid advice in written memoranda despite decades of Congressional oversight. This has certainly been the Committee's experience with documents relating to the campaign fundraising investigation. For example, despite the fact that the Committee subpoenaed the Freeh memorandum, several months later Charles La Bella drafted his lengthy memorandum regarding the appointment of an independent counsel. Then, despite the fact that the Committee subpoenaed the La Bella memorandum, and held the Attorney General in contempt over her refusal to provide it to the Committee, a number of Justice Department personnel wrote lengthy, candid memoranda expressing their advice regarding the appointment of an independent counsel.<sup>9</sup> Even after the

<sup>8</sup> Some Justice Department staff claim that the internal deliberative memoranda relating to the Ruby Ridge and Waco matters can be made available to Congress because they relate to investigations by the Office of Professional Responsibility, not the Criminal Division. Such a distinction is meaningless. As some of the memoranda relating to Ruby Ridge and Waco make clear, FBI personnel were being investigated for serious matters, including altering 302s and intimidating potential witnesses. These actions could have resulted in criminal prosecution. Therefore, these memoranda regarding Ruby Ridge and Waco contain detailed deliberations regarding investigations that could result in criminal prosecution. As such, they are virtually identical to the Freeh, La Bella, and Conrad memoranda.

<sup>9</sup> In perhaps the best example of the hollowness of the Department's claims of a "chilling effect," on the same day that the Attorney General was held in contempt over her refusal to provide the Committee with the Freeh and La Bella memoranda, Lee Rankin drafted a memorandum in which he clearly contemplated the public release of those memoranda, stating "[i]t is inexcusable, and I believe clearly calculated, that they [La Bella and Dr. Sarwal] have

The Honorable John Ashcroft  
Page 5 of 7

Freeh, La Bella, and a number of other memoranda were provided to the Committee, and released publicly. Justice Department personnel like Campaign Fundraising Task Force Chief Robert Conrad have continued to offer their candid advice in memoranda. As the Committee found in its report regarding the Reno Justice Department:

Indeed, the only practical consequence of the committee's release of the Freeh and La Bella memoranda is probably the message that one should not commit dishonest views to paper. The committee does not feel the need to protect malign advice.<sup>10</sup>

In addition, I believe that you should weigh against your concerns about Congressional access to these documents the substantial benefits that arise from Congressional oversight of the prosecutorial function. There are a number of troubling facts about the Justice Department that Congress would have never learned if it had not forced the Department to turn over the kinds of deliberative materials you are now trying to withhold:

- The public would never have learned that Charles J. La Bella, the lead prosecutor investigating the 1996 campaign fundraising scandal, believed that the Department created a double standard for investigating President Clinton: "[i]f these allegations involved anyone other than the President, Vice President, senior White House, or DNC and Clinton/Gore '96 officials, an appropriate investigation would have commenced months ago without hesitation." La Bella also concluded that "the contortions the Department has gone through to avoid investigating these allegations are apparent. . . . It is time to approach these issues head on, rather than beginning with a desired result and reasoning backwards."
- La Bella also wrote that "one could argue that the Department's treatment of the Common Cause allegations has been marked by gamesmanship rather than an even-handed analysis of the issues. That is to say, since a decision to investigate would inevitably lead to a triggering of the [Independent Counsel Act], those who are hostile to the triggering of the Act had to find a theory upon which we could avoid conducting an investigation." This is of particular consequence when put in the context of a Justice Department that was prepared to allow a senior official to denigrate the Independent Counsel Act in a widely circulated newspaper.<sup>11</sup>
- Steve Clark, another Justice Department attorney investigating the campaign fundraising matter wrote: "that, to date, we have been unable to investigate the Common Cause allegations in a straightforward way has been a great personal and professional disappointment. But, I believe the public has been most dis-served [sic] by the way in which the 'whether to investigate' issue has been approached, debated, and resolved. Never did I

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chosen to communicate their views about others within the Department in a memorandum that is the subject of such intense public interest, and is therefore likely to be leaked or become public through some other route."

<sup>10</sup> Janet Reno's Stewardship of the Justice Department: A Failure to Serve the Ends of Justice, 139 H. Rep. 106-1027 (2000). It was particularly important to learn from one of the memoranda that one senior Justice Department official made misrepresentations so severe that the then-Assistant Attorney General for the Office of Legal Counsel was compelled to write a memorandum which pointed out the misrepresentations. It is difficult for the Committee to understand why such communications should be cloaked in secrecy.

<sup>11</sup> See Jeffrey Goldberg, "The Mystery of Janet Reno: What is Janet Reno Thinking?" *The New York Times* (July 6, 1997).

The Honorable John Ashcroft  
Page 6 of 7

dream that the Task Force's effort to air this issue would be met with so much behind-the-scenes maneuvering, personal animosity, distortions of fact, and contortions of law. . . . All this, not to forestall an ill-conceived indictment, not to foreclose a report making an independent counsel referral, but to prevent any investigation of a matter involving a potential loss of more than \$180 million to the federal treasury."

- The Committee learned that each of the top investigators charged with investigating the 1996 campaign fundraising matter – Charles La Bella, his deputy Judy Feagin, Task Force Chief David Vicinanza, FBI Director Louis Freeh, FBI General Counsel Larry Parkinson, Associate Deputy Attorney General Robert Litt, and even Public Integrity Section Chief Lee Radek – all recommended the appointment of an independent counsel at least once during the three-year debate within the Justice Department. Yet, the Attorney General ignored all of their advice and insisted on investigating the President and her own political party herself, with disastrous consequences.

You have publicly acknowledged that you are trying to restore public trust in the Justice Department and the Federal Bureau of Investigation. It is hard to believe that public confidence in our investigators and prosecutors can be restored by an inflexible policy that prevents Congress from discharging a constitutionally-mandated duty. Rather, Congress has a right to review and evaluate certain prosecutorial decisions, especially those that go to the core of public confidence in the integrity of the Justice Department. For example, this Committee is currently conducting an investigation of the Department's handling of informants in its organized crime investigations. The Committee recently heard testimony from Joseph Salvati, who was imprisoned for 30 years for a crime he did not commit. While Mr. Salvati sat in prison, the FBI had substantial information pointing to his innocence, yet the FBI continued to take steps to assist and protect the man whose testimony put Salvati in prison. The Committee's investigation of the Salvati matter, and a number of other equally disturbing matters, will require access to internal deliberative Department memoranda much like the Conrad memorandum. I fear that the policy you are so intent on establishing will act to prevent the Committee from learning the full truth about these matters. What the Committee has learned so far in its investigation shows that mistakes like the Salvati case are the result of a lack of accountability in the Department's decisionmaking. I fail to see how your new policy – which will cloak the Department's decisionmaking in even more secrecy – will improve the operation of the Department.

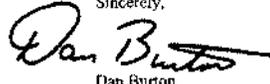
To summarize, the Committee asks only to receive the records it has received in the past. Specifically, the Committee has requested two declination memoranda relating to Ernest Howard and Mark Middleton, the Conrad memorandum regarding the need for a special counsel to investigate campaign fundraising abuses, and other related memoranda. There is no valid legal or practical reason why these records should be withheld from the Committee.

Attorney General Ashcroft, just three years ago, you agreed with my position, and you demanded that Attorney General Reno turn over the Freeh and La Bella memoranda. You said "I would like to see her [Attorney General Reno] deliver the documents. . . we need the information." I believe that your analysis of Attorney General Reno's actions was exactly right, and I am concerned that you have one standard for a Democrat Attorney General and another standard for yourself. This appears to be inexplicable. Therefore, I respectfully request that you

The Honorable John Ashcroft  
Page 7 of 7

reconsider your position, and produce to the Committee the documents which I have requested.  
If you do not produce the requested records, I will have no choice but to ask you to appear before  
the Committee to explain your position publicly.

Sincerely,



Dan Burton  
Chairman

cc: Members, Committee on Government Reform

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August 30, 2001

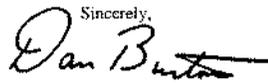
The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Tenth Street & Constitution Avenue, N.W.  
 Washington, D.C. 20530

Dear General Ashcroft:

I write to request copies of documents recently reviewed by my staff. Please provide the Committee with the following:

- SJC (7-10-01)/OPR 00076 through 00080
- SJC (7-10-01)/USA 0001 through 0003

These documents are potentially relevant to the hearing scheduled for September 6, 2001, and I would appreciate receiving copies of these documents by Tuesday, September 4, 2001.

Sincerely,  
  
 Dan Burton  
 Chairman



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

August 31, 2001

Honorable Dan Burton  
Chairman  
Committee on Government Reform  
House of Representatives  
Washington, DC 20515

**RE: REQUEST FOR DOCUMENTS**

Dear Mr. Chairman:

This responds to your letter, dated June 5, 2001, which requested FBI documents in connection with your oversight investigation of the FBI's handling of organized crime investigations in Boston, Massachusetts and related matters. The enclosed documents are provided in response to your request seeking, *inter alia*, all internal memoranda, policy statements and U.S. Department of Justice and FBI guidelines relating to the Top Hoodlum Program and other past and present programs regarding the use of confidential informants. (Item 12)

The enclosed records, consisting of four volumes of material, are from the FBI Headquarters control file for the "Top Hoodlum Program." From the its inception in 1953 through January 1958, documents concerning the program were maintained in FBI file 62-100008, which is comprised of nine sections. In January 1958, the file number was changed to 62-9. This file is comprised of 58 sections. In response to your request, these files were searched for documents concerning policy matters and guidelines relating to the management of the Top Hoodlum Program. This release, covering the time frame from 1958 through July 1960, includes all of the responsive material located in FBI file 62-100008, and responsive material located in sections 1 - 15 of FBI file 62-9. Responsive material located in the remaining sections of FBI file 62-9 will be provided to you as soon as it becomes available. Minimal redactions were made from these documents. An explanation sheet setting forth the basis for the redactions is included with those volumes containing redacted documents.

Also enclosed are copies of excerpts of trial transcripts from The People of the State of California v. Joseph Barbosa Baron dated December 3, 1971. This material is provided in response to your request for records relating to the involvement of the Department of Justice and the FBI in a State of California criminal proceeding against Joseph Baron. (Item 7). The

**RECEIVED**

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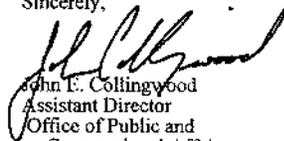
HOUSE COMMITTEE ON  
GOVERNMENT REFORM

Honorable Dan Burton

enclosed material includes transcript pages 2 - 296 containing testimony of Joseph Baron; transcript pages 297 - 300 and 307-308 containing testimony of Edward F. Harrington; transcript pages 301 - 303 containing testimony of former FBI Special Agent Dennis M. Condon; and transcript pages 304 - 306 containing testimony of former FBI Special Agent H. Paul Rico. Also enclosed is another transcript from this proceeding, dated December 10, 1971, entitled "Deposition of Paul I. Zalkind."

We continue to work to identify additional material responsive to the Committee's pending request and will supplement this production as releasable material becomes available.

Sincerely,



John E. Collingwood  
Assistant Director  
Office of Public and  
Congressional Affairs

Enclosures (5)

1 - Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
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Washington, DC 20515

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BLANKET SERVICES AVAILABLE  
 UPON REQUEST

August 31, 2001

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Tenth & Constitution Avenue, N.W.  
 Washington, D.C. 20530

Dear General Ashcroft:

Pursuant to Rules X and XI of the Rules of the House of Representatives, the Committee on Government Reform is holding a hearing entitled "The Need for Congressional Oversight of the Justice Department." The hearing is scheduled for September 13, 2001, in room 2154 of the Rayburn House Office Building at 1:00 p.m. I would like to invite you to testify at this hearing.

The Committee will inquire about the Justice Department's new policy to refuse to provide to Congress deliberative documents pertaining to criminal investigations. As I expressed to you in my August 29, 2001, letter, I believe that this new policy will, in some cases, make Congressional oversight of the Justice Department impossible. The Committee will ask you to provide further information regarding your new policy, including, but not limited to:

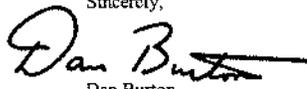
- What precedent exists for the Department's policy;
- Whether there is any legal or prudential support for your policy;
- Whether previous Administrations have reached accommodations with Congress over the types of documents under consideration; and
- What impact the policy will have on Congressional oversight of the Justice Department.

If you wish to make an opening statement, it is requested that you provide 100 copies of your written testimony to the Committee no later than 24 hours prior to the time of the hearing. To facilitate printing of the hearing record, you should also provide a computer disk containing a copy of your written testimony. At the hearing, we ask you to summarize your testimony in five minutes to allow the maximum time for discussion and questions.

The Honorable John Ashcroft  
Page 2 of 2

Under the Congressional Accountability Act, the House of Representatives must be in compliance with the Americans with Disabilities Act. Persons requiring special accommodations should contact Robert Briggs at (202) 225-5074 at least four days prior to the hearing.

Sincerely,

  
Dan Burton  
Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member

167



**U.S. Department of Justice**  
**Federal Bureau of Investigation**

Washington, D.C. 20535

SEP 04 2001

Honorable Dan Burton  
Chairman  
Committee on Government Reform  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Reference is made to your letter, dated June 5, 2001, which requested FBI documents in connection with your oversight investigation of the FBI's handling of organized crime investigations in Boston, Massachusetts and related matters. Reference is also made to visits to FBI Headquarters made by Mr. James Wilson, Chief Counsel for the Committee, on August 16 and August 28, 2001 for the purpose of reviewing unredacted copies of FBI records provided by the Department of Justice pursuant to your March 30, 2001 request.

In connection with his visits, Mr. Wilson agreed that any notes taken by him would be reviewed by the FBI and law enforcement sensitive information would be redacted prior to release of the notes to him. Enclosed are redacted copies of Mr. Wilson's notes taken on August 16, 2001 and August 28, 2001.

In addition, during his review, Mr. Wilson identified seven pages of material contained in the March 30, 2001 release that were prioritized for re-review by the FBI in light of your expanded June 5, 2001 request. Enclosed are redacted copies of the seven pages identified by

**RECEIVED**

SEP 05 2001

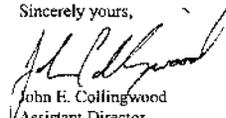
HOUSE COMMITTEE ON  
GOVERNMENT REFORM

FBI/DOJ

Honorable Dan Burton

Mr. Wilson. Information contained on these pages derives from the FBI's electronic surveillance of the offices of the National Cigarette Services at 168 Atwells Avenue, Providence, Rhode Island, between March 1962 and July 1965 and is responsive to Item 3 of your June 5, 2001 request.

Sincerely yours,



John E. Collingwood  
Assistant Director  
Office of Public and  
Congressional Affairs

Enclosures (2)

1 - Honorable Henry A. Waxman (w/out Mr. Wilson's notes)  
Ranking Minority Member  
Committee on Government Reform  
Washington, D.C. 20515

DAN RUPPEL, INDIANA  
 JIMMIE SMITH  
 BENJAMIN A. GILMAN, NEW YORK  
 CURT CLAWSON, MARYLAND  
 ERIC LIPSEY, CONNECTICUT  
 KEVIN FITZGERALD, GEORGIA  
 JOHN W. MCHUGH, FLORIDA  
 STEPHEN L. CALHOUN, CALIFORNIA  
 JOHN L. MICA, FLORIDA  
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 STEVEN C. LADENBERRY, TEXAS  
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 DAN MILLER, FLORIDA  
 DAVID GALE, CALIFORNIA  
 DON LEVY, KENTUCKY  
 JO ANN DAVIS, VIRGINIA  
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 CHRIS WILSON, FLORIDA  
 LINDA CHAMBERLAIN, TEXAS  
 JOHNNIE PURMAN, ALABAMA  
 CLYDE WATSON, MISSOURI  
 FREDERICK SCHWARZ, VIRGINIA  
 JOHN J. DUNHAM, JR., MISSISSIPPI

ONE HUNDRED SEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
 COMMITTEE ON GOVERNMENT REFORM  
 2157 RAYBURN HOUSE OFFICE BUILDING  
 WASHINGTON, DC 20515-6143  
 Majority (205) 225-2024  
 Telephone (202) 225-2974  
 Minority (205) 225-2021  
 FAX (202) 225-4822  
 www.house.gov/govreform

HERB A. WAMAN, CALIFORNIA  
 RALPH ABRAHAM, MISSISSIPPI  
 TOM LAMOTZ, CALIFORNIA  
 MARCO F. GARCIA, TEXAS  
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 KATHYAN DAVIS, TEXAS  
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 JIM LAMBERT, TEXAS  
 THOMAS H. ALLEN, MISSOURI  
 JAMES E. DUNN, ALABAMA  
 PAUL COLEMAN, MISSOURI  
 DANN E. WATSON, CALIFORNIA

September 6, 2001

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Tenth & Constitution Avenue, N.W.  
 Washington, D.C. 20530

Dear General Ashcroft:

Attached to this letter is a subpoena for a number of Justice Department documents, some of which were the subject of my August 29, 2001, letter to you. Specifically, I have subpoenaed: (1) the memorandum by Robert Conrad regarding the appointment of a special counsel to investigate campaign fundraising matters, as well as all related memoranda; (2) the declination memorandum for Mark Middleton; and (3) a number of memoranda relating to decisions to prosecute, or not to prosecute, a number of individuals involved in the Committee's investigation of the Justice Department's handling of organized crime investigations in New England.

I do not issue this subpoena lightly. As I indicated to you when you took office, I had hoped to obtain all necessary information from the Justice Department through letter requests, rather than subpoenas. For the most part, the Justice Department has been very cooperative and responsive to the Committee's requests for information. However, as I indicated in my August 29, 2001, letter, the Department has resisted producing deliberative documents to the Committee. The Department has now announced a policy that it will not produce any internal deliberative documents regarding criminal prosecutions to Congress. As I explained in my letter, I believe that the Department's policy is wrong, both legally and practically, and it will dramatically impact the ability of Congress to conduct effective oversight of the Justice Department.

My staff and I have negotiated with you, your staff, and White House staff for several months in an attempt to reach an accommodation over this issue. I have offered a number of different accommodations which would protect the Department's legitimate interests, while still allowing the Committee to conduct effective oversight. You have not accepted any of my offers. Therefore, I have announced a hearing on this matter, and invited you to testify at the hearing. I

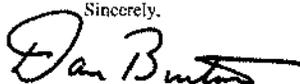
The Honorable John Ashcroft  
Page 2 of 2

am issuing the attached subpoena in advance of the hearing so that the Committee's demand for the documents is clear and legally enforceable.

The attached subpoena also calls for a number of deliberative records relating to the Committee's investigation of the Department's handling of its organized crime investigations in New England. The Committee has already received extensive information indicating that the Department has a deeply troubled past in its handling of a number of confidential informants who were providing the Department with misleading information, and who were also committing serious crimes while under Departmental protection. The records called for by the Committee's subpoena are central to the Committee's investigation of why the Department refrained from prosecuting these individuals for so long.

I remain hopeful that you will reconsider the Department's position and produce the subpoenaed documents before the Committee's hearing.

Sincerely,

A handwritten signature in black ink that reads "Dan Burton". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

Dan Burton  
Chairman

cc: Members, Committee on Government Reform

Subpoena Duces Tecum

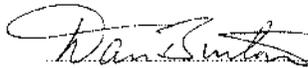
**By Authority of the House of Representatives of the  
Congress of the United States of America**

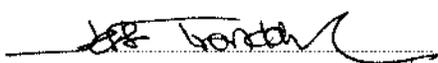
To United States Department of Justice Serve: Attorney General John Ashcroft

You are hereby commanded to produce the things identified on the attached schedule before the  
full Committee on Government Reform  
of the House of Representatives of the United States, of which the Hon. Dan Burton  
Dan Burton is chairman, by producing such things in Room 2157 of the  
Rayburn Building, in the city of Washington, on  
September 11, 2001 at the hour of 5:00 PM

To Danleigh Halfast or US Marshals Service  
to serve and make return.

Witness my hand and the seal of the House of Representatives  
of the United States, at the city of Washington, this  
6th day of September, ~~19~~<sup>20</sup>2001

  
Chairman.

Attest:  
  
Clerk.

Subpoena for U.S. Department of Justice

Served Attorney General John Ashcroft  
Tenth Street & Constitution Avenue N.W.  
Washington, D.C. 20530

before the Committee on the

Government Reform

Served *T. Faith Euten*

By *Danleigh Hayes*

by hand delivery

9/6/01

1:00 PM

*Danleigh Hayes*

House of Representatives

SCHEDULE A

**Subpoena Duces Tecum  
Government Reform Committee  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515**

United States Department of Justice  
**Serve: Attorney General John Ashcroft**  
Tenth Street & Constitution Avenue N.W.  
Washington, D.C. 20530

The Committee hereby subpoenas certain records. Please provide logs which indicate each record's Bates number, author, description, and source file. If you have any questions, please contact Chief Counsel James C. Wilson at (202) 225-5074.

Definitions and Instructions

(1) For the purposes of this subpoena, the word "record" or "records" shall include, but shall not be limited to, any and all originals and identical copies of any item whether written, typed, printed, recorded, redacted or unredacted, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all activity reports, agendas, analyses, announcements, appointment books, briefing materials, bulletins, cables, calendars, card files, computer disks, cover sheets or routing cover sheets, drawings, computer entries, computer printouts, computer tapes, external and internal correspondence, diagrams, diaries, documents, electronic mail (e-mail), facsimiles, journal entries, letters, manuals, memoranda, messages, minutes, notes, notices, opinions, statements or charts of organization, plans, press releases, recordings, reports, Rolodexes, statements of procedure and policy, studies, summaries, talking points, tapes, telephone bills, telephone logs, telephone message slips, records or evidence of incoming and outgoing telephone calls, telegrams, telexes, transcripts, or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include all other records, documents, data and information of a like and similar nature not listed above.

(2) For purposes of this subpoena, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, mentions, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

(3) This subpoena calls for the production of records, documents and compilations of data

and information that are currently in your possession, care, custody or control, including, but not limited to, all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession, or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the request includes all documents to the present.

(4) The conjunctions "or" and "and" are to be read interchangeably in the manner that gives this subpoena the broadest reading.

(5) No records, documents, data or information called for by this subpoena shall be destroyed, modified, redacted, removed or otherwise made inaccessible to the Committee.

(6) If you have knowledge that any subpoenaed record, document, data or information has been destroyed, discarded or lost, identify the subpoenaed records, documents data or information and provide an explanation of the destruction, discarding, loss, deposit or disposal.

(7) When invoking a privilege as to any responsive record, document, data or information as a ground for withholding such record, document, data or information, list each record, document, compilation of data or information by data, type, addressee, author (and if different, the preparer and signatory), general subject matter, and indicated or known circulation. Also, indicate the privilege asserted with respect to each record, document, compilation of data or information in sufficient detail to ascertain the validity of the claim of privilege.

(8) This subpoena is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto.

Subpoenaed Items

Please produce to the Committee the following records.

1. All records related to decisions either to prosecute, or refrain from prosecuting, Stephen Flemmi, including, but not limited to, records relating to decisions to prosecute, or refrain from prosecuting Flemmi for the bombing assault on attorney John Fitzgerald. Please exclude all records drafted in anticipation of, or subsequent to, the 1995 indictment of Stephen Flemmi.
2. All records related to decisions either to prosecute, or refrain from prosecuting, James J. "Whitey" Bulger. Please exclude all records drafted in anticipation of, or subsequent to, the 1995 indictment of James J. "Whitey" Bulger.
3. All records related to decisions either to prosecute, or refrain from prosecuting, Joseph Barboza.

4. All records related to decisions either to prosecute, or refrain from prosecuting, Vincent J. "Jimmy the Bear" Flemmi.
5. All records related to decisions either to prosecute, or refrain from prosecuting, Raymond L. S. Patriarca.
6. All records related to decisions either to prosecute, or refrain from prosecuting, Gennaro Angiulo.
7. All records related to decisions either to prosecute, or refrain from prosecuting, Theodore J. Sharliss, a.k.a. James Chalmas.
8. All records related to decisions either to prosecute, or refrain from prosecuting, Joseph "J.R." Russo.
9. All records related to decisions either to prosecute, or refrain from prosecuting, H. Paul Rico. Please exclude all records prepared by the Justice Department Task Force led by John Durham.
10. All records related to decisions either to prosecute, or refrain from prosecuting, John Connolly, Jr. Please exclude all records prepared by the Justice Department Task Force led by John Durham.
11. All records related to decisions either to prosecute, or refrain from prosecuting, John Morris.
12. All records related to decisions to prosecute Francis P. Salemme for the bombing assault on attorney John Fitzgerald.
13. All records related to decisions to prosecute, or to refrain from prosecuting, Robert Daddico.
14. Any report or memorandum by Robert Conrad recommending the appointment of a special counsel to investigate campaign fundraising matters, and all memoranda drafted in response to Mr. Conrad's memorandum, including any replies or rebuttals by Mr. Conrad.
15. All declination memoranda relating to Mark E. Middleton.



U.S. Department of Justice  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

September 6, 2001

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated August 30, 2001, which requested copies of two documents in connection with the Committee's hearing on Department of Justice oversight that is now scheduled for September 13, 2001. One of the documents, SJC (7-10-01)/OPR-00076, a communication by Special Agent Patrick Kiernan of the FBI's Office of Professional Responsibility, reports factual information allegedly constituting misconduct, including retaliation against a whistleblower, by high-level FBI employees. The second document, SJC (7-10-01)/USA-00001, from an FBI inspector to an Assistant United States Attorney, recommends that information regarding possible misconduct developed during a criminal investigation be furnished to the Department's Office of Professional Responsibility.

In accordance with our conversations with Committee staff, we are providing the enclosed documents pursuant to your agreement that neither the documents nor their contents will be disclosed outside of the Committee and they will be returned to the Department after the hearing. This same confidentiality agreement was the basis upon which the Department previously made the documents available to you and the Senate Judiciary Committee. As indicated in our prior correspondence, the Department would not publicly disclose these materials although we have made them available in response to your oversight request and pursuant to 5 U.S.C. 552a(b)(9). We have entered into the confidentiality agreements regarding these and other documents because they implicate significant individual privacy interests.

RECEIVED

SEP 07 2001

HOUSE COMMITTEE ON  
GOVERNMENT REFORM

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JAN HARRIS

BENJAMIN A. GIAMMA, NEW YORK

CONSTANCE A. MORELIA, MARYLAND

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DANIEL W. BOON, FLORIDA

LARRY CROWDER, MISSISSIPPI

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EDWARD J. SCHROEDER, MISSISSIPPI

JOHN T. DUNCAN, JR., MISSISSIPPI

ONE HUNDRED SEVENTH CONGRESS

## Congress of the United States

### House of Representatives

COMMITTEE ON GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

MAGNET 202 225-5074

FACSIMILE 202 225-5074

TELEPHONE 202 225-2661

TTY 202 225-4822

www.house.gov/cform

January 3, 2002

KENNETH A. WATSON, CALIFORNIA

SHARON K. ROBERTS, MISSISSIPPI

TOM L. HAYES, CALIFORNIA

WALTER A. CLAYTON, NEW YORK

FRANK R. LUTZ, NEW YORK

PAUL E. KANGAS, NEW YORK

PATSY T. ANNUNZIO, NEW YORK

CAROLYN M. COCHRAN, NEW YORK

CHRISTOPHER W. COCHRAN, NEW YORK

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DENNIS J. ROBERTS, NEW YORK

ROBERT M. ROBERTS, NEW YORK

JOHN E. TERRY, MASSACHUSETTS

JIM TURNER, TEXAS

JAMES D. SCARROWAY, TEXAS

MAYNARD H. WATSON, TEXAS

DICK T. ANTON, CALIFORNIA

BERNARD SAMBOUR, MISSISSIPPI

POLYMEROS

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Washington, D.C. 20530

Dear General Ashcroft:

I write in response to the December 19, 2001, letter from Assistant Attorney General Dan Bryant. I appreciate Mr. Bryant's effort to follow up on matters relating to the Committee's December 13, 2001, hearing. However, his letter did little to diminish the concerns that I and a number of the Committee's members have about the Justice Department's refusal to provide the Committee with access to subpoenaed records.

It appears that Mr. Bryant's letter was an attempt to explain the efforts the Justice Department has made to accommodate the Committee's interests. Mr. Bryant also stated that the Department "will be prepared to make a proposal as to how further to accommodate the Committee's needs as soon as you inform us in writing of the specific needs the Committee has for additional information." This is encouraging, but as I will explain, I have a number of concerns about your offer.

As you know, since Spring of 2001, this Committee has been negotiating with the Justice Department to obtain access to a number of Justice Department memoranda. In an effort to obtain access to those records, my staff and I have met with you, Deputy Attorney General Larry Thompson, White House Counsel Alberto Gonzales, Assistant Attorney General Michael Chertoff, Assistant Attorney General Dan Bryant, and a number of other Justice Department and White House staff. In the course of those discussions, my staff and I offered a number of compromises that would satisfy our needs as well as the Justice Department's interests. These offers were never even entertained by the Department. Indeed, before you even learned why the Committee was interested in reviewing the subpoenaed documents, you announced a blanket policy that Congress would never again have access to deliberative documents. While the statements you and Judge Gonzales made to me were modified by Mr. Horowitz during the December 13, 2001, hearing when he referred to a case-by-case analysis, it was quite clear that in no case would deliberative Justice Department documents be provided to Congress. Put simply, if you were prepared to advise the President to invoke executive privilege over the

The Honorable John Ashcroft  
January 3, 2002  
Page 2 of 6

Boston documents, there is little likelihood that you would ever permit Congress to receive deliberative memoranda.

Given the fact that you rebuffed any offers of compromise for the past eight months, you can see how I find the Department's current offers to accommodate the Committee curious. In fact, during a meeting with senior Justice Department and White House staff in September 2001, my staff noted that the Justice Department had never asked why the Committee was seeking the disputed deliberative memoranda. Your staff indicated that the Committee's articulation of its need was irrelevant to the Department's analysis. It appears that you continued to consider our need for the documents irrelevant, and even advised President Bush to claim executive privilege over the subpoenaed documents without a clear understanding of why the Committee needed them. I am unable to understand why you would do this, unless, of course, the needs of Congress are not relevant to your decisionmaking. I am surprised, and more than a little dismayed, that you would advise the President to claim executive privilege for the first time in his administration without even understanding why the Committee was seeking the records.

Given that you and your staff informed me earlier that the Justice Department was implementing a new blanket policy that Congress would no longer be provided with deliberative documents, I also find it strange that you are now asking for an articulation of the Committee's need for the Boston-related documents. If indeed there is a blanket policy in place, the Committee's needs for the documents are irrelevant to the Department. Of course, your prior articulation of a blanket policy was undermined at the December 13, 2001, hearing by Mr. Horowitz's representation that the Department conducted a case-by-case analysis of requests for deliberative documents. However, there is no indication that the Justice Department conducted any serious "case-by case" analysis in this instance, as the Department did not even seek input from the Committee prior to recommending that the President invoke executive privilege. Therefore, you can understand why I might conclude that the Justice Department is not truly interested in the Committee's needs for the subpoenaed documents, and has asked for an articulation of the Committee's needs only to make it appear as if the Department was engaged in negotiations with the Committee.

At any rate, in the interest of continuing my efforts to work with the Justice Department ... efforts which have been underway since Spring 2001 ... I will provide you with a brief summary of the Committee's needs for the subpoenaed documents. It is my hope that once you fully understand the Committee's needs for the documents, you will advise the President to withdraw his claim of executive privilege. In a general sense, in order to understand whether the Justice Department served the ends of justice, Congress must understand in certain situations why prosecutorial decisions are made. This requires a review of documents for two reasons: first, Congress cannot rely on a verbal briefing because the briefing may leave out material, intentionally or unintentionally, that is germane to the needs of Congress; and second, Congress cannot rely on a verbal briefing because there are times when the person providing the briefing will have a less developed sense of factual predicates than the individuals receiving the briefing. More specifically, the Committee subpoenaed documents pertaining to Justice Department misconduct in handling of informants because it is concerned that: (1) the Justice Department, including the FBI, was using its powers in a corrupt manner, and that this abuse led to the

The Honorable John Ashcroft  
 January 3, 2002  
 Page 3 of 6

imprisonment of Joseph Salvati for thirty years for a crime he did not commit, as well as a number of other equally horrific episodes, including murders; (2) Justice Department personnel may have covered up corrupt conduct over a course of many years; (3) until Judge Mark Wolf compelled the Justice Department to take this matter seriously, it did not appear eager to conduct, or capable of conducting, a review of its own past misdeeds; and (4) the fact that the Justice Department has constituted a task force to conduct a criminal investigation does not relieve Congress of its obligation to investigate the matter, and determine whether new legislation is needed to address the problems within the Justice Department.<sup>1</sup>

In his December 12, 2001, memorandum, President Bush stated that "I believe that congressional access to these documents would be contrary to the national interest[.]" It eludes me how it is in the national interest to cloak this dark chapter of the Justice Department's history in secrecy. Rather, I believe that once you understand the scope of Justice Department malfeasance in its handling of organized crime investigations in New England, it will become clear that Congress should receive access to these documents so that it can fully understand what mistakes were made, and enact appropriate remedies so that it never happens again.

With this in mind, I have a few observations about Mr. Bryant's letter. The letter makes it appear that some in the Department are more interested in a press strategy than serious negotiations with the Committee.

First, Mr. Bryant noted that "[w]e have not objected to the Committee's undertaking its own investigation[.]" It appears that Mr. Bryant made this statement to show how reasonable and accommodating the Department has been. However, it speaks volumes about the Justice Department's attitude regarding Congressional oversight that it believes that it has the right to "object" to the Committee undertaking an investigation. This is particularly puzzling when you will not permit Committee staff to speak with your task force supervisor. As you, of all people should know, Congress is an equal branch of government, with a power of inquiry the Supreme Court has described as "broad," and which "comprehends probes into departments of the Federal Government to expose corruption, inefficiency or waste." *Watkins v. United States*, 354 U.S. 178, 187 (1957). I am unaware of any objections raised by you when deliberative documents were sought during Senate investigations. Indeed, I can only speculate how you might have reacted if, when you served in the Senate, the Reno Justice Department had informed you or your former colleagues that it would not "object" to an oversight investigation of pressing national importance.

Second, Mr. Bryant wrote that the Department has provided "[m]ore than 3800 pages" in response to our request. In his hearing testimony on December 13, 2001, Criminal Division Chief of Staff Michael Horowitz also repeatedly invoked the number of pages provided to the Committee. The fixation of Justice Department staff on the number of pages provided in response to Committee requests is troubling. Of course, the Committee does not subpoena

<sup>1</sup> A detailed explanation of why the Committee is seeking the specific documents under subpoena can be found on the Committee's website, where it has been posted since September 2001. See [http://www.house.gov/reform/reindex/subpoena\\_reform.htm](http://www.house.gov/reform/reindex/subpoena_reform.htm). Further explanation of the Committee's needs for the documents will be made at public hearings.

The Honorable John Ashcroft  
 January 3, 2002  
 Page 4 of 6

documents by the pound, and the number of documents provided by the Justice Department is irrelevant. It is my hope that your prosecutors and investigators do not accept similar representations from defendants and their lawyers who may seek to withhold documents from the Justice Department during criminal investigations. The fact is that the Committee is seeking a small universe of deliberative Department documents, and you are refusing to provide them.

Mr. Bryant's characterizations of past efforts to accommodate the Committee are also misleading. He indicates that the Committee's need for the Conrad memorandum was accommodated by the Committee's interview of Attorney General Reno on October 5, 2000. Neither you nor Mr. Bryant were present for the interview with Attorney General Reno, so you may not understand how her interview was less-than-satisfying for the Committee.<sup>2</sup> The fact that your staff holds up the Reno interview as an example of the fulsome accommodation provided by the Justice Department shows why the Committee is skeptical of your offers.

Mr. Bryant or Mr. Horowitz could have assisted the Committee by following up on questions which were posed at the Committee's December 13, hearing, which were not answered. For example, Mr. Horowitz stated that he would inform the Committee "promptly" as to whether we would be receiving a privilege log for the records the Justice Department is withholding on the basis of privilege. Mr. Horowitz also informed Congressman Tierney that he would determine whether he could inform the Committee about who participated in the decision to advise President Bush to claim executive privilege in this matter. In addition, in a September 7, 2001, letter, I asked you a number of questions regarding the precedent for withholding this type of information from Congress. Those questions have not been answered. It is interesting that Mr. Bryant sent a four-page letter regarding the Department's efforts to accommodate the Committee without answering one single outstanding question from the Committee's hearing.

Unfortunately, Mr. Bryant's letter does little to further the process of accommodation. Rather, it distracts from the key issues. Therefore, let me list the key issues facing us over the coming months.

- The Committee is conducting an important investigation relating to serious allegations of wrongdoing in the FBI. This investigation is being negatively impacted by the Justice Department's new policy of secrecy regarding deliberative documents. It has also been negatively impacted by liberal redactions in key documents and an absolute refusal to even entertain a meeting to discuss sensitive matters involving informants. Both Department and Committee investigations have been made more complex by the refusal of the Justice

<sup>2</sup> Ms. Reno explained that she had refused to appoint a campaign fundraising special counsel because she had concluded that "there is no reasonable possibility that further investigation could develop evidence that would support the filing of charges for making a willful false statement." She provided virtually no information beyond that statement to explain why she rejected Robert Conrad's recommendation to appoint a special counsel. When asked why she was refusing to provide the Conrad memorandum, she stated that it was "part of a pending investigation." Yet, when she was squarely asked "are the issues raised in [Conrad's] memo still under investigation," Attorney General Reno answered "I can't tell you that." So, not only did Attorney General Reno fail to provide any explanation of her decisionmaking, she refused to even state whether the Conrad memo dealt with open or closed cases.

The Honorable John Ashcroft  
 January 3, 2002  
 Page 5 of 6

Department to allow Task Force Supervisor John Durham even to have a conversation with Committee lawyers.

- The new Justice Department policy would effectively eliminate real Congressional oversight of the Department. There are times when Congress should be permitted access to all of the facts, not just some of the facts. The Department's focus on the number of pages provided to the Committee betrays a belief that it is appropriate for Congress to learn some facts, but not all of the facts. It is impossible for the Congress to investigate wrongdoing in the Justice Department without access to the types of documents sought by the Committee. Yet, rather than engage the Committee in an process of compromise and accommodation, you have created a blanket policy of secrecy that will forever bar Congress from receiving deliberative Justice Department memoranda, regardless of how serious the allegations of wrongdoing.
- The Justice Department has lowered this iron veil of secrecy at the very time that it has received broad new powers to combat terrorism. While I am supportive of the new powers granted to the Justice Department, I believe that they must be subject to careful review by Congress. The policy you have created will make such oversight virtually impossible.
- The President's claim of executive privilege is surprisingly broad in its scope. Moreover, it is not supported by relevant caselaw.
- As you saw at the Committee's December 13, 2001, hearing, this Committee is united across party lines in opposition to the Justice Department's new policy. Moreover, this Committee is not the only concerned party:

"Dan Burton, a Republican and chairman of the Government Reform Committee, and Henry Waxman, its ranking Democrat, do not agree on much. But both men feel strongly, as do we, that Mr. Bush should defuse the present constitutional clash by withdrawing his unwarranted privilege claim." "Misusing Executive Privilege," *The New York Times*, December 15, 2001.

"President Bush sought to hoodwink the House Government Reform Committee and the American public last week when he invoked executive privilege to thwart a congressional investigation of abuses in the Boston FBI office. . . . The President is facing a constitutional confrontation with Congress. Republicans and Democrats should join in the defense of accountable and transparent government, whether on the floors of Congress or in America's courtrooms." "Blinded Justice," *The Boston Globe*, December 18, 2001.

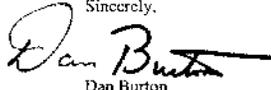
"In a range of recent situations, the White House has had a choice between opening government to scrutiny or keeping the public in the dark. In each instance - from an investigation of the mob to the release of presidential papers, to secret military tribunals and secretive detention for terror suspects - George W. Bush has opted for the dark. That's unhealthy for any democracy." "Too Many Secrets Being Kept in Bush White House," *Newsday*, December 18, 2001.

The Honorable John Ashcroft  
January 3, 2002  
Page 6 of 6

"[T]he President said release of documents sought by the committee would 'inhibit the candor' prosecutors need in discussions about actual and prospective cases. It's a mystery why he thinks so. No previous President has sought to withhold such records . . . Protection of institutional prerogatives can trump party loyalty. Cooperation with the committee is not only the right thing to do, it may avoid an unwinnable fight." "Privilege Shouldn't Cover Up This Mess," *Boston Herald*, December 17, 2001.

Given these facts, the Committee has no alternative but to hold further public hearings regarding this matter. Our next hearing will focus on precedent, or the lack thereof, for the Department's new policy, and will be held on January 24, 2002 at 10:00 a.m. I request that Assistant Attorney General Dan Bryant testify at this hearing. Mr. Bryant will be asked to testify regarding all previous times that the Justice Department has made deliberative documents available to Congress. Mr. Bryant will also be asked to answer the questions originally posed in my letter to you of September 7, 2001.

Sincerely,



Dan Burton  
Chairman

cc: Members, Committee on Government Reform

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**Fax:** (202) 225-5127  
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U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 4, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

RECEIVED

MAY 09 2002

GOVERNMENT REFORM  
COMMITTEE

Dear Mr. Chairman:

This responds to your letter, dated December 18, 2001, which requested additional documents relating to the FBI's handling of informants in Boston.

Your request has been circulated to the FBI, the Department's Criminal Division, the Boston Strike Force and the Justice Task Force, all of which have begun to search for responsive records. Due to the holidays, however, we have not yet identified and processed responsive records and, consequently, we regret that we cannot provide records today as you requested. We will, of course, supplement this response as soon as we have responsive records available for the Committee.

Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Bryant".

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

THE WHITE HOUSE  
WASHINGTON

January 10, 2002

Dear Chairman Burton:

Thank you for your January 3 letter. I have reviewed that letter and your January 3 letter to Attorney General Ashcroft. I will respond to both letters on behalf of the Executive Branch.

Thank you as well for your comments regarding our conversation of December 13. I understand and respect both your strong interest in pursuing the objectives of your Committee and your institutional perspective on privilege matters.

In response to your letters, I initially want to correct a misimpression about the Executive Branch's overall position on deliberative documents. Your letter states that Attorney General Ashcroft and I articulated to you an Executive Branch "policy" that "henceforth Congress would never receive deliberative documents from a criminal investigation or prosecution." There is no such bright-line policy, nor did we intend to articulate any such policy. As a general matter, the Executive Branch will treat requests for Department of Justice deliberative documents from closed matters in the same way it treats requests for Executive Branch deliberative documents more generally: through a process of appropriate accommodation and negotiation to preserve the respective constitutional roles of the two Branches. No bright-line rule historically has governed, or now governs, responses to congressional requests for the general category of Executive Branch "deliberative documents."

Of course, the Committee's subpoenas in this matter sought a very narrow and particularly sensitive category of deliberative materials -- prosecution and declination memoranda -- as well as the closely related category of memoranda to the Attorney General regarding the appointment of a special prosecutor. Absent unusual circumstances, the Executive Branch has traditionally protected those highly sensitive deliberative documents against public or congressional disclosure. This traditional Executive Branch practice is based on the compelling need to protect both the candor of the deliberative processes by which the Department of Justice decides whether to prosecute individuals and the privacy interests and reputations of uncharged individuals named in such memoranda.

Moreover, with respect, congressional access to these kinds of sensitive prosecutorial decisionmaking documents would threaten to politicize the criminal justice process and thereby threaten individual liberty. The Executive Branch is appropriately concerned that the prospect of congressional review of prosecution or declination memoranda might lead prosecutors to err on the side of investigation or prosecution solely to avoid political criticism. This would, in turn, undermine public and judicial confidence in our law enforcement processes. In addition, prosecution and declination memoranda often require analyses and judgments of witness credibility, witness appearance, witness reputation, defense tactics, judicial quality, and strength of evidence; such sensitive analyses and judgments require confidentiality in order to ensure the

Page 2  
The Honorable Dan Burton  
January 10, 2002

candor necessary for appropriate decisionmaking. For all of these reasons, the President's December 12 decision to assert executive privilege was entirely proper as a matter of constitutional law and practice.

It bears emphasis for purposes of this discussion, moreover, that laws enacted by Congress independently prevent the Executive Branch from disclosing significant portions of prosecution and declination memoranda -- even to Congress. In particular, Rule 6(e) of the Federal Rules of Criminal Procedure and the prohibitions contained in 18 U.S.C. 2510 *et seq.* (regarding wire and oral intercept information, generally referred to as Title III information) prohibit disclosure of grand jury and wiretap information.

In this matter, the Committee's subpoenas sought production of four categories of Department of Justice prosecutorial documents: those relating to (i) the potential appointment of a special counsel for the campaign financing investigation, (ii) the investigation of Mark Middleton, (iii) the investigation of Ernest Howard, and (iv) the investigation of certain individuals investigated and prosecuted by the Boston United States Attorney's Office. Your recent letters and statements in the press indicate that the Committee has now narrowed its focus to the fourth category of documents described above (the Boston documents). The Boston documents consist of ten prosecution memoranda. Significant portions of those memoranda cannot be disclosed lawfully due to the proscriptions of Rule 6(e) and Title III. And the traditional confidentiality and separation-of-powers principles outlined above also plainly apply to these memoranda.

However, the Executive Branch recognizes that in unusual circumstances like those present here, where the Executive Branch has filed criminal charges alleging corruption in the FBI investigative process, even the core principle of confidentiality applicable to prosecution and declination memoranda may appropriately give way, to the extent permitted by law, if Congress demonstrates a compelling and specific need for the memoranda. *See generally Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 731 (D.C. Cir. 1974) (*en banc*) (congressional committee is required to demonstrate that the information sought is "demonstrably critical to the responsible fulfillment of the Committee's functions").

Before the President's assertion of privilege and the December 13 hearing, the Committee had explained the general nature of its inquiry into corruption in the FBI's handling of informants in Boston, but it had not explained why these prosecutorial memoranda were necessary to that inquiry or, for example, how they might reveal evidence of corruption in the charging process or otherwise should be differentiated from ordinary prosecution and declination memoranda. As of the Committee hearing on December 13, therefore, there was no reason for the Executive Branch to analyze or respond to the Committee's subpoena for these Boston prosecution memoranda any differently from the campaign financing, Howard, or Middleton memoranda. That was particularly true since the subpoena for these Boston prosecutorial memoranda, issued only a week before the September 13 hearing at which the Attorney General was initially scheduled to testify, was a very late addition to the series of Committee subpoenas and requests seeking the other prosecutorial memoranda. Indeed, for that same reason, we were

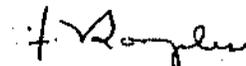
Page 3  
The Honorable Dan Burton  
January 10, 2002

surprised that the Committee's hearing, which was subsequently rescheduled from September 13 to December 13, focused only on the Boston documents.

As you know, the President's memorandum of December 12 asserting executive privilege expressly directed that the Administration work "with the Committee to provide such information as it can, consistent with these instructions and without violating the constitutional doctrine of separation of powers." Consistent with the President's directive and the statement of Committee interest that has been articulated since December 12, we are prepared to accommodate the Committee's interest in a manner that should both satisfy the Committee's legitimate needs and protect the principles of prosecutorial candor and confidentiality. Department of Justice attorneys will provide a confidential, oral description of the contents of the ten Boston documents to you and your staff and to the Ranking Member and his staff. The attorneys also will answer appropriate questions you may have about the documents. After the briefing, if you have additional requests, we will respond in a manner consistent with the President's December 12 directive, the requirements of law, and the longstanding practices of the Executive Branch.

I am hopeful that this proposed accommodation process will provide the Committee with the information it legitimately needs, while at the same time respecting and preserving the critical Executive Branch interest in the appropriate candor and confidentiality of prosecutorial decisionmaking. We look forward to concluding this matter appropriately and expeditiously in consultation with you and your staff.

Sincerely,



Alberto R. Gonzales  
Counsel to the President

The Honorable Dan Burton, Chairman  
Committee on Government Reform  
United States House of Representatives  
Rayburn House Office Building, Room 2157  
Washington, DC 20515

cc: Members of Committee on Government Reform



United States District Court

Boston, Massachusetts 02210

CHAMBERS OF  
MARK L. WOLF  
DISTRICT JUDGE

January 11, 2002

Honorable Dan Burton, Chairman  
Committee on Government Reform  
House of Representatives  
2185 Rayburn HOB  
Washington, DC 20515

Dear Congressman Burton:

Thank you for your December 17, 2001 letter. Before responding, I wanted to read the transcript of the December 13, 2001 hearing that evidently generated your request for "copies of all documents and materials ordered [by me] to be under seal in United States v. Salemme, 91 F. Supp. 2d 141 (D. Mass. 1999)." I have recently done so.

I understand that the House of Representatives Committee on Government Reform (the "Committee"), which you chair, is seeking the requested documents in connection with the exercise of its constitutional responsibilities for overseeing the Executive Branch and for considering legislation to address the serious issues that have emerged from the Salemme case and related matters. Nevertheless, I do not believe that I can provide the requested documents to you at this time.

The documents that you request were produced to the parties and the court in the course of litigating several motions in the Salemme case, subject to protective orders that restrict their dissemination. See United States v. Salemme, 978 F. Supp. 386, 389-90 (D. Mass. 1997); United States v. Salemme, 1997 WL 810057 at \*4 (D. Mass. Dec. 29, 1997). Therefore, neither the court nor the parties may provide the requested documents to the Committee unless and until those protective orders are modified.

I am not certain whether you are seeking all of the documents produced in discovery pursuant to protective orders or only the sealed exhibits that I referenced in my September 15, 2001 Memorandum and Order. I assume for present purposes that you are requesting all of the documents.

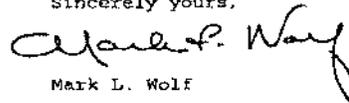
In the past several years, I have decided other issues concerning the modification of the protective orders. Acting on motions by the government, I have amended the protective orders to permit the production of the requested documents in discovery in other criminal cases, on the condition that comparable protective orders restricting their use and dissemination be entered in those cases. However, the government opposed a motion by the estate of John McIntyre to intervene in the Salemme case and obtain the documents that you request, primarily on the ground that private, third-parties do not have standing to intervene in a criminal case. In June 2000, I denied that motion to intervene without prejudice. See enclosed June 28, 2000 Order and June 28, 2000 transcript. A hearing on a renewed motion by Mr. McIntyre's estate, which has now filed a civil suit for damages against the United States, will be held on January 22, 2002. The government also opposed a motion to intervene and obtain documents subject to the protective orders made by Peter Limone, who had been incarcerated for more than thirty years after being convicted of murdering Edward Deegan. I was compelled to deny that motion too. See enclosed Sept. 22, 2000 Order. At the same time, I stated that I might, upon request, modify my protective orders to permit documents to be produced in the state court litigation that later led to Mr. Limone's release. Id. I was not, however, asked to do so.

A subpoena or motion by a Committee of Congress, rather than by an individual, would present unique questions that have not been addressed previously in the Salemme case. I will give the interested parties in the Salemme case notice of your letter, as well as a copy of this response. I hope that representatives of the Committee and the Department of Justice will attempt to reach an agreement to resolve the issues raised by your request. I understand from reading the transcript of the December 13, 2001 hearing that your request to me may be based, at least in part, on the invocation by the Attorney General of a deliberative process privilege. Thus, the enclosed transcript of my December 14, 1998 decision addressing questions of deliberative process privilege that arose in the Salemme case may be of value to the Committee and the Attorney General. Also enclosed are the two referenced memoranda that I found were not subject to the balancing of interests that is required when the deliberative process privilege is properly invoked.

I hope that the Committee and the Department of Justice will reach agreement on the issues that evidently prompted your December 17, 2001 letter. If, however, the Committee issues a subpoena or files in the Salemme case a motion seeking the documents that you

have requested, I will, pursuant to my usual practice, conduct a hearing prior to deciding the merits of the matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Mark L. Wolf". The signature is written in dark ink and is positioned to the right of the typed name.

Mark L. Wolf

cc: Henry A. Waxman, Ranking Minority Member  
House of Representatives Committee on Government Reform  
Assistant United States Attorney James D. Herbert  
• Kenneth J. Fishman, Esq., Counsel for Stephen Flemmi

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA ) Cr. No. 94-10287-MLW  
 )  
v. )  
 )  
STEPHEN FLEMMI )

ORDER

WOLF, D.J.

March 12, 2002

The court has considered the Government's Motion to Limit Scope of Protective Order (the "Motion") to which, it is represented, defendant Stephen Flemmi assents. The Motion asks the court to modify the Protective Order included in paragraph 9 of the June 26, 1997 Order,<sup>1</sup> which was amended on December 29, 1997,<sup>2</sup> and related Orders concerning certain discovery<sup>3</sup> to remove any

<sup>1</sup>United States v. Salemme, 978 F.Supp. 386, 389-90 (D. Mass. 1997).

<sup>2</sup>United States v. Salemme, 1997 WL 810057, at \*4 (D. Mass. Dec. 29, 1997).

<sup>3</sup>Orders directly relating to documents and information generated by the 1997 investigation by the Department of Justice and FBI include, but may not be limited to, a November 14, 1997 Order which is not under seal, the November 14, 1997 Order Disclosing Documents and Information to Defendants From Certain In Camera Submissions (Under Seal), and the November 14, 1997 Order Disclosing to Defendants Information From August 13, 1997 Executive Summary of Department of Justice Investigation (Under Seal). Each of the sealed November 14, 1997 Orders summarizes certain information relating to the 1997 investigation that was provided to the court. It is not clear to the court whether the government considered these sealed Orders when it prepared the Motion and, in any event, whether it seeks authority to disclose these Orders to the Committee. The government shall, by March 18, 2002, state whether it requests authorization to disclose the

impediment that those Orders impose to the production to the Committee on Government Reform of the United States House of Representatives (the "Committee") of any records or information relating to the 1997 investigation which was conducted by the Department of Justice and the Federal Bureau of Investigation (the "FBI") concerning allegations of government misconduct arising from this case. The government does not request that any impounded transcript be unsealed at this time. Rather, the government proposes that a motion be required if issues involving the unsealing of impounded transcripts arise.

In essence, the government proposes that the court remove any restraint on the government's production of documents prepared by the Department of Justice or FBI, while keeping control of the possible disclosure of sealed transcripts of court proceedings. This proposal is reasonable.

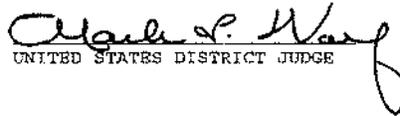
Accordingly, it is hereby ORDERED that:

1. The Protective Order included in paragraph 9 of the June 26, 1997 Order, as amended on December 29, 1997, and other Orders relating to documents and information generated by the 1997 Department of Justice and FBI investigation of allegations of misconduct relating to this case, including but not limited to the Orders listed in footnotes 1, 2 and 3 hereof, are amended to permit  
sealed November 14, 1997 Orders to the Committee.

the government to disclose such information and produce such documents to the Committee, except as provided in paragraph 2 of this Order.

2. Paragraph 1 of this Order shall not operate to permit the production of any transcript, or part of a transcript, in this case that is under seal. The court will decide any motion to unseal any impounded transcript after giving the parties notice and an opportunity to be heard.

3. This Order shall be provided to the Committee as well as to the parties.

  
UNITED STATES DISTRICT JUDGE

03/12/02 15:05 FAX 617 223 9096

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03/02



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TO: Jim Wilson

FROM: Dennis O'Leary

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ONE HUNDRED SEVENTH CONGRESS

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January 17, 2002

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 EDWARD BARNES, MISSISSIPPI  
 TONY PANDOLF

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Washington, D.C. 20530

Dear General Ashcroft:

Pursuant to Rules X and XI of the Rules of the House of Representatives, the Committee on Government Reform is holding a hearing entitled "The History of Congressional Access to Deliberative Justice Department Documents." The hearing is scheduled for January 23, 2002, in room 2154 of the Rayburn House Office Building at 1:00 p.m. I request that Assistant Attorney General Dan Bryant testify at this hearing.

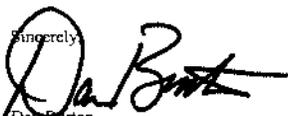
The Justice Department is withholding from the Committee a number of deliberative Justice Department memoranda. In explaining the decision to withhold these documents from the Committee, both Department and White House personnel have suggested that there is a longstanding policy against the release of these types of memoranda, and that Congressional access to these documents would cause substantial public harm. To evaluate the accuracy of these claims, the Committee is attempting to develop a fuller understanding of the history of Congressional access to deliberative Justice Department records. On September 7, 2001, I sent a letter asking four specific questions and making a specific request for documents which would assist the Committee in developing this record. I have received no response from the Justice Department. Mr. Bryant will be asked to answer the questions listed in the September 7, 2001, letter, as well as other questions regarding the history of Congressional access to Justice Department records.

If Mr. Bryant wishes to make an opening statement, it is requested that he provide 100 copies of his written testimony to the Committee no later than 24 hours prior to the time of the hearing. To facilitate printing of the hearing record, he should also provide a computer disk containing a copy of his written testimony. At the hearing, we will ask Mr. Bryant to summarize his testimony in five minutes to allow the maximum time for discussion and questions.

The Honorable John Ashcroft  
January 17, 2002  
Page 2 of 2

Under the Congressional Accountability Act, the House of Representatives complies with the Americans with Disabilities Act. Persons requiring special accommodations should contact Committee Chief Clerk Robert Briggs at (202) 225-5074 at least four days prior to the hearing.

Thank you for your assistance in this matter, and we look forward to Mr. Bryant's testimony.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member



U.S. Department of Justice  
Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

January 18, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
United States House of Representatives  
Washington, D.C. 20515

**RECEIVED**

JAN 18 2002

HOUSE COMMITTEE ON  
GOVERNMENT REFORM

Re: Request for Documents

Dear Mr. Chairman:

I am writing to provide a supplemental response to your letter, dated June 5, 2001, which requested FBI documents in connection with your oversight investigation of the FBI's handling of organized crime investigations in Boston, Massachusetts and related matters. The enclosed documents are provided in response to your request for specific material as follows.

Item 3 - All audiotape recordings, telephone wiretaps, other audio interceptions and transcripts relating to Raymond Patriarca Sr. from January 1, 1962 to December 31, 1968. Enclosed are thirteen volumes of records responsive to this request. This release supplements records provided to you previously, including twelve volumes of documents previously released to the Providence Journal under the Freedom of Information Act (FOIA), and concludes the processing of material pertaining to the Patriarca wiretaps.

Item 4 - All audiotape recordings, telephone wiretaps, other audio interceptions and transcripts relating to Gennaro "Jerry" Angiulo from January 1, 1962 to December 31, 1968. Enclosed are five volumes of documents reflecting summaries of information obtained as the result of the FBI's electronic surveillance of Jay's Lounge, 255 Tremont Street, Boston, Massachusetts. The device was installed in January 1963 and discontinued in July 1965. All responsive material is provided in this release.

Item 6 - All records relating to H. Paul Rico's recall from retirement and subsequent involvement in the investigation of former U.S. District Court Judge Alcee Hastings. Enclosed are two packets of material derived from the FBI's five volume bribery investigation of Alcee Hastings. The enclosed material relates to the use of retired Special Agent H. Paul Rico as an undercover agent during this investigation that ultimately resulted in the acquittal of Judge Hastings. Please be advised, at the direction of the Attorney General, the FBI also provided limited investigative assistance during a 1985 Federal Judicial investigation by the 11th Circuit.

Enclosures (26)

Honorable Dan Burton

United States Court of Appeals into allegations of judicial impropriety by Judge Hastings. With the exception of serving subpoenas as requested by the judicial investigators, the FBI's limited investigative role in this case did not involve Mr. Rico. Therefore, material from this file was determined to be not responsive to your request.

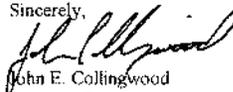
Item 9c - All records, including audiotape recordings and transcripts, relating to Joseph Barboza. Enclosed is a copy of FBI file 183-HQ-1613. This file, comprised of two volumes, concerns the 1976 - 1979 investigation into the murder of Joseph Barboza Baron. Information contained in this file is also responsive to item 10 (records relating to contacts between Joseph Barboza and specific individuals) and item 11 (records relating to contacts between specific individuals and any other individual regarding Joseph Barboza).

Item 9d - All records, including audiotape recordings and transcripts, relating to John S. Kelley. Enclosed is a single document concerning retired Special Agent Paul Rico's handling of witness John "Red" Kelley. We believe this individual is identical to the subject of your request. We await additional identifying information from the Committee's Chief Counsel in order to assist in our review for additional responsive material.

Item 12 - All internal memoranda, policy statements, and U.S. Department of Justice and FBI guidelines relating to the Top Hoodlum Program and the Top Echelon Program and other past and present programs regarding the use of confidential informants. Enclosed are three volumes of material which cover the time period from 1970 through 1987. This concludes the processing of the material pertaining to the Top Hoodlum Program and successor programs.

Information was redacted from these documents and an explanation sheet setting forth the bases for the redactions is included with each package. We continue to work to identify additional material responsive to the Committee's pending request and will supplement this production as releasable material becomes available.

Sincerely,

  
John E. Collingwood  
Assistant Director  
Office of Public and  
Congressional Affairs

1 - The Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
House of Representatives  
Washington, D.C. 20515

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 .....  
 .....

January 25, 2002

David Ayres  
 Chief of Staff  
 Department of Justice  
 10<sup>th</sup> and Constitution Avenue, N.W.  
 Washington, D.C. 20530

Dear David:

I write to bring a matter to your attention that is of great importance to both the Committee and the Department of Justice. I reach out to you because it is my hope that the Attorney General will give his personal attention to this matter. I also write to you because, as you are aware, I have the utmost respect for your integrity.

Earlier this afternoon, at 3:52 p.m., I responded to a message from reporter Beverly Lumpkin. She told me that she had been told by the Justice Department that the Committee on Government Reform had been offered an opportunity to review selected passages from documents that are currently subject to a claim of executive privilege by President Bush. She also stated that she had been told that the Committee had rejected this offer. I told the reporter that the information provided to her by the Justice Department was false.

Concerned that someone may have been providing the media with inaccurate information, I immediately called Carl Thorsen at the Office of Legislative Affairs. The call was placed at 4:00 p.m. and Mr. Thorsen confirmed that the "offer" described to Ms. Lumpkin has never been made and that it would be false to say that the Committee had ever been offered a review of selected sections of the Boston documents. Mr. Thorsen indicated that he would look into this matter. I thanked him for his honesty and ended the conversation.

At 4:17 p.m. I received a call from Laurie Knight, who is a producer at the television program "60 Minutes." She informed me that she had earlier received a telephone call from Bryan Sierra, a Justice Department spokesman, and that Mr. Sierra had informed her that the Committee had been offered an opportunity to review selected

passages of the Boston documents that are under a claim of privilege by President Bush and that the Committee had declined the offer. As with Ms. Lumpkin, I told Ms. Knight that she had been lied to and that the information was completely inaccurate.

I am extremely concerned that the United States Department of Justice would permit a spokesman to engage in this type of behavior. Although Mr. Sierra attempted to speak with me at 5:16 p.m., I did not speak with him because I believed that it would be inappropriate to do so at that time. Subsequently, at approximately 5:41 p.m., Mr. Thorsen informed me that Mr. Sierra called both of the reporters who had been misinformed and corrected the record. Nevertheless, someone at the Justice Department should think long and hard about what happened. It is difficult to believe that this was an error. The state of negotiations between the Justice Department and the Committee are embodied in correspondence and are perfectly clear. They are also a matter of public record. The Justice Department has not offered the Committee a review of any documents subject to the President's claim of executive privilege. Indeed, the Committee requested such a review in its letter of January 11, 2002, and was told a few days later that the White House was not inclined to permit such a review. Therefore, I must conclude, absent clear evidence to the contrary, that Mr. Sierra's statements were deliberate attempts to distort the record, rather than simple mistakes. In addition, there has been a great deal of inaccurate information communicated recently about the Committee's request to review certain types of records. It is my hope that the Department will -- to the extent it has been involved in the communication of such inaccuracies -- make an effort to bring a close to this unfortunate chapter. We should consider these issues on the merits, and not allow inaccurate spin to cloud the facts.

It is my sincere hope that you will take my concerns seriously and make the appropriate inquiries about what has happened.

Sincerely,



James C. Wilson  
Chief Counsel

cc: Hon. Timothy E. Flanigan, Deputy Counsel to the President



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

January 25, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This is to confirm and further the conversation between the Committee's Chief Counsel Jim Wilson and FBI Special Counsel Beth Heers on January 9, 2002 regarding the status of our responses to your requests for documents relating to the oversight of the Bureau's handling of informants in Boston.

As a preliminary matter, Mr. Wilson confirmed that the Department has complied with the Committee's document requests dated March 30, May 10, and May 23, 2001. With regard to items requested in your letter dated June 5, 2001, our production of documents responsive to items 1 (Messrs. Rico, Condon, Connolly and Morris awards and similar documents) and 7 (records about DOJ involvement in State prosecution of Joseph Barboza) are complete.

We have not processed records responsive to item 2 of the June 5<sup>th</sup> letter because they relate to matters under investigation by the Justice Task Force. In addition, we have not produced material responsive to items 5 (FBI/OPR report on FBI's relationship with James Bulger, Stephen Flemmi and other Boston informants) or 9(b) (Stephen Flemmi, 1960-1971) because we believe that they are covered by the Protective Order entered by Judge Wolf in *United States v. Francis P. Salemme, et al.* (D. Mass. 1997). The FBI/OPR report also contains information relating to pending law enforcement matters.

We have completed our production of records responsive to item 3 (Patriarca wiretaps and overhears, January 1, 1962 to December 31, 1968) and item 12 (Top Hoodlum Program) and appreciated Mr. Wilson's clarification that, regarding item 12, you are not seeking AG Informant Guidelines. We also have completed our production of FBI records responsive to item 4 (Gennaro Angiulo wiretaps and overhears, January 1, 1962 to December 31, 1968) and item 6 (Mr. Rico's recall from retirement and subsequent involvement in investigation of former U.S. District Judge Alcee Hastings). We have not identified any documents responsive to item 8 (post-retirement contacts with Messrs. Rico, Condon, and Connolly) beyond those identified in response to items 1 and 6. We have not searched files pertaining to pending civil actions in which these individuals may be named as defendants.

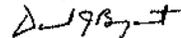
We have also produced records responsive to item 9(c) (Joseph Barboza) and are continuing to review and process responsive records. As we advised Mr. Wilson, our search for and release of records responsive to items 10 and 11, regarding Mr. Barboza's contacts with listed individuals and contacts between listed individuals concerning Mr. Barboza, was conducted in conjunction with our processing of records responsive to item 9(c). Efforts to locate records responsive to 9(a) (Vincent Flemmi) have recently identified potentially responsive records maintained by the FBI's Boston office. Those records are being reviewed and responsive material will be processed and released. Mr. Wilson advised that he would provide additional information regarding item 9(d) (John S. Kelley) to assist the FBI in searching for records.

Please be advised, in responding to your request, we have not disclosed information which would reveal the identity of an FBI informant. In some instances, this has required the redaction of material contained in released documents and, in others, we have not produced entire informant files. The FBI advises that more specific information concerning the withheld material cannot be provided without jeopardizing the very information we are trying to protect. This issue was discussed with Mr. Wilson during his review of material responsive to item 13 (redacted text) in two visits to the FBI in August 2001. We are continuing to consider alternatives for accommodating the Committee's needs regarding this matter.

With regard to your letter dated December 18, 2001, I am advised that the FBI believes, based on a preliminary search for responsive material, that disclosure of documents responsive to items 1 and 2, regarding contacts between Frank Oreto and Joseph Salvati and Marie Salvati, respectively, if they exist, would be prohibited by Title III. We are conferring with Department attorneys about that question and will supplement this response as soon as possible. Mr. Wilson instructed that the Committee does not currently wish to receive documents responsive to items 3 (SA Rico's handling of John "Red" Kelley); 4 (SA Sheehan's handling of John "Red" Kelley); 5 (Strike Force Chief Edward Harrington's handling of John "Red" Kelley); 6 (re Rhode Island Supreme Court finding on subornation of perjury by SA Rico during 1970 trial of Maurice Lerner); and 7 (re Rhode Island Supreme Court finding of perjury by SA Rico during 1970 trial of Maurice Lerner). Lastly, the FBI advised that they have identified material concerning item 8 (Victor Garo), but it is not investigative in nature. Mr. Wilson said he is not interested in those records.

The Department is continuing to search for documents responsive to your requests and we will supplement this response when additional documents become available. I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

**FAX COVER SHEET**

DATE: 1/25/02

TO: Jim Wilson

PHONE NO. \_\_\_\_\_

FAX NO. 202-3974

2

FROM: FAITH BURTON

PHONE NO. 514-1653

FAX NO. 202-2643

NO. OF PAGES: \_\_\_\_\_ (EXCLUDING COVER)

COMMENTS: \_\_\_\_\_  
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U.S. Department of Justice  
Criminal Division

Assistant Attorney General

Washington, D.C. 20530

January 25, 2002

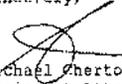
The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This is to respond to requests articulated at the Committee's hearing on December 13, 2001 for a log of the documents relating to the Boston FBI matter that were subject to the President's claim of executive privilege.

Enclosed for your review is a log of those documents. I was going to provide this log to you at the meeting that was scheduled for January 10, 2002. Our expectation was that we would describe the documents to Committee staff and hear the staff's explanation of how the Committee's investigative needs relate to particular documents. We hope that this meeting will be rescheduled in the near future.

Sincerely,

  
Michael Chertoff  
Assistant Attorney General

Enclosure

cc: The Honorable Henry Waxman  
Ranking Minority Member

**Boston Documents Subject to Executive Privilege Claim**

1. Memorandum Re: Whether to Prosecute Raymond Patriarca, December 2, 1965.
2. Memorandum Re: Whether to Prosecute Raymond Patriarca and Two Additional Named Individuals, June 6, 1967.
3. Memorandum Re: Whether to Prosecute Raymond Patriarca and Six Additional Named Individuals, August 11, 1969.
4. Memorandum Re: Whether to Prosecute Howard Winter and Twenty Additional Named Individuals, January 29, 1979.
5. Memorandum Re: Whether to Prosecute Gennaro Angiulo and Six Additional Named Individuals, August 25, 1983.
6. Memorandum Re: Whether to Prosecute the First National Bank of Boston and One Additional Named Individual, December 11, 1984.
7. Memorandum Re: Whether to Prosecute the First National Bank of Boston, December 20, 1984.
8. Memorandum Re: Whether to Prosecute the First National Bank of Boston, January 8, 1985.
9. Memorandum Re: Whether to Prosecute Robert Carozza and Six Additional Named Individuals, September 18, 1989.
10. Memorandum Re: Whether to Prosecute Raymond Patriarca and Seven Additional Named Individuals, March 7, 1990.



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

**FAX COVER SHEET**

DATE: 1/25/02

TO: Jim Wilson

PHONE NO. \_\_\_\_\_

FAX NO. 202-3974

FROM: FAITH BURTON

PHONE NO. 514-1653

FAX NO. 202-2641

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January 29, 2002

The Honorable Daniel J. Bryant  
 Assistant Attorney General  
 U.S. Department of Justice  
 Tenth and Constitution Avenue, N.W.  
 Washington, DC 20530

Dear Assistant Attorney General Bryant:

Pursuant to Rules X and XI of the House of Representatives, the Committee on Government Reform is holding a hearing entitled, "The History of Congressional Access to Deliberative Justice Department Documents." The hearing is scheduled for 10:00 a.m., February 6, 2002, in Room 2154 of the Rayburn House Office Building. I request that you testify at this hearing.

In the course of its investigations of several matters, the Committee made requests for deliberative Justice Department memoranda. The Justice Department and the White House informed the Committee that Congress would no longer be provided with access to any deliberative Justice Department memoranda. Justice Department staff indicated that it was attempting to return to the "policy" of the Justice Department prior to Attorney General Reno, which was, purportedly, that the Justice Department did not provide Congress with deliberative documents.

In response to what was clearly intended to be an inflexible policy, and after considerable negotiation, the Committee issued a subpoena for the earlier requested documents.<sup>1</sup> The inflexible position of the Justice Department and the White House was modified when a Justice Department witness testified on December 13, 2001, that a case-by-case analysis would be conducted in order to respond to congressional subpoenas for deliberative documents. Unfortunately, the witness was not able to explain what specific factors led the President to claim executive privilege over subpoenaed documents that relate to the Committee's investigation of Justice Department corruption in Boston.

<sup>1</sup> One subpoena had already been issued in response to a Justice Department staff suggestion that a "friendly" subpoena would help to break the logjam in what were, at the time, ongoing negotiations.

Assistant Attorney General Daniel J. Bryant  
January 29, 2002  
Page 2 of 3

I request that you provide the Committee with testimony regarding:

- 1) All prior occasions when Congress has been permitted access to Justice Department deliberative documents. This includes, but is not limited to, all situations where Congress -- either Members or staff -- has been permitted to review documents without taking possession of them.
- 2) How your research was conducted and with whom you or your staff spoke in order to prepare for your testimony. The Committee would like to ensure that you have made a diligent effort to learn about previous examples in order to provide the Committee with comprehensive testimony regarding relevant precedent.
- 3) What specific factors led to the decision to recommend that President Bush invoke executive privilege over the documents subpoenaed pursuant to the Committee's investigation of Justice Department corruption in Boston. The Justice Department claims that it conducts a case-by-case analysis to determine whether to provide deliberative Justice Department records to Congress. Yet, at the December 13, 2001, hearing, Mr. Horowitz was unable to articulate what specific factors led the Justice Department to recommend that the Boston documents be withheld from the Committee.
- 4) Please provide answers to the questions I posed to Attorney General Ashcroft in my letter of September 7, 2001.

The Committee understands that there has been opposition within the Department to providing deliberative documents to Congress in the past. However, I believe that access to such documents has been permitted on numerous occasions, including prior to the Clinton Administration. Your testimony will assist the committee in developing a fuller understanding of the history of congressional access to deliberative Justice Department records.

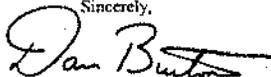
If you wish to make an opening statement, it is requested that you provide 100 copies of your written testimony to the Committee no later than 24 hours prior to the time of the hearing. To facilitate printing of the hearing record, you should also provide a computer disk containing a copy of your written testimony. At the hearing, we will ask you to summarize your testimony in five minutes to allow the maximum time for discussion and questions.

Assistant Attorney General Daniel J. Bryant  
January 29, 2002  
Page 3 of 3

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Please contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074 if you have any questions or need additional information about this hearing.

Sincerely,

A handwritten signature in black ink that reads "Dan Burton". The signature is written in a cursive, flowing style.

Dan Burton  
Chairman

DAVID BONIOR, MICHIGAN  
 DAN Rostenkowski, ILLINOIS  
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The Honorable John Ashcroft  
 Attorney General  
 U.S. Department of Justice  
 Tenth and Constitution Avenue, N.W.  
 Washington, D.C. 20530

Re: Request for Responses and Documents

Dear General Ashcroft:

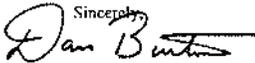
Pursuant to its authority under Rules X and XI of the House of Representatives, the Committee on Government Reform hereby requests certain information regarding the enclosed document.

Please answer the following questions and produce the following requested items, in unredacted form, to the Committee:

1. Subsequent to the date of the enclosed document, June 2, 1983, did the Department of Justice or the Federal Bureau of Investigation's Office of Professional Responsibility conduct an investigation regarding John J. Kelley's allegation that Special Agent H. Paul Rico suborned perjury?
2. If the answer to question 1 is affirmative, please provide all documents relating to such investigation.
3. Subsequent to the date of the enclosed document, June 2, 1983, did the Criminal Investigative Division conduct an investigation regarding John J. Kelley's allegation that Special Agent H. Paul Rico suborned perjury?
4. If the answer to question 3 is affirmative, please provide all documents relating to such investigation.
5. Subsequent to the date of the enclosed document, June 2, 1983, did the Organized Crime Section conduct an investigation regarding John J. Kelley's allegation that Special Agent H. Paul Rico suborned perjury?

6. If the answer to question 5 is affirmative, please provide all documents relating to such investigation.
7. On page 1 of the enclosed document, there are written notations that resemble the letter "J." Please provide an indication of the author of these notations. The notations are located on the right side of the page.

Please provide answers to the above questions and, where appropriate, documents by February 7, 2002. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member

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RS

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JUN 20 262

1 BOSTON (183A-955)

FEDERAL BUREAU OF INVESTIGATION

DIRECTOR IMMEDIATE

RLAS

*Handwritten circled text: 183-6111-5*

ATTENTION PUBLIC AFFAIRS OFFICE, OFFICE OF PROFESSIONAL RESPONSIBILITY, CC SECTION.

DESE GIOVANNI MANOCCHIO, AKA LOUIS MANOCCHIO, "BABY SHANKS", "SHANKS", RICO (A), CO: BOSTON.

REFERENCE ASAC LUDEMAN TELEPHONE CALL TO CPR AND PAO, JUNE 2, 1983.

MANOCCHIO IS A KNOWN LCN MEMBER OF THE NEW ENGLAND ORGANIZED CRIME FAMILY AND IS KNOWN TO BE ATTEMPTING TO REPLACE RAYMOND L. S. PATAIACA IN HIS LEADERSHIP ROLE. MANOCCHIO HAS BEEN A TARGET OF CAPTIONED CASE SINCE MARCH, 1982.

MANOCCHIO, FBI NUMBER 116A566A, HAS BEEN ON TRIAL, SUPERIOR COURT, PROVIDENCE, RHODE ISLAND, FOR THE PAST TWO WEEKS. HE IS BEING TRIED FOR THE 1968 GANG LAND MURDERS OF RUDOLPH BARREO AND

*Handwritten notes:*  
MANOCCHIO  
CITIZENSHIP  
LAWYER  
KIMMEL

*Handwritten note:*  
PAO's call 7/5/83 made to Gooder 6-2-83. SIB

*Handwritten note:*  
DET 183-6111-5

*Handwritten note:*  
cc's real to for 1st sec - mm Bob Marking - Telford shot

*Handwritten signature:*  
[Signature]

DE TWO BS 183A-955 UNCLAS

~~THOMAS DEL~~, RAYMOND L. S. PATRIACA, RUDOLPH ~~E. SCIARRA~~,  
~~URICE R. EARNER~~, ROBERT ~~F. FAIRBROTHERS~~ AND JOHN ~~BOSSI~~ WERE  
 L CONVICTED IN 1970 FOR THESE MURDERS OR ACCESSORY TO THESE  
 ORDERS. MANOCCHIO BECAME A FUGITIVE AT THIS TIME AND REMAINED  
 THAT STATUS UNTIL HE SURRENDERED HIMSELF IN JULY, 1979.  
 ANOCCHIO WAS INVESTIGATED UNDER BS FILE NUMBER 166-845 AND BU  
 FILE NUMBER 166-4355.

~~JOHN J. KELLEY~~, AKA "RED", IS THE MAIN WITNESS AGAINST  
 ANOCCHIO. KELLEY TESTIFIED AGAINST THOSE ALREADY PROSECUTED.  
 KELLEY BECAME A COOPERATING WITNESS IN THIS CASE AFTER HE WAS  
 INDICTED FOR HIS INVOLVEMENT IN THE ROBBERY OF A BRINKS TRUCK  
 IN MASSACHUSETTS. [REDACTED]

URING PRIOR TESTIMONY REGARDING THESE MURDERS, KELLEY  
 TESTIFIED HIS INVOLVEMENT IN THE PLANNING OF THESE MURDERS WITH  
 THOSE MENTIONED ABOVE. HOWEVER, IN THE CURRENT TRIAL AGAINST  
 MANOCCHIO, KELLEY TESTIFIED ON MAY 31, 1983 AND JUNE 1, 1985 AND  
 HAS ALTERED HIS TESTIMONY COMPARED TO THAT GIVEN PRIOR. KELLEY  
 HAD TESTIFIED IN PRIOR TRIALS THAT HE MET WITH PATRIACA AND  
 OTHERS TO DISCUSS THE MURDERS OUTSIDE THE GAS LIGHT LOUNGE IN

RE THREE BS 183A-955 UNCLAS

EVIDENCE, RHODE ISLAND. THIS HAS BEEN A POINT OF CONTENTION  
 CAUSE THE DEFENSE HAS REPLIED THAT THE GAS LIGHT, WHICH IS  
 DOWN TO HAVE BURNT DOWN, WAS BURNT PRIOR TO THE PERIOD KELLEY  
 VES FOR THE MEETINGS. KELLEY TESTIFIED ON JUNE 1, 1983 THAT  
 LIED AT THE PRIOR TRIALS AND PROCEEDINGS ABOUT THE LOCATION  
 THE MEETINGS, AT THE SUGGESTION OF FORMER FBI SPECIAL AGENT  
~~PAUL RICO~~. KELLEY CONTENDS THAT THE MEETINGS ALL OCCURED  
 AT A LOCATION THAT HE NOW CAN NOT RECALL. KELLEY ALSO  
 ESTIFIED THAT RICO INSTRUCTED HIM NOT TO DISCLOSE IN PREVIOUS  
 TRIALS THAT HE WAS BEING PAID A MONTHLY ALLOWANCE [REDACTED]

SUBSTANTIAL NEWS MEDIA ATTENTION IS BEING GIVEN TO THE  
 AMOCCHIO TRIAL, TO INCLUDE KELLEY'S TESTIMONY IN WHICH HE SAYS  
 E LIED IN PRIOR TRIALS AT THE REQUEST OF THE FBI, PARTICULARLY  
 ICO.

UACB ATTEMPTS WILL BE MADE TO INTERVIEW KELLEY REGARDING HIS  
 ALLEGATIONS TOWARD FORMER SA RICO AND THE REASON FOR HIS CHANGE  
 OF TESTIMONY.

ABOVE IS PROVIDED TO FBING FOR INFORMATION PURPOSES AND



**Boston Documents Subject to Executive Privilege Claim**

1. Memorandum Re: Whether to Prosecute Raymond Patriarca, December 2, 1965.
2. Memorandum Re: Whether to Prosecute Raymond Patriarca and Two Additional Named Individuals, June 6, 1967.
3. Memorandum Re: Whether to Prosecute Raymond Patriarca and Six Additional Named Individuals, August 11, 1969.
4. Memorandum Re: Whether to Prosecute Howard Winter and Twenty Additional Named Individuals, January 29, 1979.
5. Memorandum Re: Whether to Prosecute Gennaro Angiulo and Six Additional Named Individuals, August 25, 1983.
6. Memorandum Re: Whether to Prosecute the First National Bank of Boston and One Additional Named Individual, December 11, 1984.
7. Memorandum Re: Whether to Prosecute the First National Bank of Boston, December 20, 1984.
8. Memorandum Re: Whether to Prosecute the First National Bank of Boston, January 8, 1985.
9. Memorandum Re: Whether to Prosecute Robert Carrozza and Six Additional Named Individuals, September 18, 1989.
10. Memorandum Re: Whether to Prosecute Raymond Patriarca and Seven Additional Named Individuals, March 7, 1990.



**U.S. Department of Justice**  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

February 1, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letters, dated January 29, 2002 and September 7, 2001, in connection with the Committee hearing that is now scheduled for February 6, 2002.

In advance of the hearing, I want to correct the apparent misunderstanding regarding the Administration's position on deliberative documents generally and deliberative prosecutorial documents in particular. We have no policy that bars congressional access to all deliberative documents. As Judge Gonzales's letter, dated January 10, 2002, stated:

As a general matter, the Executive Branch will treat requests for Department of Justice deliberative documents from closed matters in the same way it treats requests for Executive Branch deliberative documents more generally: through a process of appropriate accommodation and negotiation to preserve the respective constitutional roles of the two Branches.

Our particular concern in the current controversy pertains to the narrow and especially sensitive categories of advice memoranda to the Attorney General and deliberative documents making recommendation regarding whether or not to bring criminal charges against individuals. We believe that the public interest in avoiding the politicization of the criminal justice process requires greater protection for those documents which, in turn, influences the accommodation process. This is not an "inflexible position," but rather a statement of a principled interest in ensuring the integrity of prosecutorial decision-making.

We remain prepared to work with the Committee to reach an appropriate accommodation regarding the Boston documents and hope that a meeting between Committee and Department representatives can be re-scheduled as soon as possible, and preferably before the February 6 hearing. We believe that substantial progress can be made at such a meeting in resolving the issues relating to the Committee's interest in these documents.

Turning now to the first of the numbered paragraphs of your January 29, 2002 letter: As you know, the Department has often provided Congress with access to deliberative documents of one sort or another. Consequently, it would be impossible to catalogue all of the occasions in which that has occurred. Deliberative documents take many forms and many are not particularly sensitive once a case is closed. In some instances, such materials have not been segregated from other case-related materials that are provided to congressional oversight committees. Consequently, the Department keeps no records of deliberative documents, per se, that are disclosed to congressional committees in conjunction with factual records.

Your second and third numbered paragraphs appear to seek information about the Department's internal deliberations relating to the preparation of our testimony before your Committee and the President's assertion of executive privilege. In preparing the testimony, I have consulted with Departmental components with expertise in the matters before us and, particularly with appropriate attorneys in those components. As head of the Criminal Division, Assistant Attorney General Michael Chertoff has primary responsibility for Department policies relating to criminal investigations and prosecutorial decision-making. He is best equipped to lead the Department's participation with you in an accommodation process, which we believe is the appropriate course for resolving the issues relating to these prosecutorial documents. As you recall, we asked the Committee to schedule its last hearing on this matter so that he could testify. While that did not occur, Mr. Chertoff is available next week and, as we have advised Committee staff, the Attorney General has determined that he would like Mr. Chertoff to participate as a witness at this hearing.

In response to your question about the factors that led to the recommendation to the President regarding the subpoenaed documents, the Department has concluded that the disclosure outside of the executive branch of these types of core deliberative prosecutorial documents would undermine the integrity of the prosecutorial function. We are concerned that such disclosures would chill the candid exchange of views that is essential to the criminal justice process and make it more difficult for the Attorney General and other high-level decision-makers to obtain full and frank advice from their colleagues and subordinates.

In response to your letter dated September 7, 2001, which is referenced in the fourth numbered paragraph of your January 29 letter, we have developed information relating to the numbered items in the letter. We are not in a position to provide comprehensive information about requests for deliberative prosecutorial documents prior to the Clinton Administration because the Department does not maintain records of such precedents in any readily retrievable form, but the following summaries may be helpful. We would, of course, appreciate receiving from you information about any additional precedents that you believe are relevant to your request and especially those that should be considered as we prepare for the February 6 hearing.

In 1992, the House Science, Space, and Technology Subcommittee on Investigations and Oversight initiated an inquiry into the Department's plea agreement with Rockwell International

Corporation, which related to criminal violations of environmental laws at the Rocky Flats nuclear weapons facility, outside of Denver. The Subcommittee wanted information about the Department's decision not to prosecute individuals and asked to interview the line prosecutors about those decisions. The Department made an exception to the established policy against making such individuals available to Congress with regard to two prosecutors who had answered questions from the media at a press conference on the Rocky Flats settlement. Our position, however, remained that the prosecutors could not disclose information about internal deliberations leading up to the declination decisions. When other issues regarding the Subcommittee staff interviews could not be resolved, the attorneys were subpoenaed to testify before a closed Subcommittee hearing. They provided extensive testimony but declined to answer questions seeking deliberative information.

Thereafter, Chairman Wolpe sent a letter to the President demanding that he either assert executive privilege regarding the deliberative process information or direct the Department to permit its witnesses to answer those outstanding hearing questions. When the Department did not agree to this ultimatum, the Chairman advised that he would defer contempt proceedings if the United States Attorney from Denver would testify before the Subcommittee on October 5, 1992. The United States Attorney had a long-standing family commitment on that date, which he felt obligated to fulfill, although he offered to attend on any date after October 6. The Chairman refused to reschedule the hearing, the Department determined not to seek an assertion of executive privilege, and the parties returned to the accommodation process. They finally agreed that in staff interviews, the Department attorney witnesses could disclose information about their deliberations pursuant to an agreement whereby the interviews were transcribed and transcripts could be used publicly only to refresh recollection or impeach the testimony of a witness. The deliberative prosecutorial documents were made available for use at the interviews and while staff could take notes on the documents, they could not disclose the notes publicly and the deliberative documents were returned to the Department at the conclusion of each interview. The limitations on disclosure of the interview transcripts also applied to any transcript references to the deliberative documents.

In 1980, a special Senate Judiciary Subcommittee conducted an inquiry about the Department's investigation and conclusions regarding alleged violations of the Foreign Agents Registration Act by the President's brother, Billy Carter. It appears that, while the matter was pending, then Attorney General Civiletti discussed Mr. Carter's failure to register under the Act with the President, which underscored the Committee's interest in the Department's process leading up to the declination. We understand that the Subcommittee records indicate that deliberative prosecutorial memoranda, as well as factual investigative records, were disclosed. We have not located any information indicating that the Department expressed concerns about the disclosure of the deliberative prosecutorial documents or otherwise sought an accommodation, let alone any assertion of executive privilege.

Our information regarding the General Dynamics matter, which was the subject of the Senate inquiry in 1984 that is referenced in item 5 of your September 7 letter, indicates that

deliberative prosecutorial memoranda were provided to Congress. The circumstances and terms of this disclosure are unclear and I do not know whether the Department considered its implications as we have in the instant matter.

In response to the third item of your September 7 request, we have identified two instances that may be helpful. In 1909, President Theodore Roosevelt withheld information of precisely the same nature as that at issue today--information surrounding a decision whether or not to take action against the target of an investigation. The Attorney General had conducted an investigation of the U.S. Steel Corporation's acquisition of the Tennessee Coal and Iron Company two years earlier, and had declined to institute legal action against U.S. Steel. The Senate requested information regarding the reasons for his decision and any opinions written by the Attorney General or under his authority on the matter. President Roosevelt refused to provide documents regarding the Attorney General's decision not to take legal action. Roosevelt explained:

I have thus given to the Senate all the information in the possession of the executive department which appears to me to be material or relevant, on the subject of the resolution. I feel bound, however, to add that I have instructed the Attorney-General not to respond to that portion of the resolution which calls for a statement of his reasons for nonaction. I have done so because I do not conceive it to be within the authority of the Senate to give directions of this character to the head of an executive department, or to demand from him reasons for his action. Heads of the executive departments are subject to the Constitution, and to the laws passed by the Congress in pursuance of the Constitution, and to the directions of the President of the United States, but to no other direction whatever.

In a second matter, beginning in 1957, the House Judiciary Subcommittee on Antitrust conducted an investigation regarding the Department's enforcement of consent decrees. The Department refused to make available any of its files relating to the American Telephone and Telegraph consent decree, including memoranda and recommendations from Antitrust Division staff. In refusing to disclose the documents, Deputy Attorney General William Rogers explicitly referred to President Eisenhower's rationale for asserting executive privilege with respect to Defense Department deliberations during the course of the McCarthy investigations in 1954. President Eisenhower had justified this assertion of the privilege on the grounds that "it is essential to efficient and effective administration that employees of the Executive Branch be in a position to be completely candid in advising with each other on official matters," and he had also stressed that it was necessary "to maintain the proper separation of powers between the Executive and Legislative Branches of the Government in accordance with my responsibilities and duties under the Constitution." Deputy Attorney General Rogers also stated that "the essential process of full and flexible exchange might be seriously endangered were staff members hampered by the knowledge they might at some later date be forced to explain before Congress intermediate positions taken." Three Department representatives eventually testified before the Subcommittee, but they reaffirmed the Department's policy of withholding internal deliberative documents, but

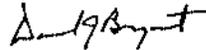
the documents which were never disclosed in this matter.

The foregoing summary is by no means exhaustive, but I believe it illustrates how previous administrations have responded differently to congressional requests for deliberative prosecutorial information. Each Department has surely pursued the course it deemed necessary and appropriate in the particular circumstances it faced, as we have done in the instant matter. Based upon the circumstances surrounding this subpoena, the President concluded that his assertion of executive privilege was the appropriate course to protect the integrity of the criminal justice process and in invoking the privilege, he requested that the Department "remain willing to work informally with the Committee to provide such information as it can, consistent with these instructions and without violating the constitutional doctrine of separation of powers." It remains our hope that you will agree to meet with us in order to engage in that informal process with regard to the Boston documents.

Lastly, in response to the fourth item in your September 7 letter, we have compiled the enclosed records, which we hope will be helpful to you. They include a published 1986 opinion of Office of Legal Counsel (OLC) Assistant Attorney General Charles Cooper, a published 1989 opinion of OLC Assistant Attorney General William Barr, a 1991 letter from Office of Legislative Affairs (OLA) Assistant Attorney General Lee Rawls to Senator Metzenbaum, and a January 27, 2000 letter from OLA Assistant Attorney General Robert Raben to Chairman John Linder of the House Rules Subcommittee on Rules and Organization of the House. These documents have informed the Department's responses to requests for deliberative prosecutorial documents and our approach to the accommodation process. We are not identifying unpublished confidential advice memoranda from OLC to the Attorney General or other executive branch officials.

I hope that this information is helpful to you. Please do not hesitate to contact me if you would like additional assistance about this or any other matter.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

Enclosures

cc: The Honorable Henry Waxman  
Ranking Minority Member



application has been made to the division of the court, why such a warrant was not made." 28 U.S.C. § 595(a). Because such a notification was not made, the court, in *Walters*, 407 U.S. 307 (1972), recognized that "it is not possible to disclose at least some information that is included in the confidential report filed with the court, § 595(a) appears to create a narrow exception to the general rule of confidentiality."

The legislative history of this provision suggests, however, that the scope of the required notification is very limited; disclosure of particular details of the investigation findings and the prosecutorial decision is not contemplated:

[T]he Attorney General might respond that he had already applied for the appointment of a special prosecutor or he might respond that upon the conclusion of a preliminary investigation, he made a finding and filed the requisite recommendations before the court, that the matter was so unambiguously settled as to not warrant further investigation or prosecution. If no application for the appointment of a special prosecutor has been made to the division of the court, the Attorney General is required to explain the specific reasons why a special prosecutor is not required under the standards set forth in § 592(a). If the reason for not appointing a special prosecutor is the fact that the matter is so unambiguously settled as to not warrant further investigation or prosecution, the Attorney General's explanation under this subsection need only state that fact. The Committee does not intend that the Attorney General go into any detail with regard to the basis for the decision made in the exercise of his prosecutorial discretion or that a matter simply did not warrant any further investigation or prosecution after the conclusion of a preliminary investigation.

S. Rep. No. 170, supra, at 72 (emphasis added). That history also makes clear that Congress contemplated that the names of implicated individuals would be included in the required notification.<sup>6</sup>

Based on this legislative history and the overriding concern reflected in the Act with preserving confidentiality, we believe that, unless the court has approved disclosure, the notification required by § 595(a) need (and may) encompass only a statement that an application for an independent counsel has been filed as to a particular individual or individuals, or that after investigation the Attorney General determined that the allegations against particular individuals did not warrant further investigation. Obviously, if the Attorney General determined, on some ground other than the sufficiency and credibility of the evidence, that he need not apply for an independent counsel—for example,

<sup>6</sup> Disclosure is not restricted to the public, although the committee may, under "in its own initiative or upon request of the Attorney General, make public such portions of such notifications as will not constitute a disclosure of confidential information." 28 U.S.C. § 595(b). The Attorney General is to make the public portions of the notification available to the public, and the House Report specifically states that "the Committee . . . may desire to release the names of individuals, mentioned in the notification, especially if some individuals are not the subjects of the alleged criminal activity." H. Rep. No. 170, supra, at 73.

The confidentiality provisions were regarded as "crucial to the general scheme" of the Act. S. Rep. No. 170, 95th Cong., 2d Sess. 58 (1978). Congress recognized that "it is not possible to disclose at least some information that is included in the confidential report filed with the court, § 595(a) appears to create a narrow exception to the general rule of confidentiality." H. Rep. No. 170, supra, at 58. However, even if the court agrees to disclose that an application has been made or to announce the identity and jurisdiction of an independent counsel, "there may still be justification for keeping the contents of an application for a special prosecutor . . . confidential because of unsubstantiated allegations and other information which may be contained in the application for appointment." *Id.*

The language of the Act's confidentiality provisions that the documents "shall not be revealed to any individual outside the division of the court or the Department of Justice" is carefully drafted, and on its face prohibits disclosures to Congress no less than disclosures to the public. The legislative history of the Act supports this interpretation of the statute's unambiguous language. "The contents of the report by the Attorney General after a preliminary finding of some impropriety is to remain secret, available only to the court and I presume, to the special prosecutor, but may not be released to the public or to Congress without of special leave of this new court." 124 Cong. Rec. 3462 (1978) (remarks of Rep. Wiggins) (emphasis added).<sup>7</sup>

In general, then, the Act restricts the Attorney General's ability to disclose to Congress the contents of any application or report filed with the court, unless and until the court agrees. This blanket confidentiality requirement, however, is subject to a narrow exception triggered when Congress requests under § 595(c) that the Attorney General apply for an independent counsel. If the Attorney General receives such a request, he is required to "provide written notification of any action . . . taken in response to such request and, if so

<sup>7</sup> Although the language of the confidentiality provisions refers only to documents actually filed with the court, the provisions obviously cannot literally be interpreted by disclosing the contents of the documents to the public. H. Rep. No. 170, supra, at 58. (The contents of the report . . . filed to determine facts . . . 73. H. Rep. No. 170, supra, at 58.)

<sup>8</sup> Section 595(c) of the Act authorizes "the majority of majority party members or a majority of all nonmajority party members of the Committee on the Judiciary of either House of the Senate" to request the Attorney General to apply for the appointment of an independent counsel. 28 U.S.C. § 595(c).



A. Executive Privilege

Assuming that Congress has a legitimate legislative purpose for its inquiry, the Executive Branch's interest in keeping the information confidential must be assessed. That interest is usually discussed in terms of "executive privilege," and we will use that convention here. The question, however, is not strictly speaking just one of executive privilege. Although the considerations that support the concept and assertion of executive privilege apply to any congressional request for information, the privilege itself need not be claimed formally via a *vis* Congress except in response to a lawful subpoena; in responding to an informal congressional request for information, the Executive Branch is not necessarily bound by the limits of executive privilege.

1. Constitutional Basis of Executive Privilege

The Constitution nowhere states that the President, or the Executive Branch generally, enjoys a privilege against disclosing information requested by the courts, the public, or the legislative branch. The existence of such a privilege, however, is a necessary corollary of the executive function vested in the President by Article II of the Constitution, has been asserted by numerous Presidents from the earliest days of our Nation, and has been explicitly recognized by the Supreme Court. *United States v. Nixon*, 418 U.S. at 705-06.

2. Protection of Law Enforcement Files

Although the principle of executive privilege is well established, there are few clear guidelines regarding its practical application. The privilege has most frequently been asserted in the areas of foreign affairs and military and domestic secrets, but it has also been invoked in a variety of other contexts. In 1954, President Eisenhower asserted that the privilege extends to deliberative communications within the Executive Branch. In a letter to the Secretary of Defense, he stated:

Because it is essential to effective administration that employees of the Executive Branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications or any documents or reproductions concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the Subcommittees of the Senate Commissions on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions . . . .

1954 Pub. Papers 483-84 (May 17, 1954).

investigative committee spell out that group's jurisdiction and purpose with sufficient particularity." *Id.* at 201. The scope of judicial inquiry on these matters is narrow, and "should not go beyond the narrow confines of determining that a committee's inquiry may fairly be deemed within its province." *Zaritsky v. United States Secretaries' Fund*, 421 U.S. at 506 (quoting *Tony v. Brundage*, 341 U.S. 367, 374 (1951)).

Nevertheless, the investigative power of Congress is not unlimited. Congress cannot, for example, inquire into matters which are within the exclusive province of one of the other branches of Government. . . . Neither can it inquire into the Executive's internal affairs. . . . *Baron v. United States*, 360 U.S. at 111; *see also Kilbourn v. Thompson*, 103 U.S. 168, 192 (1881) (Congress cannot exercise judicial authority). Congress must be able to articulate a legitimate legislative purpose for its inquiry; if Congress lacks constitutional authority to legislate on the subject (or to authorize and appropriate funds), arguably Congress has no jurisdiction to inquire into the matter.<sup>11</sup>

Accordingly, a threshold inquiry that should be made upon receipt of any congressional request for information is whether the request is supported by any legitimate legislative purpose.<sup>12</sup> The clearest application of this constraint on congressional requests for information is with respect to matters that are vested exclusively in the President (such as the removal of executive officers).<sup>13</sup> Given the breadth of Congress' legislative jurisdiction, particularly its authority regarding the appropriation of funds, it may be difficult to articulate more precise limits. With respect to decisions made by the Attorney General under the Independent Counsel Act, we believe that Congress could not justify an investigation based on its disagreement with the prosecutorial decision regarding appointment of an independent counsel for a particular individual. Congress simply cannot constitutionally second-guess this decision. Congress does, however, have a legitimate legislative interest in overseeing the Department's enforcement of the Independent Counsel Act and relevant criminal statutes and in determining whether legislative revisions to the Act should be made. Given the general judicial reluctance to look behind congressional assertions of legislative purpose, such an assertion would likely be deemed sufficient to meet the threshold requirement for congressional inquiry.

<sup>11</sup> Moreover, Congress may be a public target for the inquiry; the investigation must be authorized by Congress, and the scope of the inquiry must be defined by Congress. *United States v. Johnson*, 383 U.S. 709, 714 (1966); *Williamson v. United States*, 367 U.S. 399, 406-09 (1961); *Baron v. United States*, 360 U.S. at 111; *William v. United States*, 354 U.S. at 187; *United States v. Brandy*, 545 F.2d 41, 44-45 (5th Cir. 1976); *United States v. Johnson*, 383 U.S. at 715; 106 *Kilbourn v. Thompson*, 107 U.S. at 193.

<sup>12</sup> The relevance of this inquiry is illustrated by *United States v. Johnson*, 383 U.S. at 715. In that case, the Supreme Court held that Congress' investigation into the activities of the Attorney General's office was a valid legislative purpose. If Congress' legislative jurisdiction is not clearly violated, the Department may be able to satisfy the inquiry without disclosing confidential information. For example, the Director of the Office of Personnel Management recently refused to answer questions about the activities of the Office of Personnel Management in the testimony of the Deputy Director of OPM, on the grounds that the information requested was not within the jurisdiction of OPM, and that the release of official personnel records would create a serious privacy problem. In fact, the Deputy Director was not a witness to the activities of OPM, and the release of his personnel records would not be regarded as an invasion and disclosure of the Bureau. In such cases, the Senate can claim a legitimate interest in obtaining information about the Bureau.

Many of the policy of the Executive Branch throughout our Nation's history generally been to decline to provide committees of Congress with access to, or copies of, open law enforcement files except in extraordinary circumstances. This policy with respect to Executive Branch investigations was first expressed by President Washington and has been reaffirmed by or on behalf of most of our Presidents, including Presidents Jefferson, Jackson, Lincoln, Theodore Roosevelt, Franklin Roosevelt, and Eisenhower. No President, to our knowledge, has departed from this position affirming the confidentiality and privileged nature of open law enforcement files. See "History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress" (Part D, 6 Op. O.L.C. 75) (1982).

This policy is grounded primarily on the need to protect the government's ability to prosecute fully and fairly. Attorney General Robert H. Jackson articulated the basic position over forty years ago:

It is the position of this Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the laws be faithfully executed," and that congressional or public access to them would not be in the public interest.

Disclosure of the reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

40 Op. Att'y Gen. 45, 46 (1941). Similarly, this Office has explained that "the Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation." Memorandum for Edward L. Morgan, Deputy Counsel to the President from Thomas E. Kanper, Deputy Assistant Attorney General, Office of Legal Counsel (Dec. 19, 1969). Other grounds for objecting to the disclosure of law enforcement files include the potential damage to proper law enforcement that would be caused by the revelation of sensitive techniques, methods, or strategy; concern over the safety of confidential informants and the chilling effect on other sources of information; sensitivity to the rights of innocent individuals who may be identified in law enforcement files but who may not be guilty of any violation of law; and well-founded fears that the perception of the integrity, impartiality, and fairness of the law enforcement process as a whole will be damaged if sensitive materials is distributed beyond those persons necessarily involved in the investigation and prosecution process.

Quite apart from the concern that disclosure would prejudice particular prosecution pending congressional inquiry is the primary interest in disclosure might hamper prosecutorial decision-making in future cases. Cf. *United States v. Nixon*, 418 U.S. at 704. Employees of the Department would likely be reluctant to express candidly their views and recommendations on controversial and sensitive matters if those views could be exposed to public scrutiny by Congress upon request.

In addition, potential targets of enforcement actions are entitled to protection from premature disclosure of investigative information. It has been held that there is "no difference between prejudicial publicity instigated by the United States through its legislative arm. *DeLoach v. United States*, 199 F.2d 107, 114 (1st Cir. 1952). Pretrial publicity originating in Congress, therefore, can be attributed to the government as a whole and can require postponement or other modification of the prosecution on due process grounds. *Id.* Moreover, a person who is ultimately not prosecuted may be subjected to unfair and prejudicial publicity — and thus suffer substantial and lasting damage to his professional and community standing — based on unfounded allegations."

There are, of course, circumstances in which the Attorney General may decide to disclose to Congress information about his prosecutorial decisions. Once an investigation has been closed without further prosecution, many of the considerations previously discussed lose some of their force. Access by Congress to details of closed investigations does not pose as substantial a risk that Congress will be a partner in the investigation and prosecution, or will otherwise seek to influence the outcome of the prosecution; likewise, if no prosecution will result, concerns about the effects of undue prejudicial publicity on a lawyer would disappear. Still, such records should not automatically be disclosed to Congress. Obviously, much of the information in a closed criminal enforcement file, such as unpublished debar or subgrants against particular individuals and details that would reveal confidential sources, and investigative techniques and methods, would continue to need protection (which may or may not be adequately afforded by a confidentiality agreement with Congress). In addition, the Department and the Executive Branch have a long-term institutional interest in maintaining the integrity of the prosecutorial decision-making process. The Supreme Court has recognized that "In times of experience teachers that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." *United States v. Nixon*, 418 U.S. at 705. It therefore is important to weigh the potential "chilling effect" of a disclosure of details of the deliberative process against the immediate needs of

<sup>1</sup> Employees of Justice officials, as attorneys, are exempted from the Code of Professional Conduct. The Code prohibits lawyers who are retained with an investigation from making or participating in making "any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communications and that there have been some actual dissemination already public or likely possible information about the matter." Model Code of Professional Responsibility, DR 1-107(d)(1)(1977).

Compliance of the Department. After assessing all of these factors, an occasional appointment has invited Congress on prosecutorial decisions and has discussed some details of the underlying investigation, once the investigation has been closed.

3. Attorney-Client Communications

Some of the communications relevant to an Independent Counsel Act decision could conceivably fall within the scope of the common law evidentiary privilege for attorney-client communications.<sup>16</sup> Although the attorney-client privilege may be invoked by the government in litigation and under the Freedom of Information Act separately from any "deliberative process" privilege,<sup>17</sup> it is not generally considered to be distinct from the executive privilege in any dispute between the executive and legislative branches. The interests implicated under common law by the attorney-client privilege generally are not assumed by the constitutional considerations that shape executive privilege, and therefore it is not usually considered to constitute a separate basis for resisting congressional demands for information. As this Office has previously noted, for the purpose of responding to congressional requests, communications between the Attorney General, his staff, and other Executive Branch "clients" that might otherwise fall within the common law attorney-client privilege should be analyzed in the same fashion as any other intra-Executive Branch communications. See "Confidentiality of the Attorney General's Communications with the President," 6 Op. O.L.C. 481, 490 & n.17, 494 & n.24 (1982).<sup>17</sup>

Nonetheless, when the Attorney General is acting in his role as the President's chief legal adviser, his communications to the President may warrant greater confidentiality than those of some other Cabinet advisers because of the nature of the Attorney General's responsibilities to the executive and his special areas of expertise, e.g., legal advice and law enforcement. This Office has previously emphasized the particular importance of protecting the President's ability to receive candid legal advice:

<sup>16</sup> The attorney-client privilege generally protects confidential communications of a client to the attorney, made in order to obtain legal advice. See, e.g., *Upjohn Co. v. United States*, 449 U.S. 435, 442 (1981); *Wheeler v. United States*, 435 U.S. 507, 513 (1978). The privilege is not absolute, and its application is subject to the public interest in the disclosure of information which the client had previously disclosed to the attorney, as well as to the attorney's ability to give candid and informed professional advice. The privilege has generally been extended to include communications between a client and his lawyer, *Attorney General v. Department of the Air Force*, 566 F.2d 262, 228-31 (D.C. Cir. 1977).  
<sup>17</sup> See, e.g., *Proton v. Department of State*, 658 F.2d 606, 652 (D.C. Cir. 1980), cert. denied, 457 U.S. 905 (1981); *United States Central, Inc. v. Department of the Air Force*, 566 F.2d at 321; *General States One Corp. v. DOE*, 617 F.2d 154, 160 (D.C. Cir. 1979); 5 U.S.C. § 552(b)(5) (documents exempted from mandatory disclosure under the Freedom of Information Act); *United States v. Weber*, 485 F.2d 1311, 1314 (9th Cir. 1973).  
<sup>18</sup> Likewise, communications that would be protected by litigation or other law enforcement privileges under the work product privilege would generally be considered part of the government's deliberative process, and therefore would not be subject to the same level of confidentiality. See, e.g., *United States v. Weber*, 485 F.2d 1311, 1314 (9th Cir. 1973).

The reasons for the constitutional privilege against compelled disclosure of executive branch deliberations have special force when legal advice is involved. None of the President's obligations is more solemn than his duty to obey the law. The Constitution itself places this responsibility on him, in his oath of office and in the requirement of article II, section 3 that "he shall take Care that the Laws be faithfully executed." Because this obligation is imposed by the Constitution itself, Congress cannot lawfully undermine the President's ability to carry it out. Moreover, legal matters are likely to be among those on which high government officials most need, and should be encouraged to seek, objective, expert advice. As crucial as frank debate on policy matters is, it is even more important that legal advice be candid, objective, and even blunt or harsh." *see United States v. Nixon*, 418 U.S. 683, 708 (1974), where necessary. Any other approach would jeopardize not just particular policies and programs but the principle that the government must obey the law. For these reasons, it is critical that the President and his advisers be able to seek, and give, candid legal advice and opinions free of the fear of compelled disclosure.

Memorandum for the Attorney General from John M. Harmon, Assistant Attorney General, Office of Legal Counsel 76 (Jan. 13, 1981).

4. Independent Counsel Act Decisions

We believe that these considerations we have outlined apply to decisions whether to recommend appointment of an independent counsel no less than they apply to any other prosecutorial decision made by this Department. Although the ultimate decision whether to prosecute a particular individual rests with the independent counsel, the threshold decisions whether to investigate and whether to recommend appointment of an independent counsel are critical steps in that ultimate prosecutorial judgment. The decision whether "there are reasonable grounds to believe that further investigation or prosecution is warranted" is quintessentially a prosecutorial decision, akin to those made every day in the course of the Department's enforcement of the criminal laws. In fact, the Act specifically recognizes that the Attorney General's decision whether to seek appointment of an independent counsel is non-reviewable by the courts, like any other exercise of prosecutorial discretion.<sup>18</sup>

<sup>18</sup> The Act provides that the Attorney General's decision to apply for appointment of an independent counsel "shall not be subject to any review." 28 U.S.C. § 593(b). The independent counsel's decision whether to prosecute is also non-reviewable. Under § 593(b)(1)(A) the Attorney General reports to the court that "there are no reasonable grounds to believe that further investigation or prosecution is warranted," the court "shall have no power to appoint an independent counsel." *Id.*

Compliance of the Department. After assessing all of these factors, an occasional appointment has invited Congress on prosecutorial decisions and has discussed some details of the underlying investigation, once the investigation has been closed.

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<sup>17</sup> See, e.g., *Proton v. Department of State*, 658 F.2d 606, 652 (D.C. Cir. 1980), cert. denied, 457 U.S. 905 (1981); *United States Central, Inc. v. Department of the Air Force*, 566 F.2d at 321; *General States One Corp. v. DOE*, 617 F.2d 154, 160 (D.C. Cir. 1979); 5 U.S.C. § 552(b)(5) (documents exempted from mandatory disclosure under the Freedom of Information Act); *United States v. Weber*, 485 F.2d 1311, 1314 (9th Cir. 1973).  
<sup>18</sup> Likewise, communications that would be protected by litigation or other law enforcement privileges under the work product privilege would generally be considered part of the government's deliberative process, and therefore would not be subject to the same level of confidentiality. See, e.g., *United States v. Weber*, 485 F.2d 1311, 1314 (9th Cir. 1973).

Thus, we believe there are strong constitutional and policy considerations flowing from the doctrine of separation of powers, the obligation to preserve the integrity of the prosecutorial function, and the need to protect the rights of those who are the target of criminal investigations, that should inform and guide the Department's response to a congressional request for information about independent counsel decisions. It may be that any such request could be accommodated through a process of negotiation with Congress. Only rarely do congressional requests for information result in a subpoena of an Executive Branch official or in any congressional action. In most cases, the informal process of negotiation and accommodation mandated by President Reagan in his November 4, 1982, Memorandum for the Heads of Executive Departments and Agencies as "Procedures Governing Responses to Congressional Requests for Information" is sufficient to resolve any dispute.<sup>31</sup> On occasion, however, the process breaks down, and a subpoena is issued by a congressional committee or subcommittee. At this point, it would be necessary to consider what procedures and defenses are available to the Executive branch.

We outline below some of the issues that would be raised if Congress subpoenaed the Attorney General in connection with a congressional request for information about an independent counsel decision. Our particular focus here is on the House of Representatives, because it is far more likely that such action would be taken by the House than by the Senate.

IV. Subpoena Authority of the House of Representatives  
 A. Basis of Subpoena Authority

As previously noted, Congress has a broad, but not unlimited, investigative authority. See *McGrain v. Daugherty*, 273 U.S. at 174. This investigative

<sup>31</sup> See, e.g., *United States v. [redacted]*, 464 F.2d 1000, 1006, and its application history, see 3, Reg. No. 176, supra, at 44, which states that the court may have more flexibility in defining the independent counsel's jurisdiction, so that the court may grant the subpoenaed counsel—or the independent counsel case manager—any information that is relevant to the investigation. The court also stated that the independent counsel's jurisdiction is not limited to the specific subject matter of the investigation. In addition, the Act itself provides several reasons by which the jurisdiction of the independent counsel could be expanded, all of which require the participation of the Attorney General. For example, if the Attorney General receives additional information, he may refer the matter to the independent counsel. See 28 U.S.C. § 594(c)(2). The Attorney General may also refer the matter to the independent counsel if he receives information from a source other than the independent counsel. See 28 U.S.C. § 594(c)(3). The independent counsel himself may ask the Attorney General to do so. See 28 U.S.C. § 594(c)(4). Finally, the independent counsel may refer the matter to the independent counsel if he receives information from a source other than the independent counsel. See 28 U.S.C. § 594(c)(5). The independent counsel may also refer the matter to the independent counsel if he receives information from a source other than the independent counsel. See 28 U.S.C. § 594(c)(6).

<sup>32</sup> The memorandum states that "the policy of this Administration is to comply with Congressional subpoenas unless there is a compelling reason to believe that such compliance would be injurious to the national defense or the national security." (Emphasis added.) The memorandum also states that "the Department will not comply with a subpoena if it is determined that such compliance would be injurious to the national defense or the national security." (Emphasis added.) The memorandum also states that "the Department will not comply with a subpoena if it is determined that such compliance would be injurious to the national defense or the national security." (Emphasis added.)

A closely related question is whether any distinction between "closed" and "open" investigations could or should be drawn in a case in which the Attorney General determines that the evidence warrants further investigation of some, but not all, of those individuals against whom allegations have been directed. That determination would rest in large part on the facts and documents at issue and would in most cases probably require a particularized judgment as to whether some information relating to "closed" cases could be reasonably segregated and disclosed to Congress without undue risk of prejudicing the independent counsel's "open" investigation. We are obviously not in a position to make that judgment, and would defer to the Criminal Division, if we were so inclined, that in many, perhaps most, cases the evidence may be so intertwined that no separation is possible. In other cases, especially those of a uniquely sensitive nature, separation may be feasible.

In addition, because the Attorney General's decision not to seek an independent counsel for particular individuals must be based on his determination that "there are no reasonable grounds to believe that further investigation or prosecution would merit particularly strong. Moreover, even though the decision by the Attorney General not to seek appointment of an independent counsel is unreviewable, in an interrelated investigation the possibility always exists that the independent counsel's investigation may uncover new information that will result in further investigation."<sup>33</sup>

<sup>33</sup> See, e.g., *United States v. [redacted]*, 464 F.2d 1000, 1006, and its application history, see 3, Reg. No. 176, supra, at 44, which states that the court may have more flexibility in defining the independent counsel's jurisdiction, so that the court may grant the subpoenaed counsel—or the independent counsel case manager—any information that is relevant to the investigation. The court also stated that the independent counsel's jurisdiction is not limited to the specific subject matter of the investigation. In addition, the Act itself provides several reasons by which the jurisdiction of the independent counsel could be expanded, all of which require the participation of the Attorney General. For example, if the Attorney General receives additional information, he may refer the matter to the independent counsel. See 28 U.S.C. § 594(c)(2). The Attorney General may also refer the matter to the independent counsel if he receives information from a source other than the independent counsel. See 28 U.S.C. § 594(c)(3). The independent counsel himself may ask the Attorney General to do so. See 28 U.S.C. § 594(c)(4). Finally, the independent counsel may refer the matter to the independent counsel if he receives information from a source other than the independent counsel. See 28 U.S.C. § 594(c)(5). The independent counsel may also refer the matter to the independent counsel if he receives information from a source other than the independent counsel. See 28 U.S.C. § 594(c)(6).

<sup>34</sup> It is noted that even if the Attorney General applies to the court for appointment of an independent counsel, the Department's investigation may voluntarily be considered "closed," because 28 U.S.C. § 594(c)(2) requires the Department to "suspend all investigations and proceedings regarding [a] subject [redacted] if the independent counsel is appointed." (Emphasis added.) The Department's position is that such investigations of proceedings may be continued by the Department of Justice. For the reasons set forth above, we believe that position is without merit.

<sup>35</sup> The independent counsel's jurisdiction is, of course, limited to that specified by the court, based on the application filed by the Attorney General. See 28 U.S.C. § 594(c)(1), 595(a), 595(b). Although the language

authority of a witness:

A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change, and where the legislative body does not itself possess the requisite information . . . no course must be had to others who do possess it. Experience has taught that mere requests for such information are unavailing, and also that information which is volunteered is not always accurate or complete, so some means of compulsion are essential to obtain what is needed.

Id. at 175. Because the subpoena power is regarded as inherent in Congress' Article I power, it does not require enactment of a statute. Nonetheless, the exercise of subpoena power must be authorized by the relevant House. See, e.g., *Rand v. Cheney Commissioners*, 277 U.S. 316, 389 (1928); *McGrain v. Daugherty*, 273 U.S. at 151.

Since 1974, the House Rules have given standing committees and subcommittees the authority to subpoena and issue subpoenas.<sup>27</sup> House Rule XI(m)(1)(B) authorizes any committee or subcommittee "to require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as it deems necessary." Subpoenas may be issued by a committee or subcommittee "only when authorized by a majority of the members voting, a majority being present," except that "the power to subpoena and issue subpoenas . . . may be delegated to the chairman of the committee pursuant to such rules and under such limitations as the committee may prescribe." House Rule XI(m)(2)(A). Any authorized subpoena must be signed by the chairman of the committee or by a member designated by the chairman. Id. The rules of each standing committee flesh out somewhat the requirements for issuance of a subpoena, specifying in particular if, or under what circumstances, the chairman of the full committee may issue a subpoena without a vote of the committee.

8. Enforcement of Subpoenas

If a subpoenaed witness refuses to respond fully in a subpoena, the subcommittee or committee, as the case may be, can vote to hold the witness in contempt of Congress. As a matter of consistent historical practice, a contempt of Congress vote by a subcommittee is referred to the full committee, although there appears to be no technical requirement to liberate committee approval.

<sup>27</sup>Since its adoption in 1974, subpoena authority was granted only to committee-level bodies. See *Congressional Quarterly, Guide to the Congress* 164 (1983).

between a subcommittee contempt resolution and refers to the full House.<sup>28</sup>

By operation of House Rule XI(m)(2)(B), any action to enforce compliance with a committee or subcommittee subpoena must be approved by and the House. See *In re Bagley Industry Antitrust Litigation*, 589 P.2d 786, 790 (5th Cir. 1979) (House approval required for intervention in private antitrust suit to gain access to documents subpoenaed by subcommittee from a party to the litigation); see generally *Willert v. United States*, 369 F.2d 198, 201 (D.C. Cir. 1966) (regarding that reference under 2 U.S.C. §§ 192-194 requires a vote of the full House or Senate, except during adjournments).

The House would have three alternatives available to enforce the subpoena: (1) refer to the United States Attorney for prosecution under 2 U.S.C. §§ 192-194; (2) arrest by the Sergeant-at-Arms; or (3) a civil writ seeking declaratory enforcement of the subpoena. The first two of these alternatives may well be foreclosed by advice previously rendered by this Office.

1. Referral Under 2 U.S.C. §§ 192-194

The criminal contempt of Congress statute contains two principal sections, 2 U.S.C. §§ 192 and 194.<sup>29</sup> Section 192, which sets forth the criminal offense of contempt of Congress, provides in pertinent part:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, . . . or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than 1 month nor more than 12 months.<sup>30</sup>

<sup>28</sup>The courts have understood the language of the procedural subpoena to limit the contempt of Congress process and, by parallel, the available range of enforcement that must take place before a contempt of Congress proceeding is brought. See *Willert v. United States*, 369 F.2d 198, 202 (D.C. Cir. 1966), see also *Willert v. United States*, 369 F.2d 198, 202 (D.C. Cir. 1966), cert. denied, 388 U.S. 911 (1967); *Willert v. United States*, 369 F.2d 198, 202 (D.C. Cir. 1967); *Willert v. United States*, 369 F.2d 198, 202 (D.C. Cir. 1967); *Willert v. United States*, 369 F.2d 198, 202 (D.C. Cir. 1967). It would therefore be argued that construction of a subpoenaed committee resolution would be necessary in order to provide an additional check upon the contempt of Congress process. No court, however, has so held, and no later court has by operation of the House or any committee rules precluded the House or any committee from proceeding with a contempt of Congress proceeding. The House and the committee may proceed directly to the House, without seeking approval from the full committee. For example, the contempt resolution used by the Subcommittee on Oversight and Investigations of the House Committee on Public Works and Transportation against EPA Administrator Barlow was referred to the full Committee, and the House then voted to enforce the contempt.

<sup>29</sup>28 U.S.C. §§ 192 and 194.

<sup>30</sup>It should be noted that the language of any national self-defense statute for a witness to refuse to testify at the grand jury trial would depend on the statute.

<sup>31</sup>This matter has been held unconstitutional under a punitive requirement in *Chapman v. United States*, 365 U.S. 616, 617 (1961), and *United States v. Aron*, 435 U.S. 670, 671 (1978) (D.C. Cir. 1978), cert. denied, 440 U.S. 943 (1979).

During the EPA matter, the Office rendered advice to the Attorney General, as the case may be, and on the applicability of §§ 192 and 194 to Executive Branch officials who assert claims of executive privilege on behalf of the President.<sup>28</sup> In brief, we concluded that a United States Attorney is not required to refer a contempt citation to a grand jury or otherwise to prosecute an Executive Branch official who is carrying out the President's instruction to assert executive privilege. Our conclusion rested partly on the need to preserve traditional prosecutive discretion, i.e., that Congress may not direct the executive to prosecute a particular individual without leaving any discretion in the executive to determine whether a violation of the law has occurred. We also concluded more broadly, however, that the contempt of Congress statute simply was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President's claim of executive privilege. We noted that neither the legislative history nor the subsequent implementation of §§ 192 and 194 suggest that Congress intended the statute to apply to executive officials who carry out a Presidential assertion of executive privilege. Moreover, as a matter of constitutional law, we concluded that the threat of criminal prosecution would unduly chill the President's ability to protect presumptively privileged Executive Branch deliberations.

The President's exercise of this privilege, particularly when based upon the written legal advice of the Attorney General, is presumptively valid. Because many of the documents over which the President may wish to assert a privilege are in the custody of a department head, a claim of privilege over those documents can be parried only with the assistance of that official. If one House of Congress could make it a crime simply to assert the President's presumptively valid claim, even if a court subsequently were to agree that the privilege claim were valid, the exercise of the privilege would be so burdened as to be nullified. Because Congress has other methods available to test the validity of a privilege claim and to obtain the documents that it seeks, even the threat of a criminal prosecution for asserting the claim is unreasonable, unwarranted, and therefore intolerable burden on the exercise by the President of his functions under the Constitution.

8 On O.L.C. at 102. Therefore, Congress could not, as a matter of executive or constitutional law, invoke the criminal contempt of Congress procedure set out in 2 U.S.C. §§ 192 and 194 against the head of an Executive Branch agency, if he acted on the instructions of the President to assert executive privilege in response to a congressional subpoena.

<sup>28</sup> See "Protection for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege," 6 Op. O.L.C. 181 (1986).

83

Section 194 requires certain responsibilities on the Speaker of the House or the President. In cases where the Speaker of the House or the President fails to refer a contempt citation to a grand jury or otherwise to prosecute an Executive Branch official who is carrying out the President's instruction to assert executive privilege, we concluded that a United States Attorney is not required to refer a contempt citation to a grand jury or otherwise to prosecute an Executive Branch official who is carrying out the President's instruction to assert executive privilege. Our conclusion rested partly on the need to preserve traditional prosecutive discretion, i.e., that Congress may not direct the executive to prosecute a particular individual without leaving any discretion in the executive to determine whether a violation of the law has occurred. We also concluded more broadly, however, that the contempt of Congress statute simply was not intended to apply and could not constitutionally be applied to an Executive Branch official who asserts the President's claim of executive privilege. We noted that neither the legislative history nor the subsequent implementation of §§ 192 and 194 suggest that Congress intended the statute to apply to executive officials who carry out a Presidential assertion of executive privilege. Moreover, as a matter of constitutional law, we concluded that the threat of criminal prosecution would unduly chill the President's ability to protect presumptively privileged Executive Branch deliberations.

Whenever a witness summoned as mentioned in section 192 of this title fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House . . . or any committee or subcommittee of either House of Congress, and the fact of such failure or failure to produce is reported to either House while Congress is in session or when Congress is not in session, a statement of fact constituting such failure is reported and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the President of the Senate or Speaker of the House, as the case may be, to certify, and so shall to certify, the statement of facts aforesaid under the seal of the Senate or House, as the case may be, to the appropriate United States Attorney, whose duty it shall be to bring the matter before the Grand Jury for its action.

Under this provision, the committee would refer a resolution of contempt to the House, which would then have to approve the resolution and instruct the Speaker to certify the contempt to the United States Attorney for presentation to the grand jury.<sup>29</sup>

The contempt of Congress procedure has been used only once against an Executive Branch official who refused to comply with a subpoena on executive privilege grounds. In 1982, EPA Administrator Barford, acting as the President's director, refused to release certain environmental sensitive documents in response to a subpoena from the Subcommittee on Oversight and Investigations of the House Committee on Public Works and Transportation. The Subcommittee and subsequently the full Committee approved a contempt of Congress resolution, and on December 16, 1982, the full House adopted the resolution. On December 17, Speaker O'Neill certified the contempt to the United States Attorney for the District of Columbia for prosecution under § 192. The United States Attorney declined to refer the contempt citation to the grand jury, pending resolution of a lawsuit filed by the Executive Branch to block enforcement of the subpoena,<sup>30</sup> and completion of negotiations between the executive and legislative branches to reach a compromise settlement.<sup>31</sup>

<sup>29</sup> 2 U.S.C. § 194 would permit the Speaker (or President, as appropriate) to certify a contempt without the approval of either House of Congress. This alternative, however, would appear to be forbidden by the House rules, which clearly require that House approval be obtained. See *H. Res. 1, 95th Cong., 1st Sess.* (1977).

<sup>30</sup> *H. Res. 1, 95th Cong., 1st Sess.* (1977).

<sup>31</sup> These negotiations ultimately resulted in an agreement and withdrawal of the contempt citation.

84



It is also possible that Congress might attempt to limit the provisions of the Independent Counsel Act, which require the Attorney General to conduct an investigation "whenever he receives information sufficient to constitute grounds to investigate" the way of the concerned Executive Branch officials. This would constitute a violation of any Federal criminal law other than a violation constituting a petty offense." 28 U.S.C. § 591. The crime of contempt of Congress is a non-petty criminal offense. See 2 U.S.C. § 192; 18 U.S.C. § 1. Thus a contempt citation against a covered official would arguably trigger the Attorney General's obligation under the Act. Invocation of the Act would not, however, necessarily require the Attorney General to apply for the appointment of an independent counsel. As this Office has advised on prior occasions, the Attorney General retains a certain measure of discretion with respect to whether to apply for an independent counsel.

B. *Differences to Congressional Subpoena*

1. *Lack of Jurisdiction*

As we discussed above, Congress' investigative power, while broad, is not unlimited. Thus, absent the asserting executive privilege, there may be other lines of defense against a subpoena. The most promising line is that the subpoena itself has no jurisdiction to request the information, either because Congress as a whole has no authority to inquire into the matter, or because Congress has not given the committee the requisite authority.

a. *Scope of Congress' Jurisdiction*

The Supreme Court has not articulated with precision whether there are particular limits to the jurisdiction of Congress to request information from the Executive Branch. Nonetheless, as we have previously set forth, Congress must at a minimum be able to articulate a legitimate legislative purpose for its inquiry. We will not repeat that discussion here, except to say that if the matter either falls wholly within the province of another branch, see *Kilbourn v. Thompson*, 103 U.S. at 192, or Congress cannot point to some rational nexus between the inquiry and its legislative power, see *Morison v. United States*, 360 U.S. at 111, we believe the subpoena would be held invalid for lack of authority, and could be challenged on that basis.

b. *Scope of Committee's Jurisdiction*

Not only must the investigation fall within Congress' jurisdiction, but the committee or subcommittee must also have been specifically authorized by the

<sup>21</sup> See, e.g., *Clinton*.

<sup>22</sup> The need for judicial review in fact was emphasized by the Department in its *United States v. House of Representatives* litigation as a basis for the need to minimize the risk. The Department also noted that the subpoena would be subject to judicial review and that a subpoena issued in violation of the statute would be void.

that the matter jurisdiction clearly exists is a suit to help enforcement of a subpoena addressed directly to the Executive Branch.<sup>23</sup> The rationale used by the Department in that suit would appear to apply equally to suits filed by a House of Congress seeking enforcement of its subpoenas against executive privilege claims.

In addition, the courts may be willing to entertain a civil suit brought by the House in order to avoid any question about the possible applicability of the criminal contempt provisions of §§ 192 and 194. When a possible impairment of the President's constitutional prerogatives is involved, the courts are particularly careful to construe statutes to avoid a constitutional confrontation. In *United States v. Nixon*, for example, the Court construed the limitation in 28 U.S.C. § 1291 (that appeals be taken only from "final" decisions of a district court) to permit the President to appeal an adverse ruling on his claim of executive privilege without having to plead himself in contempt of court.

(The traditional contempt avenue to immediate appeal is peculiarly inappropriate due to the unique setting in which the question arises. To require a President of the United States to place himself in the posture of disobeying an order of a court merely to trigger the procedural mechanism for review of the ruling would be unnecessary, and would present an unnecessary occasion for constitutional confrontation between two branches of the Government.)

418 U.S. at 691-92. The U.S. Court of Appeals for the District of Columbia has issued on several occasions that criminal contempt proceedings are an inappropriate means for resolving document disputes, especially when they involve another governmental entity. See *Tobin v. United States*, 505 F.2d 270 (D.C. Cir.), cert. denied, 371 U.S. 902 (1962); see also *United States v. Fort*, 443 F.2d at 671-76. The Fifth Circuit appears to have held that no government official need subject himself to contempt in order to obtain review of his claim that the government is privileged to refuse to comply with a court's demand for documents. See *Casar v. LTV Aerospace Corp.*, 480 F.2d 620, 622 (5th Cir. 1973); *Carr v. Manville Manufacturing Co.*, 431 F.2d 384, 387 (5th Cir. 1970), cert. denied, 400 U.S. 1000 (1971); but see in re *Attorney General*, 596 F.2d 28, 62 (2d Cir.), cert. denied, 444 U.S. 903 (1979). Thus, although the civil enforcement route has not been tried by the House, it would appear to be a viable option.<sup>24</sup>

<sup>23</sup> The doctrine of the district court in *United States v. House of Representatives* does not directly address the jurisdictional question, although it does conclusively hold as to whether the Executive Branch can sue the House of Representatives. The Supreme Court's decision in *Clinton* is also not directly on point.

<sup>24</sup> See, e.g., *United States v. House of Representatives*, 418 U.S. 900 (1974), where the House sought to enforce its subpoena against the Executive Branch.

<sup>25</sup> See, e.g., *United States v. House of Representatives*, 418 U.S. 900 (1974), where the House sought to enforce its subpoena against the Executive Branch.

<sup>26</sup> See, e.g., *United States v. House of Representatives*, 418 U.S. 900 (1974), where the House sought to enforce its subpoena against the Executive Branch.

... witness' prerogative to refuse to testify, particularly if court-ordered immunity is implicated. See *Jahay v. United States*, 306 F.2d at 775-76. ...  
 ... The courts have also suggested that the power of other witnesses or the court to define for itself the scope of a committee's jurisdiction is limited. In *Rosenblatt*, 360 U.S. at 174, the Court noted that it "you witness saying that the scope of the Committee's authority was for the House, not a witness, to determine, subject to the witness reviewing responsibility of this Court." Similarly, "it is appropriate to observe that just as the Constitution forbids the Congress to invade fields reserved to the Executive and Judiciary, it imposes on the Judiciary the reciprocal duty of not lightly intruding with Congress' exercise of its legitimate powers." *Hickman v. United States*, 369 U.S. 309, 622 (1962). See also *McClure v. McKittlen*, 521 F.2d 1024, 1034 (D.C. Cir. 1975) ( prerogative of the judiciary to determine whether the investigation is within the jurisdiction of a particular committee is "extremely limited").

Nevertheless, it is clear that a witness may refuse to answer on the ground that the inquiry has not been authorized by the relevant House. Particularly where constitutional concerns are raised by compelled testimony, courts may be reluctant to construe a far-ranging inquiry by a particular committee or subcommittee that does not appear to fall within the jurisdiction granted by Congress.

2. Executive Privilege

Finally, the subpoena could be resisted on the ground that the information requested is protected by the executive privilege. It is important to remember, however, that exercise of the privilege does not just involve an invocation of the Executive Branch's interest in keeping the information confidential; it also involves an evaluation of the strength of Congress' need for that information, and whether those needs can be accommodated in some other way.

Thus, Congress must be able to articulate its need for the particular materials — to "probe[] ... specific legislative decisions that cannot responsibly be made without access to materials uniquely contained" in the presumably privileged documents (or testimony) it has requested, and to show that the material "is demonstrably critical to the responsible fulfillment of the Committee's functions." *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d at 731, 733. In *Senate Select Committee, for example*, the court held that the committee had not made a sufficient showing of need for copies of the Presidential tape recordings, given that the President had already released transcripts of the recordings. The committee argued that it

<sup>20</sup>The judicial decisions dealing with Congress' subpoena authority have far the most part involved requests for private information. In those cases the courts have been sensitive to Public, Health, and Privacy concerns. In *United States v. Weber*, 385 F.2d 137, 141 (D.C. Cir. 1967), the court held that the House could not subpoena a committee's investigation. See also *United States v. Brown*, 343 U.S. 481, 485 (1952); *United States v. United States*, 354 U.S. at 344-52. Although the constitutional immunity required by a subpoena of an executive branch official also flows from Article I and II, neither does the Bill of Rights, it must shield the equally sensitive to these constitutional limitations.

... to conduct the investigation. Since defiance of a subpoena raises the possibility of criminal prosecution, "a clear chain of authority from the House to the questioning body is an essential element of the offense." *Giback v. United States*, 384 U.S. at 716. It "must appear that Congress empowered the Committee to act, and further that at the time the witness allegedly defied its authority the Committee was acting within the power granted to it." *Id.* (quoting *United States v. Lewis*, 19 F.R.D. 27 (S.D.N.Y. 1955), aff'd, 736 F.2d 312 (2d Cir. 1984)). See also *Widitz v. United States*, 354 U.S. at 204-05, 214-15; *Eastman v. United States Services v. Ford*, 421 U.S. at 505-06. Thus, a witness cannot be compelled to answer questions that fall outside of the investigative jurisdiction of a committee or subcommittee. See *United States v. Ramey*, 343 U.S. at 44-45; *Bergman v. Senate Select Committee on Aging*, 389 F. Supp. 1127, 1130 (S.D.N.Y. 1973); *United States v. Casazza*, 208 F. Supp. 401, 406 (D.P.R. 1962).

Although this general principle is well recognized by the courts, in practice they have given considerable deference to a committee's definition of its jurisdiction. In cases in which the courts have refused to enforce a subpoena because the inquiry fell outside of the committee's jurisdiction, the primary defect was that the investigative authority given to the committee was simply too broad and ill-defined that it gave the witness no fair notion of the scope of the inquiry. See, e.g., *Widitz v. United States*, 354 U.S. at 204; *United States v. Ramey*, 343 U.S. at 43. In many cases, the courts have considered the "legislative history" of the committee's investigation (e.g., the language and background of the authorizing resolution, remarks made by the chairman or members of the committee to define the scope of the investigation, the existence and scope of similar investigations) to determine whether a particular matter falls within a committee's jurisdiction. "Just as legislation is often given meaning by the glass of legislative reports, administrative interpretation and long usage, so the proper meaning of an authorization to a congressional committee cannot furnished them by the source of congressional action." *Barenblatt v. United States*, 360 U.S. at 117. See also *Withrow v. United States*, 365 U.S. at 408; *Trobb v. United States*, 308 F.2d at 775-76; *United States v. Fort*, 443 F.2d at 682. This analysis, of course, can both ways. If a committee has historically exercised investigative jurisdiction over a particular subject, and makes the same between its investigative jurisdiction and the particular subject matter clear, the courts may hesitate to second-guess that judgment. See, e.g., *Rosenblatt v. United States*, 360 U.S. at 119-20. On the other hand, if the committee has not previously asserted investigative jurisdiction over the subject matter, and the subject matter is not clearly linked to the committee's jurisdiction, the courts may lean to in favor of protecting the

<sup>21</sup> Because the liability of the Committee's action by itself is of the same the witness defines the subpoena, a subpoena issued by the full House or subcommittee (through committee or subcommittee) will not cause any constitutional problem. *United States v. United States*, 354 U.S. at 173 n.1.





U.S. Department of Justice  
Office of Legal Counsel

Office of the  
Assistant Attorney General

Washington, D.C. 20530

June 19, 1989

MEMORANDUM

TO: General Counsels' Consultative Group

FROM: William P. Barr *WPB*  
Assistant Attorney General  
Office of Legal Counsel

RE: Congressional Requests for  
Confidential Executive Branch Information

This memorandum summarizes the principles and practices governing congressional requests for confidential Executive Branch information. As discussed below, the Executive Branch's general practice has been to attempt to accommodate whatever legitimate interests Congress may have in obtaining the information, while, at the same time, preserving Executive Branch interests in maintaining essential confidentiality. Only when the accommodation process fails to resolve a dispute and a subpoena is issued does it become necessary for the President to consider asserting executive privilege.

I. Congress' Oversight Authority

The constitutional role of Congress is to adopt general legislation that will be implemented -- "executed" -- by the Executive Branch. The courts have recognized that this general legislative interest gives Congress investigatory authority. Both Houses of Congress have power, "through [their] own process, to compel a private individual to appear before it or one of its committees and give testimony needed to enable it efficiently to exercise a legislative function belonging to it under the Constitution." McGrain v. Daugherty, 273 U.S. 135, 160 (1927). The issuance of subpoenas in aid of this function "has long been held to be a legitimate use by Congress of its power to investigate," Eastland v. United States Servicemen's Fund, 421 U.S. 491, 504 (1975), provided that the investigation is "related to, and in furtherance of, a legitimate task of the Congress." Watkins v. United States, 354 U.S. 178, 187 (1957). The inquiry must pertain to subjects "on which legislation could be had." McGrain v. Daugherty, 273 U.S. at 177. Thus, Congress' oversight authority

is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution. Broad as it is, the power is not, however, without

limitations. Since Congress may only investigate into those areas in which it may potentially legislate or appropriate, it cannot inquire into matters which are within the exclusive province of one of the other branches of the Government.

Barenblatt v. United States, 360 U.S. 109, 111-12 (1959).

## II. Executive Privilege

If it is established that Congress has a legitimate legislative purpose for its oversight inquiry, the Executive Branch's interest in keeping the information confidential must be assessed. This subject is usually discussed in terms of "executive privilege," and that convention is used here. The question, however, is not strictly speaking just one of executive privilege. While the considerations that support the concept and assertion of executive privilege apply to any congressional request for information, the privilege itself need not be claimed formally vis-a-vis Congress except in response to a lawful subpoena; in responding to a congressional request for information, the Executive Branch is not necessarily bound by the limits of executive privilege.

Executive privilege is constitutionally based. To be sure, the Constitution nowhere expressly states that the President, or the Executive Branch generally, enjoys a privilege against disclosing information requested by the courts, the public, or the Legislative Branch. The existence of such a privilege, however, is a necessary corollary of the executive function vested in the President by Article II of the Constitution.<sup>1</sup> It has been asserted by numerous Presidents from the earliest days of our Nation, and it was explicitly recognized by the Supreme Court in United States v. Nixon, 418 U.S. 683, 705-06 (1974).

There are at least three generally-recognized components of executive privilege: state secrets, law enforcement, and deliberative process. Since most disputes with Congress in this area in recent years have concerned the privilege for Executive Branch deliberations, this memorandum will focus on that component. See generally Memorandum for the Attorney General from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, Re:

<sup>1</sup> The privilege to withhold information is implicit in the scheme of Article II and particularly in the provisions that "[t]he executive Power shall be vested in a President of the United States of America," art. II, sec. 1, cl. 1, and that the President shall "take Care that the Laws be faithfully executed," art. II, sec. 3.

Confidentiality of the Attorney General's Communications in Counseling the President, 6 Op. O.L.C. 481, 484-90 (1982).

The first congressional request for information from the Executive Branch occurred in 1792, in the course of a congressional investigation into the failure of an expedition under the command of one General St. Clair. President Washington called his Cabinet together to consider his response, stating that he could conceive that there might be papers of so secret a nature that they ought not be given up. The President and his Cabinet concluded "that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public . . ." 1 Writings of Thomas Jefferson 304 (1903) (emphasis added). While President Washington ultimately determined in the St. Clair case that the papers requested could be furnished without injury to the public, he refused four years later to comply with a House committee's request for copies of instructions and other documents employed in connection with the negotiation of a treaty with Great Britain.

The practice of refusing congressional requests for information, on the ground that the national interest would be harmed by the disclosure, was employed by many Presidents in the ensuing years. See generally History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress. Part I - Presidential Invocations of Executive Privilege Vis-a-Vis Congress, 6 Op. O.L.C. 751 (1982). The privilege was most frequently asserted in the areas of foreign affairs and military and national security secrets; it was also invoked in a variety of other contexts, including Executive Branch investigations. In 1954, in instructing the Secretary of Defense concerning a Senate investigation, President Eisenhower asserted that the privilege extends to deliberative communications within the Executive Branch:

Because it is essential to efficient and effective administration that employees of the Executive Branch be in a position to be completely candid in advising with each other on official matters, and because it is not in the public interest that any of their conversations or communications, or any documents or reproductions, concerning such advice be disclosed, you will instruct employees of your Department that in all of their appearances before the Subcommittee of the Senate Committee on Government Operations regarding the inquiry now before it they are not to testify to any such conversations or communications or to produce any such documents or reproductions.

Public Papers of Dwight D. Eisenhower 487-84 (1954).

240

I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Bryant".

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

(Rev. 06-11-2000)

**FEDERAL BUREAU OF INVESTIGATION**

Precedence: PRIORITY Date: 12/15/2000  
 To: Director's Office Attn: Office of Professional Responsibility  
 From: Office of Professional Responsibility  
 Contact: Patrick J. Kiernan, ext. 4-5775  
 Approved By: DeFec, Michael A  
 Drafted By: Kiernan Patrick J:pjk  
 Case ID #: 263-HQ-New (Pending)

Title: CONTACTS WITH THE  
 OFFICE OF SPECIAL COUNSEL (OSC) -  
 WACO INQUIRY;  
 OPR REFERRALS;  
 THOMAS E. LOCKE, DEPUTY ASSISTANT DIRECTOR (DAD),  
 INSPECTION DIVISION (INSD);  
 ALLYSON A. SIMONS, DAD, LABORATORY DIVISION (LAB)

Synopsis: The purpose of this Electronic Communication (EC) is to summarize instances of misconduct by FBI employees Thomas B. Locke, DAD, INSD, and Allyson A. Simons, DAD, LAB which recently occurred during the course of the OSC Waco inquiry.

Enclosure(s): Enclosed with this EC are the following Memorandum of Interviews (MOIs) from the OSC: Unit Chief (UC) James J. Cadigan dated August 28, 2000; DAD Thomas E. Locke dated August 29, 2000; DAD Allyson A. Simons dated August 30, 2000; Deputy Director (DD) Thomas J. Pickard dated September 1, 2000; Two MOIs from Assistant Director (AD) Donald Kerr, LAB, dated May 30, 2000 and September 1, 2000 respectively; and Section Chief (SC) Robert Sibert, LAB, dated October 5, 2000. Also enclosed are copies of FBI Job Posting #20000587 advertising for the position of Adjudication Unit Chief, OPR; SSA Patrick J. Kiernan's Performance Appraisal Report (PAR), dated 7/31/00, as rated by Assistant Director (AD) Wiley D. Thompson, III and reviewed by Director Louis J. Freeh; and Division Head Comments, dated 9/05/2000, as submitted by Acting AD Thomas B. Locke commenting on SSA Kiernan's qualifications for the above position.

Details: Approximately one thousand interviews were conducted and several million documents were reviewed by the OSC. Over the last year, SSA Kiernan has been made aware of certain inappropriate conduct, which may fall under the realm of potential OPR violations. Accordingly, SSA Kiernan is obligated to report such conduct. SSA Kiernan has some first-hand

To: Director's Office From: Office of Professional  
Responsibility  
Re: 263-HQ-New, 12/15/2000

knowledge of a few of the incidents. Many of these incidents have been documented by the OSC during the course of their investigation. Investigators from the OSC are available for interview regarding any of the interviews they conducted.

In their formal report to the Deputy Attorney General, the OSC decided to only set forth instances of FBI misconduct if they directly related to the five central questions they were asked to resolve by Attorney General Janet Reno. Other instances of misconduct, brought to light as a result of their inquiry, may be contained within the MOIs written by the appropriate investigator. It is recommended that these MOIs be reviewed for potential misconduct issues, as the OSC intends to turn them over to the Department of Justice (DOJ), for eventual release to the National Archives and the general public. The FBI should assess these formal interviews before a public release is made. Because of the close association SSA Kiernan had with the OSC over the course of their investigation, some of those instances of misconduct were made known to SSA Kiernan. The following information describes one such incident and its aftereffects, which SSA Kiernan is aware, and is being referred to OPR for appropriate investigation:

Deputy Assistant Director (DAD) Thomas B. Locke, INSP  
Unauthorized Disclosure;  
Poor Judgement;  
Unprofessional Conduct;  
Reprisal/Retaliation

Deputy Assistant Director (DAD) Allyson A. Simons, LAB  
Unauthorized Disclosure  
Poor Judgement

During the course of the OSC inquiry, SSA Kiernan has been assigned to the Inspection Division and reported directly to the AD Wiley D. Thompson, III. On July 31, 2000, AD Thompson retired and Deputy Assistant Director (DAD) Thomas B. Locke became Acting AD. During this time period, the OSC was in the middle of trying to determine what had happened to the three missing M651 military tear gas rounds at the crime scene. There were some very intense interviews occurring of FBI crime scene supervisory personnel, UC James (Jim) J. Cadigan, Firearms and Toolmarks Unit, LAB, and SA Richard (Rick) Crum, Richmond Division, Winchester RA.

On August 25, 2000, Acting AD Locke was contacted by DAD Allison A. Simons, LAB, who was calling on behalf of her

To: Director's Office From: Office of Professional  
Responsibility  
Re: 263-HQ-New, 12/14/2000

employee, UC Jim Cadigan. UC Cadigan had been asked by the OSC to take a polygraph regarding his statements to the OSC. DAD Simons wanted to know if the FBI was allowing its employees to take polygraphs in regard to the OSC investigation. Acting AD Locke did not know and did not call SSA Kiernan to inquire, even though this issue had already come up before and been resolved. Instead, Acting AD Locke called Deputy General Counsel (DGC) Thomas A. Kelley, Office of General Counsel (OGC), who had been recused from all OSC matters since January 2000 (which Acting AD Locke knew), and asked him what the FBI policy/position would be in this regard. DGC Kelley provided Acting AD Locke the proper advice that the polygraph was voluntary and it was the employee's decision whether they wanted to take it or not.

Acting AD Locke then contacted DD Thomas J. Pickard to inform him of the OSC's attempt to polygraph UC Cadigan. During the conversation with DD Pickard, DD Pickard advised Acting AD Locke that SA Rick Crum had already been polygraphed by the OSC and did not do very well. As a result, DD Pickard was assisting in finding him an attorney.

Acting AD Locke subsequently contacted DAD Simons and advised her of DGC Kelley's opinion on the polygraph as well as his conversation with DD Pickard, particularly with reference to SA Rick Crum having taken a polygraph and not doing well. According to UC Cadigan's subsequent interview, DAD Simons learned of SA Crum's polygraph troubles and advised UC Cadigan that another agent in Virginia had taken a polygraph and the results were not good. In her interview with the OSC, DAD Simons admitted to telling UC Cadigan (before his polygraph) that SA Crum had already taken a polygraph and it did not go well.

A short time later, UC Cadigan contacted Acting AD Locke concerning his dilemma of taking a polygraph for the OSC. Acting AD Locke and UC Cadigan have been friends throughout their FBI careers and were classmates during their initial FBI training. When UC Cadigan asked for advice on the matter, Acting AD Locke counseled UC Cadigan to take the polygraph since he was telling the truth. Unfortunately, Acting AD Locke also specifically told UC Cadigan that SA Crum had already taken a polygraph for the OSC and he did not do very well. Acting AD Locke later admitted to SSA Kiernan that he knew as soon as he made this statement, he probably should not have said it.

On August 29, 2000, DAD Locke was formally interviewed by the OSC and admitted this mistake. DD Pickard and DAD Simons were also interviewed and they admitted their conversations with Acting AD Locke. AD Donald Kerr, LAB, and Section Chief Robert

To: Director's Office From: Office of Professional  
Responsibility  
Re: 263-HQ-New, 12/15/2000

Sibert, LAB, were also interviewed for any knowledge regarding the events in question. Acting AD Locke also verbally admitted this entire scenario to SSA Kiernan, AD John Collingwood, Office of Public and Congressional Affairs (OPCA), and Special Assistant Roberto Iraola, OSC, on August 29, 2000 shortly after returning from his interview at the OSC. SSA Kiernan, who knew nothing about this incident until after Acting AD Locke's formal OSC interview, also confirmed it with OSC Assistant Special Counsel (ASC) Stuart Levey and US Postal Investigator Keith Thompson. The OSC advised they did not say anything to SSA Kiernan because of the difficult position it would place SSA Kiernan in.

During this time period, Acting AD Locke was under strong consideration for promotion to the permanent AD INSD position. Acting AD Locke was not chosen for the position, which decision was made after the OSC notified DD Tom Pickard on September 1, 2000 of Acting AD Locke's actions in regard to this polygraph matter. DD Pickard commented to the ASC Levey about Acting AD Locke's promotion being on his desk, but his (Locke's) career now turning in another direction. The OSC requested to DD Pickard that Acting AD Locke no longer be allowed to have supervision over SSA Kiernan as the FBI's liaison to the OSC. After DD Pickard discussed the matter with Director Freeh, the supervision of SSA Kiernan was taken away from Acting AD Locke and INSD and given to AD Michael A. DeFco, OPR, on September 7, 2000.

On August 29, 2000 at the exact time when SSA Kiernan was in Acting AD Locke's office asking Acting AD Locke for a recommendation on a FD-638 for a promotion, Acting AD Locke received a call to immediately come to the OSC office for an interview. Acting AD Locke asked SSA Kiernan what the situation was about, but SSA Kiernan had no idea. Acting AD Locke came back later that morning and admitted his misconduct as noted above.

When asking for the above promotional recommendation, SSA Kiernan provided to Acting AD Locke a copy of SSA Kiernan's latest Performance Appraisal Report (PAR) dated 7/31/00, rated by former AD Wiley D. Thompson, III and reviewed by Director Louis J. Freeh (attached). This PAR was very detailed and reflected an exceptional rating in every Critical Element rated. Acting AD Locke was given the PAR, as he had only taken over the supervision of SSA Kiernan on August 1, 2000 after AD Thompson retired. The Division Head Comments (attached) on the FD-638, dated 09/05/2000, for promotion to Adjudication Unit Chief, OPR, subsequently submitted and signed by Acting AD Locke, did not even address the qualifications of the position, as requested in

To: Director's Office From: Office of Professional  
Responsibility  
Re: 263-HQ-New, 12/15/2000

the advertisement (attached). This omission was specifically noted in the local career board comments regarding SSA Kiernan. SSA Kiernan was ultimately ranked third out of six candidates at the local FBI OPR career board.

Another INSD employee, SSA Brian Fortin, who also put in for the same position, is suspected to have a much more detailed and favorable recommendation. A comparison of his Division Head Comments would easily resolve this issue. Furthermore, SSA Fortin has three years less experience in the FBI than SSA Kiernan and no OPR experience. DAD Locke sat in on the SAMMS board deliberations for this promotional position on November 21, 2000 and is suspected of favoring or promoting SSA Fortin over SSA Kiernan, despite SSA Kiernan having more qualifications for the position, as requested in the advertisement. A review of the SAMMS Board tape recording will reflect any comments made by DAD Locke regarding both SSA Kiernan and SSA Fortin. SSA Kiernan was advised by career board personnel that the discussion of this promotion was very "lively and spirited" that day. SSA Fortin received the promotion to UC, OPR. SSA Kiernan has heard that even SSA Fortin was shocked to learn he was chosen for the position, as he was not even in the final package that was presented to the SAMMS board. It is believed that DAD Locke was retaliating against SSA Kiernan for the loss of the AD position and potential OPR investigation caused by his own misconduct, in regard to the OSC Waco investigation. At a minimum, DAD Locke should have recused himself from the FD-638 Division Head Comments, as well as the SAMMS board deliberations because of these incidents.

♦♦

AUSA ROBERT GOLDMAN

7/29/97

INSPECTOR JOHN E. ROBERTS

RUBY RIDGE INVESTIGATION

Reference the "FBI HEADQUARTERS RUBY RIDGE COVER-UP INVESTIGATION - EVIDENCE AND RECOMMENDATION REGARDING LARRY A. POTTS AND DANNY O. COULSON REPORT TO THE ATTORNEY GENERAL JUNE 16, 1997".

As you are aware from our previous discussions, this investigation has surfaced numerous instances of misconduct by FBI employees, some of which are very serious. Although the focus of this investigation was criminal, we, through our interviews of FBI personnel, uncovered numerous instances of misconduct.

We have reviewed all of the FD-302s, Memoranda of Interviews (MOIs) and memoranda which document misconduct issues and have redacted any reference to grand jury material. These documents are available for immediate release to the personnel charged with the administrative adjudication of this matter.

I believe we should either furnish to OPR/DOJ a list of the misconduct issues we uncovered during our investigation or furnish to the OPR/DOJ all of the redacted FD-302s, MOIs and memoranda which document the misconduct issues. It would be most efficient to inform OPR/DOJ of the misconduct issues, but if that avenue is unacceptable we should provide OPR/DOJ with the FD-302s, MOIs and memoranda so they can review the material and determine how, or if, they want to address the misconduct.

The results of our investigation indicate misconduct issues were known to Inspectors Robert Walsh and Van Harp and went unaddressed. Our investigation also developed information suggesting that Associate Special Agent-in-Charge (A-SAC) Charles Mathews was aware of misconduct issues which he failed to address and that A-SAC Mathews was involved in misconduct in late 1994 when he was in charge of adjudicating the Ruby Ridge matter.

1 - AUSA Goldman  
1 - Mr. Roberts  
1 - 74-HQ-1142791  
JER:jer  
[9]

The following are the more serious examples of misconduct identified through this investigation:

1. ASAC Anthony Betz, while a Special Agent assigned to the HRT, was shot once or possibly twice during an HRT training exercise. Neither Danny O. Coulson, then ASAC of the HRT, nor SA Betz reported the shooting;
2. Inspector Van Harp instructed a subordinate (SSA John Lewis) to change FD-302 reports of interviews during the Inspector Walsh investigation of the Ruby Ridge matter. These changes were substantive and were in direct conflict with the original notes taken during the interview;
3. SSA John Lewis, during his interview in this investigation, cautioned the interviewers (SSAs Timothy McCants and Scott Salter) that they should remember who they work for when conducting this investigation. SSA Lewis is now the ASAC in the Houston Division. His comment, I believe, was an attempt to intimidate the interviewers.
4. After Danny O. Coulson was placed on administrative leave and advised to have no contact with the office, he instructed his ASAC, James Adams, to remove from the Dallas Division the file containing information on the Ruby Ridge crisis and deliver the file to him (Coulson);
5. Thomas Kelley's comment to Inspector Roberts that his (Inspector Roberts') involvement in the Ruby Ridge investigation will not be good for him in the end;
6. SA Michael Pullano's written instructions to a HRT sniper to not provide information about the sniper shots at Ruby Ridge that conflicts with Lon Horiuchi's version;
7. SA Jon Uda's lack of candor during his interview and subsequent polygraph interview;
8. Inspector Robert Walsh's comments to Michael Kahoe about being able to control the Ruby Ridge investigation which he supervised; and
9. SAC William Gore's conduct at the Ruby Ridge crisis site as reported by SAs under his command.

I believe this investigative team will be subjected to a great deal of criticism if we do not provide allegations of misconduct immediately. My concern is that administrative action may be taken by the DOJ without them having the benefit of all the relevant documentation of misconduct. Should such actions be taken and later OPR/DOC or the Congress determines there was

JUL 16 2003 9:42AM US ATTORNEYS OFFICE  
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additional information which was not made available, we will not have a defensible position.

I recall the Congress, during earlier hearings, being quite critical of the FBI's ability to accurately report FD-302 interviews. Now we have evidence that FD-302s were changed substantively to remove an interviewee's opinions and to remove inflammatory information during the Inspector Walsh investigation.

DAN BURTON, INDIANA  
 Chairman  
 BENJAMIN G. GRUBIN, NEW YORK  
 CONSTANCE A. AMIELLA, MARYLAND  
 CHRISTOPHER SHAYS, CONNECTICUT  
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 JOHN LEVIN, KENTUCKY  
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 ERIC H. LITVIN, FLORIDA  
 GARY LAMBERT, OHIO  
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ONE HUNDRED SEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
 COMMITTEE ON GOVERNMENT REFORM  
 2157 RAYBURN HOUSE OFFICE BUILDING  
 WASHINGTON, DC 20515-6143

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 \*\*\*\*\*  
 BERNARD SANDERS, VERMONT  
 Independent

September 7, 2001

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Tenth & Constitution Avenue, N.W.  
 Washington, D.C. 20530

Dear General Ashcroft:

Your staff has indicated that at the Committee's September 13, 2001, hearing, on behalf of President Bush, you will invoke executive privilege with respect to the documents sought by the Committee's September 6, 2001, subpoena. The Committee has an interest in determining relevant precedent pertaining to the decision made by the Justice Department and the President. The Committee also has an interest in determining if this type of information has been subject to Congressional review under previous Administrations. Therefore, please provide the Committee with the following information:

1. A description of all situations prior to the Clinton Administration when the Justice Department permitted Congress to review records or receive testimony containing deliberative prosecutorial information.
2. A description of all situations prior to the Clinton Administration when the Justice Department permitted Congress to review the types of documents currently being sought by the Committee, specifically, prosecution memoranda, declination memoranda, or memoranda to the Attorney General making recommendations regarding a specific criminal case.
3. A listing of all cases prior to the Clinton Administration when the President or his designee invoked executive privilege over records or testimony containing deliberative prosecutorial information. In addition, please specify cases when executive privilege was claimed over the types of records currently being sought

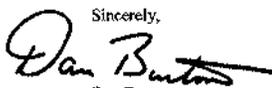
The Honorable John Ashcroft  
Page 2 of 2

by the Committee. Please specify the outcome of the claim of executive privilege.

4. A listing of all memoranda or opinions of the Office of Legal Counsel which provide specific support for the position being taken by the Administration.
5. Copies of all deliberative materials provided to the Subcommittee on International Trade, Finance, and Security Economics of the Joint Economic Committee or the Subcommittee on Administrative Practice and Procedure of the Senate Judiciary Committee in the course of the investigation discussed in 8 U.S. Op. Off. Legal Counsel 252 (1984).

As these matters are of central importance to the Committee's hearing, please provide the requested information by 5:00 p.m. on Wednesday, September 12, 2001.

Sincerely,



Dan Burton  
Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member

THE WHITE HOUSE  
WASHINGTON

December 12, 2001

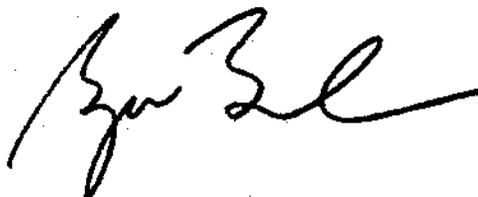
## MEMORANDUM FOR THE ATTORNEY GENERAL

SUBJECT: CONGRESSIONAL SUBPOENA FOR EXECUTIVE BRANCH DOCUMENTS

I have been advised that the Committee on Government Reform of the House of Representatives has subpoenaed confidential Department of Justice documents. The documents consist of memoranda from the Chief of the Campaign Financing Task Force to former Attorney General Janet Reno recommending that a Special Counsel be appointed to investigate a matter under review by the Task Force, memoranda written in response to those memoranda, and deliberative memoranda from other investigations containing advice and recommendations concerning whether particular criminal prosecutions should be brought. I understand that, among other accommodations the Department has provided the Committee concerning the matters that are the subject of these documents, the Department has provided briefings with explanations of the reasons for the prosecutorial decisions, and is willing to provide further briefings. I also understand that you believe it would be inconsistent with the constitutional doctrine of separation of powers and the Department's law enforcement responsibilities to release these documents to the Committee or to make them available for review by Committee representatives.

It is my decision that you should not release these documents or otherwise make them available to the Committee. Disclosure to Congress of confidential advice to the Attorney General regarding the appointment of a Special Counsel and confidential recommendations to Department of Justice officials regarding whether to bring criminal charges would inhibit the candor necessary to the effectiveness of the deliberative processes by which the Department makes prosecutorial decisions. Moreover, I am concerned that congressional access to prosecutorial decisionmaking documents of this kind threatens to politicize the criminal justice process. The Founders' fundamental purpose in establishing the separation of powers in the Constitution was to protect individual liberty. Congressional pressure on executive branch prosecutorial decisionmaking is inconsistent with separation of powers and threatens individual liberty. Because I believe that congressional access to these documents would be contrary to the national interest, I have decided to assert executive privilege with respect to the documents and to instruct you not to release them or otherwise make them available to the Committee.

I request that you advise the Committee of my decision. I also request that the Department remain willing to work informally with the Committee to provide such information as it can, consistent with these instructions and without violating the constitutional doctrine of separation of powers.







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BERNARD SANDERS VERMONT  
 REPRESENTATIVE

The Honorable John Ashcroft  
 Attorney General  
 U.S. Department of Justice  
 Tenth and Constitution Avenue, N.W.  
 Washington, D.C. 20530

Re: Request for Documents

Dear General Ashcroft:

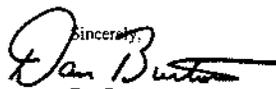
Pursuant to its authority under Rules X and XI of the House of Representatives, the Committee on Government Reform hereby requests certain records.

Please produce the following items, in unredacted form, to the Committee:

- All records relating to contacts between Frank Oreto and Joseph Salvati;
- All records relating to contacts between Frank Oreto and Marie Salvati;
- All records relating to then-FBI Special Agent H. Paul Rico's handling of witness John "Red" Kelley;
- All records relating to then-FBI Special Agent Robert E. Sheehan's handling of witness John "Red" Kelley;
- All records relating to then-Attorney-in-Charge, Strike Force Against Organized Crime, Edward F. Harrington's handling of witness John "Red" Kelley;
- All records relating to the Rhode Island Supreme Court's finding that FBI Special Agent H. Paul Rico suborned perjurious testimony during the 1970 trial of Maurice R. "Pro" Lerner. *See Lerner v. Moran*, 542 A.2d 1089 (R.I. 1988);
- All records relating to the Rhode Island Supreme Court's finding that FBI Special Agent H. Paul Rico committed perjury during the 1970 trial of Maurice R. "Pro" Lerner. *See Lerner v. Moran*, 542 A.2d 1089 (R.I. 1988);
- All investigative files relating to Victor J. Garo.

255

Please produce the requested items by January 4, 2002. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 19, 2001

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

I am writing to follow up regarding the Committee's subpoenas seeking prosecutorial decisionmaking memoranda in connection with the Committee's investigations of campaign finance matters, alleged false statements by an individual (Ernest Howard) in a separate investigation, and the FBI's handling of informants in Boston. The Department stands ready to work with the Committee to seek to accommodate the legitimate needs that the Committee may have for information regarding these matters.

The Department has a strong confidentiality interest in the extremely sensitive prosecutorial decisionmaking documents called for by the subpoenas. The Attorney General and other Department decisionmakers must have the benefit of candid and confidential advice and recommendations in making investigative and prosecutorial decisions. Consistent with the longstanding position of the executive branch with respect to these kinds of highly sensitive memoranda, the President has therefore asserted executive privilege with respect to the subpoenaed documents. At the same time, he has requested that the Department remain willing to work with the Committee to provide such information as the Department can, consistent with his instructions and without violating the constitutional doctrine of separation of powers.

Pursuant to longstanding executive branch policy, in responding to congressional requests for confidential information, the Department seeks in all cases to engage in an accommodation process in an effort to satisfy legitimate congressional needs while protecting executive branch confidentiality interests. The Department has already accommodated the Committee's information needs with respect to the prosecutorial memoranda relating to campaign finance and the Howard matter. We have provided briefings on the reasons for the decisions to decline prosecutions for Ernest Howard and Mark Middleton, which your August 30, 2001, letter indicated were very helpful. With regard to the Conrad collection of memoranda, on August 23, 2000, then Attorney General Reno publicly stated the reasons for her decision not to appoint a Special Counsel and, on October 5, 2000, you questioned her about that decision in an interview

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on the record. Prior to these explanations, the Department had provided the underlying factual records relating to each matter, to the extent permissible under the grand jury secrecy requirements of Rule 6(e) of the Federal Rules of Criminal Procedure. In the October 2000 meeting, some information also could not be provided because of its relevance to then pending investigations.

As to the Boston matter, we believe that the Department and the Committee can work together to provide the Committee additional information without compromising the principles maintained by the executive branch. We will be prepared to make a proposal as to how further to accommodate the Committee's needs as soon as you inform us in writing of the specific needs the Committee has for additional information. See United States v. American Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977); Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc).

The Department has been providing an extensive body of other materials to the Committee since April 27, 2001, when we provided approximately 1178 pages in response to your request of March 30, 2001 for documents about the murder of Mr. Edward Deegan, for which Mr. Joseph Salvati and six others were convicted. Since the crime was not prosecuted federally, the FBI does not have a discrete file on the subject. Hence, the responsive documents were found in other files and some information was redacted because it pertained to other matters outside the scope of the Committee's request. In August 2001, Committee counsel reviewed unredacted copies of these documents and some pages were re-processed to restore information that was responsive to your June 5 request for documents on other Boston matters. More than 3800 pages have been produced in response to that request and the FBI is still processing responsive documents regarding the FBI's handling of informants in Boston. We expect to provide documents regarding the FBI's Top Hoodlum Program this week and to produce additional documents after the Holiday recess.

The document production process for the Boston matters has thus been proceeding since March of this year. We note, moreover, that the Committee's March and June requests did not indicate any interest in the prosecutorial decision-making memoranda and the Committee did not even request them until it subpoenaed them on September 6. The Committee then immediately scheduled for September 13 a hearing regarding its demand for these documents. When that hearing was postponed due to the events of September 11, the Department was advised that the matter would be deferred until a later time. We first learned that the Committee was renewing the matter during the week following Thanksgiving when the hearing was re-scheduled for December 6. It was postponed to December 13 at the Department's request so that Assistant Attorney General Michael Chertoff could testify, but his obligations relating to the September 11 investigation made that appearance impossible and the Chairman refused the Attorney General's request that the hearing be postponed to the week of December 17.

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The Department fully respects the Committee's interest in reviewing allegations of misconduct by government employees, and we have provided, and will continue to provide, investigative records, judicial filings, and other records responsive to your requests, consistent with the accommodation process. Of course, we cannot provide grand jury information covered by Rule 6(e), electronic surveillance information subject to Title III, or information that would identify confidential informants.

Finally, as the Committee is aware, the Department is fully committed to addressing corruption in the handling of informants by the FBI in Boston and has dedicated extensive resources to that purpose. In 1999, the Justice Task Force was established to investigate law enforcement corruption relating to Messrs. James Bulger and Stephen Flemmi. The Task Force has expanded the scope of the inquiry to include allegations that FBI agents and prosecutors allowed a witness to frame Mr. Salvati and others for the Deegan murder while permitting that witness to protect another individual, who was central to the murder conspiracy. It was the Task Force that located exculpatory documents, which led to the release of Peter Limone and the dismissal of charges against Mr. Salvati and Mr. Limone. The Task Force also has obtained the indictment of former FBI Special Agent John Connolly, which is expected to go to trial early in 2002. Additionally, the United States Attorney's Office in Boston obtained indictments against Messrs. Bulger and Flemmi in 1995 and in 2000, charging them with 19 and 10 murders, respectively. The ongoing work of the Task Force and the United States Attorney's Office is dedicated to investigating and prosecuting corruption by FBI agents and prosecutors relating to the handling of informants, as well as any underlying crimes that may have been committed by those individuals. As these efforts proceed, it will be important to ensure that they are based only on the evidence and the law, free from any political influence or coercion.

We have not objected to the Committee's undertaking its own investigation and we understand that Committee staff have conducted interviews and may have undertaken other investigative steps in Boston and elsewhere. We ask that the Committee provide us with information that it believes may be relevant to potential violations of federal criminal law. We understand the Committee's interest in not deferring its own inquiry while our criminal investigations continue, and we trust that the two can continue independently, as has often happened historically.

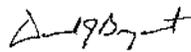
The Department looks forward to a continued dialogue with the Committee so we can accommodate your legitimate oversight needs for information in a manner that is consistent with

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our law enforcement responsibilities. We would like to resume such a constructive conversation as soon as possible.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

Members of Committee on Government Reform

The Supreme Court has recognized that the Constitution gives the President the power to protect the confidentiality of Executive Branch deliberations. See generally Nixon v. Administrator of General Services, 433 U.S. 425, 446-455 (1977). This power is independent of the President's power over foreign affairs, national security, or law enforcement; it is rooted instead in "the necessity for protection of the public interest in candid, objective, and even blunt or harsh opinions in Presidential decisionmaking." United States v. Nixon, 418 U.S. at 708.

It necessarily follows -- and the Supreme Court so held in United States v. Nixon -- that communications among the President and his advisers enjoy "a presumptive privilege" against disclosure in court. Id.<sup>2</sup> The reasons for this privilege, the Nixon Court explained, are "plain". "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." Id. at 705. Often, an adviser's remarks can be fully understood only in the context of a particular debate and of the positions others have taken. Advisers change their views, or make mistakes which others correct; this is indeed the purpose of internal debate. The result is that advisers are likely to be inhibited if they must anticipate that their remarks will be disclosed to others, not party to the debate, who may misunderstand the significance of a particular statement or discussion taken out of context. Some advisers may hesitate -- out of self-interest -- to make remarks that might later be used against their colleagues or superiors. As the Court stated, "[a] President and those who assist him must be free to explore alternatives in the process of shaping policies and making decisions and to do so in a way many would be unwilling to express except privately." Id. at 708.

These reasons for the constitutional privilege have at least as much force when it is Congress, instead of a court, that is

<sup>2</sup> The Nixon Court explained that the privilege is constitutionally based:

[T]he privilege can be said to derive from the supremacy of each branch within its own assigned area of constitutional duties. Certain powers and privileges flow from the nature of enumerated powers; the protection of the confidentiality of Presidential communications has similar constitutional underpinnings.

418 U.S. at 705-06 (footnote omitted). The Court also acknowledged that the privilege stems from the principle of separation of powers: "The privilege is fundamental to the operation of Government and inextricably rooted in the separation of powers under the Constitution." Id. at 708.

seeking information. The possibility that deliberations will be disclosed to Congress is, if anything, more likely to chill internal debate among Executive Branch advisers. When the Supreme Court held that the need for presidential communications in the criminal trial of President Nixon's close aides outweighed the constitutional privilege, an important premise of its decision was that it did not believe that "advisers will be moved to temper the candor of their remarks by the infrequent occasions of disclosure because of the possibility that such conversations will be called for in the context of a criminal prosecution." *Id.* at 712. By contrast, congressional requests for Executive Branch deliberative information are anything but infrequent. Moreover, compared to a criminal prosecution, a congressional investigation is usually sweeping; its issues are seldom narrowly defined, and the inquiry is not restricted by the rules of evidence. Finally, when Congress is investigating, it is by its own account often in an adversarial position to the Executive Branch. Its interest, generally, is in checking the Executive Branch and initiating action to override judgments made by the Executive Branch. This increases the likelihood that candid advice from Executive Branch advisers will be taken out of context or misconstrued. For all these reasons, the constitutional privilege that protects Executive Branch deliberations against judicial subpoenas must also apply, perhaps even with greater force, to Congress' demands for information.

The United States Court of Appeals for the District of Columbia Circuit has explicitly held that the privilege protects presidential communications against congressional demands. During the Watergate investigation the court of appeals rejected a Senate committee's efforts to obtain tape recordings of conversations in President Nixon's offices. The court held that the tapes were constitutionally privileged and that the committee had not made a strong enough showing to overcome the privilege. Senate Select Committee on Presidential Campaign Activities v. Nixon, 498 F.2d 725 (D.C. Cir. 1974) (*en banc*). Indeed, the court held that the committee was not entitled to the recordings unless it showed that "the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's functions." *Id.* at 731 (emphasis added).<sup>3</sup>

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<sup>3</sup> The Supreme Court has assumed that the constitutional privilege protects Executive Branch deliberations against Congress to some degree. See United States v. Nixon, 418 U.S. at 712 n.19. Moreover, the Court held in Administrator of General Services, supra, that the constitutional privilege protects Executive Branch deliberations from disclosure to members of the same branch in a later administration; the Court rejected the specific claim of privilege in that case not because the privilege was inapplicable but because the intrusion was

(continued...)

Finally, history is replete with examples of the Executive's assertion of privilege in the face of congressional requests for deliberative process information. We have previously recounted the incidents in which Presidents, beginning with President Washington, have withheld from Congress documents that reflected deliberations within the Executive Branch. History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress, Part II - Invocations of Executive Privilege by Executive Officials, 6 Op. O.L.C. 782 (1982).

### III. Accommodation Process

Where Congress has a legitimate need for information that will help it legislate, and the Executive Branch has a legitimate, constitutionally recognized need to keep certain information confidential, at least one court has referred to the obligation of each Branch to accommodate the legitimate needs of the other. This duty to accommodate was described by the D.C. Circuit in a case involving a House committee's request to a private party for information which the Executive Branch believed should not be disclosed. The court said:

The framers . . . expect[ed] that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.

\* \* \*

[Because] it was a deliberate feature of the constitutional scheme to leave the allocation of powers unclear in certain situations, the resolution of conflict between the coordinate branches in these situations must be regarded as an opportunity for a constructive

<sup>3</sup>(...continued)

limited and the interests justifying the intrusion were strong and nearly unique. See 433 U.S. at 446-455. Since the Court has held that the privilege protects Executive Branch communications against compelled disclosure to the Judicial Branch and to later members of the Executive Branch, there is every reason to believe that the Court would hold that it protects against compelled disclosure to Congress.

modus vivendi, which positively promotes the functioning of our system. The Constitution contemplates such accommodation. Negotiation between the two branches should thus be viewed as a dynamic process affirmatively furthering the constitutional scheme.

United States v. American Tel. & Tel. Co., 567 F.2d 121, 127, 130 (D.C. Cir. 1977) (footnotes omitted).

In an opinion he issued in connection with a 1981 executive privilege dispute involving a committee of the House of Representatives and the Department of Interior, Attorney General William French Smith captured the essence of the accommodation process:

The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch.

Opinion of the Attorney General for the President, Assertion of Executive Privilege in Response to a Congressional Subpoena, 5 Op. O.L.C. 27, 31 (1981) (Smith Opinion).

The process of accommodation requires that each Branch explain to the other why it believes its needs to be legitimate. Without such an explanation, it may be difficult or impossible to assess the needs of one Branch and relate them to those of the other. At the same time, requiring such an explanation imposes no great burden on either Branch. If either Branch has a reason for needing to obtain or withhold information, it should be able to express it.

The duty of Congress to justify its requests not only arises directly from the logic of accommodation between the two Branches, but it is established in the case law as well. In United States v. Nixon, the Supreme Court emphasized that the need for evidence was articulated and specific. 418 U.S. at 700-702, 713. Even more to the point is Senate Select Committee on Presidential Campaign Activities. In that case, the D.C. Circuit stated that the sole question was "whether the subpoenaed evidence is demonstrably critical to the responsible fulfillment of the Committee's functions." 498 F.2d at 731. The court held that the Committee had not made a sufficient showing. It pointed out that the President had already released transcripts of the conversations of which the Committee was seeking recordings. The Committee argued that it needed the tape recordings "in order to verify the accuracy of" the transcripts, to supply the deleted portions, and to gain an understanding that could be acquired only by hearing the inflection and tone of voice of the speakers. But the court answered that, in order to legislate, a committee

of Congress seldom needs a "precise reconstruction of past events." Id. at 732. The court concluded:

The Committee has . . . shown no more than that the materials deleted from the transcripts may possibly have some arguable relevance to the subjects it has investigated and to the areas in which it may propose legislation. It points to no specific legislative decisions that cannot responsibly be made without access to materials uniquely contained in the tapes or without resolution of the ambiguities that the transcripts may contain.

Id. at 733. For this reason, the court stated, "the need demonstrated by the Select Committee . . . is too attenuated and too tangential to its functions" to override the President's constitutional privilege. Id.

Senate Select Committee thus establishes Congress' duty to articulate its need for particular materials -- to "point[] to . . . specific legislative decisions that cannot responsibly be made without access to materials uniquely contained in" the privileged document it has requested. Moreover, this case suggests that Congress will seldom have any legitimate legislative interest in knowing the precise predecisional positions and statements of particular Executive Branch officials. When Congress demands such information, it must explain its need carefully and convincingly.

It is difficult to generalize about the kind of accommodation with respect to deliberative process information that may be appropriate in particular cases. Whether to adhere to the consistent general policy of confidentiality for such information will depend on the facts of the specific situation. Certain general principles do apply, however. As Attorney General Smith explained in advising President Reagan:

[T]he interest of Congress in obtaining information for oversight purposes is . . . considerably weaker than its interest when specific legislative proposals are in question. At the stage of oversight, the congressional interest is a generalized one of ensuring that the laws are well and faithfully executed and of proposing remedial legislation if they are not. The information requested is usually broad in scope and the reasons for the request correspondingly general and vague. In contrast, when Congress is examining specific proposals for legislation, the information which Congress needs to enable it to legislate effectively is usually quite narrow in scope and the reasons for obtaining that information correspondingly specific. A specific, articulated need for information will weigh substan-

tially more heavily in the constitutional balancing than a generalized interest in obtaining information.

Smith Opinion, 5 Op. O.L.C. at 30. Moreover, Attorney General Smith explained, information concerning ongoing deliberations need rarely be disclosed:

[T]he congressional oversight interest will support a demand for predecisional, deliberative documents in the possession of the Executive Branch only in the most unusual circumstances. It is important to stress that congressional oversight of Executive Branch actions is justifiable only as a means of facilitating the legislative task of enacting, amending, or repealing laws. When such "oversight" is used as a means of participating directly in an ongoing process of decisionmaking within the Executive Branch, it oversteps the bounds of the proper legislative function. Restricted to its proper sphere, the congressional oversight function can almost always be properly conducted with reference to information concerning decisions which the Executive Branch has already reached. Congress will have a legitimate need to know the preliminary positions taken by Executive Branch officials during internal deliberations only in the rarest of circumstances. Congressional demands, under the guise of oversight, for such preliminary positions and deliberative statements raise at least the possibility that the Congress has begun to go beyond the legitimate oversight function and has impermissibly intruded on the Executive Branch's function of executing the law. At the same time, the interference with the President's ability to execute the law is greatest while the decisionmaking process is ongoing.

Id. at 30-31.

#### IV. Procedures

President Reagan's November 4, 1982 Memorandum for the Heads of Executive Departments and Agencies on "Procedures Governing Responses to Congressional Requests for Information" (the Reagan Memorandum) sets forth the long-standing Executive Branch policy in this area:

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch . . . [E]xecutive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary.

Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches.

The Reagan Memorandum also sets forth the procedures for asserting executive privilege in response to a congressional request for information. Under the terms of the Memorandum, an agency must notify and consult with the Attorney General, through the Assistant Attorney General for the Office of Legal Counsel, as soon as it determines that compliance with the request raises a "substantial question of executive privilege." The Memorandum further provides that executive privilege cannot be asserted without specific authorization by the President, based on recommendations made to him by the concerned agency head, the Attorney General, and the Counsel to the President.

In practice, disputes with Congress in this area typically commence with an informal oral or written request from a congressional committee or subcommittee for information in the possession of the Executive Branch. Most such requests are honored promptly; in some cases, however, the Executive Branch official may resist supplying some or all of the requested information either because of the burden of compliance or because the information is of a sensitive nature. The Executive Branch agency and the committee staff will typically negotiate during this period to see if the dispute can be settled in a manner acceptable to both sides. In most cases this accommodation process is sufficient to resolve any dispute. On occasion, however, the process breaks down, and a subpoena is issued. At that point, if further negotiation is unavailing, it is necessary to consider asking the President to assert executive privilege.

If after assertion of executive privilege the committee remains unsatisfied with the agency's response, it may vote to hold the agency head in contempt of Congress. If the full Senate or House of Representatives then votes to hold the official in contempt, it might attempt to impose sanctions by one of three methods. First, it might refer the matter to a United States Attorney for reference to a grand jury. See 2 U.S.C. §§ 192, 194. Second, the Sergeant-at-Arms theoretically could be dispatched to arrest the official and detain him in the Capitol; if this unlikely event did occur, the official would be able to test the legality of his detention through a habeas corpus petition, thereby placing in issue the legitimacy of his actions in refusing to disclose the subpoenaed information. Third, and the most likely option due to legal and practical difficulties associated with the first two options, the Senate or House might bring an action in court to obtain a judicial order requiring compliance with the subpoena and contempt of court enforcement orders if the court's order is defied.



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

July 1, 1991

The Honorable Howard M. Metzenbaum  
United States Senate  
Washington, D.C. 20510

Dear Senator Metzenbaum:

This letter is in response to your letter of June 6, 1991, to the Attorney General relating to Michael Luttig's views concerning the applicability of executive privilege to intra-departmental communications. In particular, you have inquired as to the role, if any, that Mr. Luttig has played in formulating an Administration position that executive privilege extends to such communications. As explained in greater detail below, Mr. Luttig has not formulated or advanced a position on the applicability of the privilege to intra-departmental communications that is new or different from that taken by past Administrations of both parties for many years. Nor has the Office of Legal Counsel under his direction departed from its longstanding position on the scope of the privilege -- a position that is supported by historical practice, scholarly commentary and caselaw.

The Executive has long taken the position that executive privilege extends not only to communications to and from the President, but to deliberative communications between the President's subordinates and those who, in turn, advise them. Indeed, we are not aware of any Administration, Republican or Democratic, that has taken a contrary position. Presidents from George Washington through President Bush have asserted a right of executive privilege. We have enclosed for your review a representative group of documents reflecting this fact.

The doctrine of executive privilege was recognized as early as the Presidency of George Washington. In 1792, a House Committee requested letters and instructions from Secretary of War Knox pertaining to a failed military expedition led by General St. Clair. The President and his Cabinet concluded that "the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of

which would injure the public . . . ." 1 The Writings of Thomas Jefferson 303-04 (Lipscomb ed. 1905). The documents were ultimately delivered to the Committee after an accommodation was reached.

The principles articulated by President Washington have been consistently applied by more contemporary Presidents in the context of deliberations among lower-level Executive branch officials. During the so-called Army-McCarthy hearings in 1954, President Eisenhower sent a letter to the Secretary of Defense, directing that executive privilege be claimed for communications not involving the President himself, citing the need for "employees of the Executive Branch [to] be in a position to be completely candid in advising with each other on official matters . . ." The Public Papers of the Presidents, Dwight D. Eisenhower, 1954, at 483 (emphasis added).

President Kennedy reaffirmed the applicability of executive privilege to communications not involving the President by asserting executive privilege in response to a request from Senator Thurmond asking for the names of government employees who had recommended changes in speeches prepared by lower-level Department of Defense employees for delivery by military personnel. A letter from the President to Secretary of Defense Robert McNamara, dated February 8, 1962, made plain that the assertion of privilege covered communications that did not personally involve the President or his close advisors:

[I]t would not be possible for you to maintain an orderly Department and receive the candid advice . . . of your subordinates if they, instead of you and your senior associates, are to be individually answerable to the Congress, as well as to you, for their internal acts and advice.

Military Cold War Education and Speech Review Policies: Hearings Before the Special Preparedness Subcomm. of the Senate Comm. on Armed Services, 87th Cong., 2d Sess. 508 (1962). Chairman Stennis sustained the claim of executive privilege, and the Subcommittee upheld his ruling. See History of Refusals by Executive Branch Officials to Provide Information Demanded by Congress, 6 Op. Off. Legal Counsel 751, 777 (1982).

In 1980, President Carter authorized the assertion of executive privilege to protect Executive branch deliberative documents concerning the decision to impose a conservation fee on imports of crude oil and gasoline. The documents being withheld included not only documents reflecting the presidential deliberative process on that decision, but also documents relating solely to the internal deliberative process of the Department of Energy. See History of Refusals by Executive

Branch Officials to Provide Information Demanded by Congress, 6 Op. Off. Legal Counsel 751, 773-80 (1982).

And, in 1981, President Reagan asserted executive privilege and directed the Secretary of Interior to withhold certain documents requested by the Subcommittee on Oversight and Investigations of the Energy and Commerce Committee of the House of Representatives. Although some of the documents concerned communications from foreign officials or deliberations of the President's Cabinet, the bulk of the documents

reflect[ed] internal deliberations within the Department of the Interior . . . . Some of these documents [were] staff level advice to policymakers containing recommendations regarding decisions which ha[d] not yet become final. Others contain[ed] internal Interior Department deliberations regarding its participation in [Cabinet deliberations]. Still other documents reflect[ed] tentative legal judgments. . . . In addition, the subpoena encompass[ed] preliminary drafts of congressional testimony by the Secretary of the Interior. These latter documents, although generated at levels below that of the Cabinet and subcabinet, [were] of a highly deliberative nature and involve[d] an ongoing decisional process of considerable sensitivity.

Assertion of Executive Privilege in Response to a Congressional Subpoena, 5 Op. Off. Legal Counsel 27, 28-29 (1981).

The Department of Justice has long asserted this position on behalf of the Executive branch, either through the Attorney General or through the Office of Legal Counsel. President Carter's Assistant Attorney General for the Office of Legal Counsel, John M. Harmon, for example, opined that executive privilege extends

to communications containing the policy deliberations of executive officials at a level below that of the President. The need to protect deliberative communications derives from the need for candor and objectivity in the policymaking decisions of the Government. See, United States v. Nixon, *supra*, at 705-6. This need exists not only at the Presidential level, but also at other levels in the Government. In other contexts the courts have long recognized the importance of protecting the confidentiality of lower executive officials' deliberative communications, and so too has Congress.

Memorandum Opinion for the General Counsel of the Department of Commerce, 1 Op. Off. Legal Counsel 269, 271-72 (1977).

Assistant Attorney General Harmon's opinion was supported by numerous prior opinions and statements of the Office of Legal Counsel. For example, in 1971 William H. Rehnquist, then Assistant Attorney General for the Office of Legal Counsel, testified on the subject of executive privilege before the Senate Subcommittee on Separation of Powers of the Committee on the Judiciary. Mr. Rehnquist stated that "Congress has recognized the validity of claims of executive privilege" as applied to "intragovernmental discussions," and observed that such claims have extended not only to conversations with the President, but to the confidentiality of the "process of decision-making at a high governmental level" because of "the necessity of safeguarding frank internal advice within the executive branch." Statement of William H. Rehnquist, Assistant Attorney General, Office of Legal Counsel on Executive Privilege and S. 1125 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 92nd Cong., 1st Sess. 11, 15 (Aug. 4, 1971). We have enclosed copies of the Harmon opinion and the Rehnquist testimony, and two other memoranda of the Office of Legal Counsel that include detailed summaries of the Executive's invocation of executive privilege.

This longstanding view of the scope of the privilege discussed above is widely recognized among scholars and commentators. The Committee on Civil Rights of the Association of the Bar of the City of New York, for example, has expressed its

strong opinion that any advice given by any agency employee as to any legitimate governmental functions or activities must be protected against disclosure if the agency is to be able to count on the candid and forthright advice it requires for its proper functioning and the employee is not to be subjected to the danger of harassment or punishment based on the advice given.

Committee on Civil Rights, Executive Privilege: Analysis and Recommendations for Congressional Legislation 27 (1974) (second emphasis added).

Professor Laurence Tribe similarly acknowledges a "generic privilege for internal deliberations" within the Executive branch and explains that the privilege "encourag(es) candid intragovernmental communications and honor[s] the justified expectations of privacy of governmental advisors and decisionmakers." He observes: "[t]hat an enforceable promise of secrecy may well be the cost of candor has been recognized by the Supreme Court: 'Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process.'" L. Tribe, American

Constitutional Law 276 (2d ed. 1968) (footnotes omitted) (quoting United States v. Nixon, 418 U.S. 683, 705 (1974)).

Other commentators also have said that the privilege extends to communications among lower-level government officials, even as against requests from Congress:

The disclosure of [intragovernmental communications] is considered to be contrary to the public interest because the nation has an overriding interest in the ability of Government officials below the decision-making level to discuss matters freely among themselves and with their superiors, and because this objective is not likely to be achieved if these inferior officials must anticipate that some day their discussions, comments, and advice would be disclosed, and that then they would have to justify them before Congress.

Kramer & Marcuse, Executive Privilege -- A Study of the Period 1953-1960, 29 Geo. Wash. L. Rev. 827, 912 (1961) (footnote omitted). These commentators have recognized that executive privilege is broad in scope because it arises from the constitutional functions of the Executive:

The same logic which holds that Congress has the power to investigate so that it may effectively exercise its legislative functions, supports the proposition that the President has the power to withhold information when the use of the power is necessary to exercise his Executive functions effectively, i.e., where it is required . . . generally, for the furtherance of the efficiency and integrity of the Executive branch, such as the safeguarding of frank internal advice and discussion . . .

Id. at 899 (emphasis added).

The caselaw that exists on the subject of executive privilege fully supports the position historically taken by the Executive. Most significantly, the Supreme Court's unanimous decision in United States v. Nixon recognized "the valid need for protection of communications between high Government officials and those who advise and assist them in the performance of their manifold duties; the importance of this confidentiality is too plain to require further discussion." 418 U.S. 683, 705 (1974) (emphasis added). See also id. at 706 (recognizing "the need for confidentiality of high-level communications"). Courts have recognized the need for confidential Executive branch communications, even in the face of congressional requests for such communications. See Senate Select Committee v. Nixon, 498 F.2d 725, 731 (D.C. Cir. 1974) (en banc) ("[t]he presumption against any judicially compelled intrusion into presidential confidentiality, and the showing requisite to its defeat, hold

with at least equal force" in the context of a subpoena from a Congressional committee); see also United States v. AT&T, 567 F.2d 121, 129 (D.C. Cir. 1977) (the Executive branch may assert executive privilege against a legislative subpoena even where a third party corporation has possession of the subpoenaed documents). In fact, in recognizing the validity of an executive privilege to protect the deliberative process, the courts have drawn analogies to the deliberative privileges afforded members of Congress and their aides and to the privileges among judges and between judges and their law clerks. See Nixon v. Sirica, 487 F.2d 700, 717 (D.C. Cir. 1973) (en banc) (per curiam); Senate Select Committee, 498 F.2d at 729.

In sum, Mr. Luttig has not formulated any new legal position or policy on the applicability of executive privilege to intra-departmental communications. The Office of Legal Counsel, under his direction, has provided to the Executive departments and agencies the same advice on this issue that has been provided by that Office for years and consistently by the Department of Justice throughout our history.

It bears emphasis that during Mr. Luttig's service at OLC, the Office has adhered to the longstanding policy of this and past Administrations of complying with congressional requests for information to the fullest extent possible, consistent with the constitutional and statutory responsibilities of the Executive. The Office has never viewed the privilege as it relates to intra-departmental communications as absolute and, as required by existing caselaw, see generally United States v. AT&T, 567 F.2d 121, it has counseled all departments and agencies to accommodate Congress' needs and interests to the fullest extent possible, even when the most confidential communications are sought. As you no doubt are aware, President Bush has not asserted executive privilege with respect to any congressional request for information.

Because the Executive branch position on the applicability of executive privilege to intra-departmental communications is so well developed, there has been little new thinking on the subject in recent years. For example, the request in your letter is focused on documents prepared by Mr. Luttig or at his request or direction. Mr. Luttig has not authored any formal or informal opinions or memoranda of law on the subject of the application of executive privilege to intra-departmental communications. Nor have any such opinions or memoranda been prepared by any OLC attorney acting at Mr. Luttig's request or instruction, or by anyone outside of the Office of Legal Counsel acting at Mr. Luttig's request or instruction.

Advice on this subject has been rendered by Mr. Luttig and by attorneys acting at his direction during the relevant time period, but that advice has been provided orally, or in such

forms as suggested inserts for correspondence or draft memoranda, to be sent by others within the Executive branch. This was the case, for example, with respect to the recently resolved dispute between the House Subcommittee on Human Resources and Intergovernmental Relations and the Department of Education to which your letter makes reference. There was no written opinion or memorandum of law -- formal or informal -- prepared by Mr. Luttig or any attorney acting at his direction during the course of that dispute.

At various times throughout the pendency of that dispute, OLC drafted text for possible or proposed letters, memoranda, and talking points, all of which merely reiterated or applied the longstanding Executive branch view of executive privilege set forth above. As it relates to the subject you have inquired about, however, that language -- all of which was in draft form -- said nothing more in substance (and rarely more in terms) than that executive privilege extends to communications between and among high government officials and those who advise and assist them. Indeed, the most extensive language proposed by OLC during that entire dispute that concerned the application of executive privilege to intra-departmental communications was adopted by the Education Department and appeared, together with a series of historical examples also provided by OLC, in the following passage of the May 22, 1991, letter from that Department to Chairman Weiss: "The Supreme Court has recognized a constitutional privilege for confidential 'communications between high Government officials and those who advise and assist them in the performance of their manifold duties.' 418 U.S. 683, 705 (1974). That language recognizes the longstanding practice of the Executive Branch." A copy of that letter is enclosed for your review.

Your letter, we recognize, requests all "documents" or "materials" prepared by Mr. Luttig or by anyone acting at his request or instruction, which relate to the application or assertion of executive privilege in response to congressional requests for intra-departmental communications. The Office of Legal Counsel is charged with assisting all of the Executive agencies and departments in responding to congressional requests, which the Office does when asked to do so by the recipient of a request. Thus, from March 1989 to the present, the Office provided advice with respect to many such requests. Almost all of this advice was provided by staff attorneys within the Office, without either the knowledge or involvement of Mr. Luttig. Moreover, almost all of this advice was provided orally by the staff.

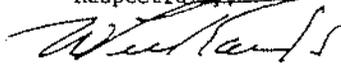
By its terms, your request could be construed to extend to every note, proposed or contemplated draft letter or memorandum, and all other draft and working materials. The personal files of the individual attorneys who handled particular requests for

assistance and perhaps general correspondence files would contain such attorney notes, draft memoranda, draft letters or inserts, scheduling information for meetings, correspondence and other miscellaneous working materials that would relate at least tangentially to the applicability of the privilege in the context of the particular disputes, and would arguably be responsive to your request because they were prepared at least technically under Mr. Luttig's supervision. We have not undertaken a review of all of these files for such miscellaneous working materials, however, because of the volume involved and because we are certain these materials would not include or reflect any view of Mr. Luttig's different in substance from that set forth above, if indeed they reflected or bore upon Mr. Luttig's personal view of the applicability of executive privilege to intra-departmental communications at all. Should you wish, we would undertake a search of all such files for any possibly responsive documents, even including informal notes and draft materials of the kind that we have described. We trust, however, that the foregoing is responsive to your concern as to whether Mr. Luttig, during his tenure at OLC, has formulated a new theory on the applicability of executive privilege to intra-departmental communications.

In response to Mr. Harvie's oral request as to whether we might provide an example of a document that recites general Executive privilege principles that could relate to intra-departmental communications (even one not written by Mr. Luttig), we have included for your information a copy of a June 1989 memorandum from William P. Barr to the General Counsels' Consultative Group on the deliberative process privilege in general. As we informed Mr. Harvie, Mr. Luttig did not author this memorandum, direct its preparation or participate in its preparation. Nor does the memorandum discuss intra-departmental communications in particular. However, the memorandum does provide a broad overview of the legal principles underlying application of Executive privilege to the deliberative process.

We look forward to working with you and the other Members of the Judiciary Committee. Please let us know if we can be of any further assistance.

Respectfully,



W. Lee Rawls  
Assistant Attorney General



U.S. Department of Justice  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

January 27, 2000

The Honorable John Linder  
Chairman, Subcommittee on Rules and  
Organization of the House  
Committee on Rules  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

We have carefully reviewed the testimony presented to the Subcommittee on Rules and Organization of the House at its hearing on July 15, 1999, on "Cooperation, Comity, and Confrontation: Congressional Oversight of the Executive Branch." The Department of Justice appreciates the Subcommittee's interest in this area, and we would like to take this opportunity to present in this letter, for the benefit of both Members of Congress and the public at large, the approach we take to the issues raised at the hearing. As always, we are committed to cooperating with your Subcommittee, and all committees of Congress, with respect to the oversight process.

The testimony presented at the hearing suggests to us that there is a need for improved communication and sensitivity between the Executive and Legislative Branches regarding our respective institutional needs and interests. It also suggests that there is considerable misunderstanding about the principles that govern the Department's longstanding positions and practices on responding to congressional oversight requests. We hope that this discussion of those governing principles will be helpful to the Committee and foster an improved understanding of the Department's interests in responding to oversight requests.

#### General Approach

The oversight process is, of course, an important underpinning of the legislative process. Congressional committees need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary either to rectify practical problems in current law or to address problems not covered by current law. By helping Congress be better informed when it makes legislative decisions, oversight promotes the accountability of government. The information that committees gather in this oversight capacity is also important for the Executive Branch in the future implementation of the law and its participation in the legislative process. We have found that the oversight process can shed

valuable light on Department operations and assist our leadership in addressing problems that might not otherwise have been clear.

President Reagan's November 4, 1982 Memorandum for the Heads of Executive Departments and Agencies on "Procedures Governing Responses to Congressional Requests for Information" sets forth the longstanding Executive Branch policy on cooperating with Congressional oversight:

The policy of this Administration is to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch . . . [E]xecutive privilege will be asserted only in the most compelling circumstances, and only after careful review demonstrates that assertion of the privilege is necessary. Historically, good faith negotiations between Congress and the Executive Branch have minimized the need for invoking executive privilege, and this tradition of accommodation should continue as the primary means of resolving conflicts between the Branches.

The D.C. Circuit Court of Appeals has recognized the obligations of Congress and the Executive Branch to seek to accommodate the legitimate needs of the other:

The framers . . . expect[ed] that where conflicts in scope of authority arose between the coordinate branches, a spirit of dynamic compromise would promote resolution of the dispute in the manner most likely to result in efficient and effective functioning of our governmental system. Under this view, the coordinate branches do not exist in an exclusively adversary relationship to one another when a conflict in authority arises. Rather, each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation.

United States v. American Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977). Attorney General William French Smith captured the essence of the accommodation process in a 1981 opinion: "The accommodation required is not simply an exchange of concessions or a test of political strength. It is an obligation of each branch to make a principled effort to acknowledge, and if possible to meet, the legitimate needs of the other branch." Opinion of the Attorney General for the President, Assertion of Executive Privilege in Response to a Congressional Subpoena, 5 Op. O.L.C. 27, 31 (1981).

In implementing the longstanding policy of the Executive Branch to comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch, the Department's goal in all cases is to satisfy legitimate legislative interests while protecting Executive Branch confidentiality interests. Examples of confidential information include national security information, materials that are

protected by law (such as grand jury information pursuant to Rule 6(e) of the Federal Rules of Criminal Procedure and taxpayer information pursuant to 26 U.S.C. § 6103), information the disclosure of which might compromise open criminal investigations or prosecutions or civil cases or constitute an unwarranted invasion of personal privacy, and predecisional deliberative communications (such as internal advice and preliminary positions and recommendations).

We believe that it must be the Department's efforts to safeguard these important Executive Branch institutional interests that have led to the frustrations expressed during the Subcommittee's hearing. We hope that we can reduce those frustrations in the future by setting forth here our perspective on some of the more important institutional interests that are implicated during the course of Congressional oversight.

#### Open Matters

Much of the testimony at the hearing addressed oversight of ongoing Department investigations and litigation. Although Congress has a clearly legitimate interest in determining how the Department enforces statutes, Congressional inquiries during the pendency of a matter pose an inherent threat to the integrity of the Department's law enforcement and litigation functions. Such inquiries inescapably create the risk that the public and the courts will perceive undue political and Congressional influence over law enforcement and litigation decisions. Such inquiries also often seek records and other information that our responsibilities for these matters preclude us from disclosing. Consequently, we have sought whenever possible to provide information about closed, rather than open, matters. This enables Congress to analyze and evaluate how statutory programs are handled and the Department conducts its business, while avoiding the potential interference that inquiries into open matters entail.

The open matters concern is especially significant with respect to ongoing law enforcement investigations. The Department's longstanding policy is to decline to provide Congressional committees with access to open law enforcement files. Almost 60 years ago, Attorney General Robert H. Jackson informed Congress that:

It is the position of the Department, restated now with the approval of and at the direction of the President, that all investigative reports are confidential documents of the executive department of the Government, to aid in the duty laid upon the President by the Constitution to "take care that the Laws be faithfully executed," and that congressional or public access to them would not be in the public interest . . . .

40 Op. Att'y. Gen. 45, 46 (1941). Attorney General Jackson's position was not new. His letter cited prior Attorney General letters taking the same position dating back to the beginning of the 20th century (*id.* at 47-48).

The rationale for this policy is set forth in a published opinion of the Office of Legal Counsel issued by Charles J. Cooper, Assistant Attorney General for the Office of Legal Counsel

during part of the Reagan Administration. See Response to Congressional Requests for Information Regarding Decisions made Under the Independent Counsel Act, 10 Op. O.L.C. 68, 76-77 (1986). Mr. Cooper noted that providing a Congressional committee with confidential information about active criminal investigations would place the Congress in a position to exert pressure or attempt to influence the prosecution of criminal cases. *Id.* at 76. Congress would become, "in a sense, a partner in the investigation," *id.*, and could thereby attempt to second-guess tactical and strategic decisions, question witness interview schedules, debate conflicting internal recommendations, and generally attempt to influence the outcome of the criminal investigation. Such a practice would significantly damage law enforcement efforts and shake public and judicial confidence in the criminal justice system. *Id.* at 76-77.

Decisions about the course of an investigation must be made without reference to political considerations. As one Justice Department official noted 30 years ago, "the Executive cannot effectively investigate if Congress is, in a sense, a partner in the investigation. If a congressional committee is fully apprised of all details of an investigation as the investigation proceeds, there is a substantial danger that congressional pressures will influence the course of the investigation." Memorandum for Edward L. Morgan, Deputy Counsel to the President, from Thomas E. Kauper, Deputy Assistant Attorney General, Office of Legal Counsel, Re: Submission of Open CID Investigation Files 2 (Dec. 19, 1969).

In addition to the problem of Congressional pressure and the appearance of such pressure, the disclosure of documents from our open files could also provide a "road map" of the Department's ongoing investigations. The documents, or information that they contain, could come into the possession of the targets of the investigation through inadvertence or a deliberate act on the part of someone having access to them. The investigation would be seriously prejudiced by the revelation of the direction of the investigation, information about the evidence that the prosecutors have obtained, and assessments of the strengths and weaknesses of various aspects of the investigation. As Attorney General Jackson observed:

Disclosure of the [law enforcement] reports could not do otherwise than seriously prejudice law enforcement. Counsel for a defendant or a prospective defendant, could have no greater help than to know how much or how little information the Government has, and what witnesses or sources of information it can rely upon. This is exactly what these reports are intended to contain.

40 Op. Atty. Gen. at 46. The Department has similar interests in the confidentiality of internal documents relating to its representation of the United States in civil litigation. Our litigation files usually contain confidential correspondence with client agencies as well as the work product of our attorneys in suits that frequently seek millions of tax dollars. They also contain "road maps" of our litigation plans and preparations, as well as confidential reports from experts and consultants. Those plans could be seriously jeopardized and our positions in litigation compromised if we are obliged to disclose our internal deliberations including, but not limited to,

our assessments of the strengths and weaknesses of evidence or the law, before they are presented in court. That may result in an unfair advantage to those who seek public funds and deprive the taxpayers of confidential representation enjoyed by other litigants.

In addition, the reputations of individuals mentioned in internal law enforcement and litigation documents could be severely damaged by the public release of information about them, even though the case might ultimately not warrant prosecution or other legal action. The Department takes very seriously its responsibility to respect the privacy interests of individuals about whom information is developed during the law enforcement process or litigation.

#### Internal Department Deliberations

With respect to oversight on closed matters, the Department has a broad confidentiality interest in materials that reflect its internal deliberative process. In particular, we have sought to ensure that all law enforcement and litigation decisions are products of open, frank and independent assessments of the pertinent law and facts -- uninhibited by political and improper influences that may be present outside the Department. We have long been concerned about the chilling effect that would ripple throughout government if prosecutors, policy advisors at all levels and line attorneys believed that their honest opinion -- be it "good" or "bad" -- may be the topic of debate in Congressional hearings or floor debates. These include assessments of evidence and law, candid advice on strengths and weaknesses of legal arguments, and recommendations to take or not to take legal action against individuals and corporate entities.

The Department must seek to protect this give-and-take process so that the participants in the process can vigorously debate issues before them and remain able to provide decisionmakers with complete and honest counsel regarding the conduct of the Department's business. If each participant's contribution can be dissected by Congress in a public forum, then the free and candid flow of ideas and recommendations would certainly be jeopardized. The Supreme Court has recognized the legitimacy of this "chilling effect" concern: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decisionmaking process." United States v. Nixon, 418 U.S. 683, 705 (1974). Our experience indicates that the Department can develop accommodations with Congressional committees that satisfy their needs for information that may be contained in deliberative material while at the same time protecting the Department's interest in avoiding a chill on the candor of future deliberations.

The foregoing concerns apply with special force to Congressional requests for prosecution and declination memoranda and similar documents. These are extremely sensitive law enforcement materials. The Department's attorneys are asked to render unbiased, professional judgments about the merits of potential criminal and civil law enforcement cases. If their deliberative documents were made subject to Congressional challenge and scrutiny, we would face a grave danger that they would be chilled from providing the candid and independent analysis essential to just and effective law enforcement or, just as troubling, that

they might err on the side of prosecution simply to avoid public second-guessing. This in turn would undermine public and judicial confidence in our law enforcement processes, untoward consequences we are confident that Congress, like the Department, wishes to avoid.

#### Privacy

In addition to these concerns, disclosure of declination memoranda would implicate significant individual privacy interests as well. Such documents discuss the possibility of bringing charges against individuals who are investigated but not prosecuted, and often contain unflattering personal information as well as assessments of witness credibility and legal positions. The disclosure of the contents of these documents could be devastating to the individuals they discuss. We try to accommodate Congressional needs for information about declinations whenever possible by making appropriate Department officials available to brief Committee Members and staff. This affords us an opportunity to answer their questions, which can be helpful because it can include the context and process that accompanied the decision. Hence, the discussion with staff may provide useful information and minimize the intrusion on individual privacy and the chill on our attorneys' preparation of future deliberative documents.

#### Line Attorneys

The Department also has a strong institutional interest in ensuring that appropriate supervisory personnel, rather than line attorneys and agents, answer Congressional questions about Department actions. This is based in part upon our view that supervisory personnel, not line employees, make the decisions that are the subjects of congressional review, and therefore they should be the ones to explain the decisions. More fundamentally, however, we need to ensure that our attorneys and agents can exercise the independent judgment essential to the integrity of law enforcement and litigation functions and to public confidence in those decisions. Senator Orrin Hatch has recognized the legitimacy of the Department's practice in this area, observing that Congressional examination of line attorneys "could chill career Department of Justice lawyers in the exercise of their daily duties." See Letter to Attorney General Janet Reno from Senator Orrin Hatch, dated September 21, 1993. Representative Henry Hyde has likewise opposed Congressional interviews of line prosecutors. See Letter of Representative Hyde to Representative Carlos Moorhead, dated September 7, 1993. By questioning supervisors and ultimately the Department's Senate-confirmed leadership, Congress can fulfill its oversight responsibilities without undermining the independence of line attorneys and agents.

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In sum, the Department recognizes that the process of Congressional oversight is an important part of our system of government. We are committed to cooperating with oversight requests to the fullest extent consistent with our constitutional and statutory responsibilities.

281

We welcome your suggestions about how we should work together to accommodate the needs of our respective branches of government. Please do not hesitate to contact me if you would like to discuss these matters further. I intend at all times to work diligently with you toward satisfying the respective needs of our coordinate branches.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Raben". The signature is fluid and cursive, with the first name "Robert" and last name "Raben" clearly distinguishable.

Robert Raben  
Assistant Attorney General

cc: The Honorable Tony Hall  
Ranking Minority Member



U.S. Department of Justice  
Office of Legislative Affairs

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Office of the Assistant Attorney General

Washington, D.C. 20530

February 1, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This supplements our prior responses to your letter, dated June 5, 2001, which requested documents in connection with the Committee's oversight investigation about the FBI's handling of informants in Boston.

Enclosed are four documents from the files of the Department's Criminal Division in response to your request. We have redacted information about third parties from one multi-subject document. We will supplement this response if we locate additional documents responsive to your request.

I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Bryant".

Daniel J. Bryant  
Assistant Attorney General

Enclosures

cc: The Honorable Henry Waxman  
Ranking Minority Member

T-3/17/49  
123-66  
MHW:WTS:DED

Honorable Randolph W. Throuser  
Commissioner  
Internal Revenue Service  
Washington, D. C.

July 30, 1949

Dear Mr. Throuser:

There is attached a list of persons from Massachusetts, Rhode Island and Connecticut who are alleged to be involved in organized criminal activities.

*WTS*

We have already initiated income tax investigations with respect to many of these individuals. We also have under consideration opening additional cases at some future date. Accordingly, we are furnishing at this time a complete list of the individuals who should come within the Federal Organized Crime Drive.

*W/S  
JAH*

In order for this office to coordinate these investigations, we request that you furnish this office with the backgrounds thus far gathered and send us future periodic progress reports. It is further requested that your National Office Coordinator and the field agents investigating these cases be permitted to discuss the details of the inquiries with personnel assigned from the Organized Crime and Racketeering Section of the Criminal Division.

*W/W  
C/S*

Access to information and documents, on a need-to-know basis, will be limited to those attorneys or employees of my office who are actively engaged in the investigations or subsequent litigations, or other Federal employees assisting us in the investigations. Persons having access to these documents will be cautioned as to the confidentiality of the information contained therein and of the penalty provisions of Section 7213 of the Internal Revenue Code and Section 1905, Title 18, United States Code, regarding the unauthorized disclosure of such information.

Sincerely,

WILL WILSON  
Assistant Attorney General

DC:  
Hansode ✓  
Chase  
Lynch  
Barnes  
Wilson  
Willie

Attachment 

MASSACHUSETTS

Fleemi, Vincent James

Boston, Massachusetts

FBI/BOS-CRM-00002

FD-203 (Rev. 4-15-64)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

73A 1023

EFH:ded #77

TO : James J. Featherstone, Deputy Chief  
Organized Crime & Racketeering Section

DATE: November 29, 1971

EFH

FROM : Edward F. Harrington, Attorney in Charge  
Boston Field Office, Organized Crime  
& Racketeering Section

SUBJECT: Testimony of Government Agents and Attorney in the Case  
of State of California v. Joseph Baron

I will testify as to the names of the underworld figures against whom Joseph Baron testified on behalf of the United States Government and on behalf of the Commonwealth of Massachusetts, namely, Raymond Patriarca, Henry Tameleo and Ronald Cassesso in the federal case; and Henry Tameleo, Peter Limone, Louis Grieco, John Silvati, Roy French and Ronald Cassesso in the state prosecution.

I will also testify that during the period that Baron was awaiting to testify in the trial of these cases he was maintained in protective custody by the federal government at Thatcher's Island, off the Massachusetts Coast, and at an estate in Gloucester, Massachusetts; and that subsequent to his testimony he was relocated by the federal government to Fort Knox, Kentucky, in protective custody, and then permanently relocated to the Santa Rosa, California area under the name of Joseph Bentley. I will also testify that the government, in order to secure Baron's personal safety, changed Baron's name to Bentley and aided him in securing a position as a student in a cooking school in the Santa Rosa, California area. I will also be asked to testify that during the time that Baron was in Santa Rosa he requested, on several occasions, to carry a gun for his own protection which request was denied by me on the ground that I had no authority to permit him to carry a weapon.

Special Agents Rico and Condon of the Federal Bureau of Investigation will testify that they both advised the witness Baron during the period that he was in protective custody in Massachusetts awaiting to testify for the federal and state governments that they had received information from underworld sources that the LCN in the Boston-Providence area was attempting to locate Baron's whereabouts so that they could kill him prior to his testifying. Special Agent Rico will testify that he or about February 3, 1970 he personally advised Joseph Baron in Massachusetts that the LCN in this area was aware that Baron was in the area and Baron was told by Rico that two individuals were here to do a "hit" on an unknown individual, who could be Baron, and that Baron, therefore, should immediately leave the

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DEPARTMENT OF JUSTICE  
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FEDERAL BUREAU OF INVESTIGATION  
CRIMINAL DIVISION

Massachusetts area and return to California.

Special Agent Condon will testify that in January, 1970 two well known "hit men" from the Boston area, Harry Johnson and Allan Fidler, traveled to the San Francisco area, and according to informants of the Boston Office of the Federal Bureau of Investigation were supposed to be making the trip to harm someone in the San Francisco area. Investigation determined that these individuals traveled extensively in the Northern California area. Local police stopped these individuals and ascertained that they had assumed false identities and they were ordered to leave San Francisco and they returned to the Boston area. A search by the police department, prior to their detention, disclosed that these individuals had two hand weapons that were stolen and a supply of ammunition. Johnson and Fidler were detained in an area in close proximity to the then whereabouts of Joseph Baron. Baron was advised by Special Agent Condon as to these facts and was urged to be careful as these individuals might be traveling to kill Baron.

Special Agents Condon and Rico will testify as to State of California witness Geraway's reputation in the Massachusetts community for truth and veracity. Geraway, who is presently serving a life sentence for murder at Walpole Correctional Institution, is considered by law enforcement authorities as a congenital liar.

It is requested that the authority to testify for Rico, Condon and me cover all the areas of testimony related to above in the event that one of the witnesses' testimony is delved into on the cross-examination of the other.

Form 64-10  
(Rev. 4-26-65)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

EFH:ded

DATE: 11/15/71

73A 1023 #77

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NOV 16 1971

CRIMINAL DIVISION

TO : James J. Featherstone, Deputy Chief  
Organized Crime & Racketeering Section

9FH FROM : Edward F. Harrington, Attorney in Charge  
Boston Field Office, Organized Crime  
and Racketeering Section

SUBJECT: Subpoenas Directed to Special Attorney Harrington and Special  
Agents Rico and Condon to Appear on Behalf of Defendant Joseph  
Baron

This is in response to your telephonic request of November 12, 1971 to set forth the testimony expected from Special Agents Rico and Condon and me on behalf of the defendant in the case of California v. Joseph Baron.

It is my judgment that the federal officials involved should respond to Baron's subpoena as it is essential that the government should fulfill its commitment to Baron to do all within its power to insure that he suffers no harm as a result of his cooperation with the federal government. (See my memoranda to you dated March 23, 1971 and October 12, 1971.)

Greg Evans, Chief Investigator, Sonoma County Public Defender's Office, has advised me that the defense wishes me to testify in substance to the extent of Baron's cooperation with the federal government, the names and stature of the individuals convicted as a result of his testimony and the steps taken by the federal government to insure his personal security from retaliation by the underworld, namely, relocation to Sonoma County, California, change of identity, and the obtaining of a job.

The defense wishes Special Agent Condon to testify in substance as an expert witness regarding organized crime in the New England area, about certain clandestine movements undertaken by the underworld during the Spring and Summer of 1970, whose purpose was to "set Baron up for" extermination.

The defense wishes Special Agent Rico to testify as an expert in organized crime in the New England area, about information he received in the period from the Spring of 1969 through the Winter of 1969 concerning underworld plans and movements, whose purpose was to exterminate Baron, which information was conveyed by Rico to Baron in order to preserve his personal safety.

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DEPARTMENT OF JUSTICE  
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R.A.O.  
CRIMINAL DIVISION

- 2 -

It is requested that Special Attorney Albert P. Cullen, Jr., who is intimately cognizant of all details relating to the Baron situation, be authorized to accompany Special Agents Rico and Condon and myself to California to insure that the interests of the government are preserved.

KIERNAN R. MYLAND  
DISTRICT ATTORNEY

Office of the District Attorney  
County of Sonoma  
HALL OF JUSTICE  
2688 MENDOCINO AVENUE  
SANTA ROSA, CALIFORNIA 95401  
TELEPHONE 753-1212

*will you ask  
Francis Harrington  
Assistant District Attorney*

October 26, 1971

John Mitchell, U.S. Attorney General  
United States Department of Justice  
Washington, D.C.

*78A 1023  
#77*

Attention: Director of Organized Crime Division

Dear Sir:

The Sonoma County District Attorney's Office is in the process of prosecuting one Joseph "Baron" Barbosa for a murder. The Baron, as he is known, was an enforcer for the Mafia in the Boston area and worked under Patriarca there. He later split with Patriarca and testified against him.

The enclosed copy of a news article which appeared in our local Sunday paper indicates that the defense intends to call Francis Harrington, attorney in charge of the U.S. Crime task force, as a witness for the Baron. This is disconcerting for the prosecution because it presents a picture of a house divided against itself. The murder for which we are prosecuting the Baron has nothing to do with his Mafia connections.

When and if Mr. Harrington testifies as a defense witness, it would be appreciated if he would do me the courtesy of contacting me first and allowing me to interview him concerning his possible testimony.

Very truly yours,

*Kiernan R. Myland*  
KIERNAN R. MYLAND  
District Attorney

KRH:hm  
Enclosure

*dit to  
machine 10/29/71  
6 Harrington*

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CRIMINAL DIVISION

FBI/BOS-CRM-00007



The Honorable John Ashcroft  
February 4, 2002  
Page 2 of 4

reality, will withhold all deliberative documents from Congress in the future. Indeed, it is difficult to think of a stronger case for Congressional access to deliberative documents than the Boston case, as there is extensive evidence of Justice Department wrongdoing, and the documents at issue are an average of 22 years old. If the Department does not provide Congress with access to the Boston documents, it is clear that the Department will not provide access to deliberative documents in any case. As of today, the Department continues to refuse to allow the Committee to even review those documents. Thus, the case-by-case analysis articulated by the Justice Department on December 13, 2001, appears to be a canard.

With respect to the issue presented by the Committee's February 6, 2002, hearing, it appears that the Department's basic position is that Congressional access to deliberative Justice Department documents is so common that it would be impossible to catalogue all of the cases in which it has occurred. This position squarely contradicts statements which have been made by a number of Justice Department and White House staff over the past several months that they are simply trying to reverse bad precedents set during the Clinton Administration, and are attempting to return to the policy of the Reagan Administration. For example, when he met with me on July 18, 2001, Assistant Attorney General Michael Chertoff stated that before 1993, the Justice Department did not provide deliberative materials to Congress. When this assertion was disputed, Mr. Chertoff stated that the articulated position prior to the Clinton Administration was that the Department could not turn over deliberative memos, and conceded only that there "may have been some slippage" from that policy.

Now it appears that the Justice Department concedes that Congress has obtained access to deliberative Justice Department records, including prosecution and declination memoranda, well before the Clinton Administration. This is an important concession, as it demonstrates that the Justice Department and White House are attempting to create a new policy which reverses the clear historical record going back to the Teapot Dome scandal. Moreover, the cases cited by Mr. Bryant show that there has not been any policy against providing deliberative documents, and in fact, such documents have been provided to Congress without any objection from the Justice Department. In the Billy Carter case cited by Mr. Bryant, the Justice Department did not make any effort to resist turning over the records. In the General Dynamics case cited by Mr. Bryant, the Reagan Justice Department provided extensive deliberative documents to Congress after a cursory objection. It is difficult to dismiss the General Dynamics case by suggesting, as Mr. Bryant does, that the Reagan Administration may not have "considered its implications as we have in the instant manner." Rather, the Reagan Administration fully understood the implications of providing deliberative documents to Congress, and did so on numerous occasions.

Nevertheless, I am concerned by the apparent lack of effort made by the Department in attempting to locate relevant precedent. There are a number of other cases documented in public records where the Department apparently provided deliberative prosecutorial records to Congress. Moreover, as you likely know, in a number of cases, deliberative documents have been shared with Congress, and there is no Committee hearing or report which documents the fact that access was provided. In these cases, the fact of Congressional access is kept confidential, usually at the request of the Justice Department. I hoped that Mr. Bryant would

The Honorable John Ashcroft  
February 4, 2002  
Page 3 of 4

make an effort to speak to prior Assistant Attorneys General for Legislative Affairs to learn of such cases, and include them in his testimony.

While the Department was only able to locate three relevant cases where deliberative documents were provided to Congress, it cited two cases as examples in which executive privilege was claimed over deliberative prosecutorial documents. Neither appears to be very relevant to the issue before the Committee. While President Theodore Roosevelt did refuse to provide documents to the Senate, I hope that the Justice Department is not relying on President Roosevelt's claim as support for the action it is taking now. First, a substantial body of caselaw regarding executive privilege has developed in the last 93 years which limits the President's ability to withhold records from Congress. Second, President Roosevelt's position would deny Congress not only deliberative documents, but also any explanation from the Justice Department for its actions. This rules out any possibility of accommodation. The other case cited by the Department was not a claim of executive privilege at all. Rather, in a 1957 antitrust investigation by the House Judiciary Committee, the Justice Department simply declined to provide the records requested by the Committee. The President did not claim executive privilege.

I believe that at the conclusion of the February 6 hearing, it will be clear that there have been a substantial number of cases in which Congress has received access to deliberative prosecutorial Justice Department records, and no modern cases where such records were withheld on the basis of executive privilege. If indeed that is the case, I think it will be clear that the Administration is creating an unprecedented policy to restrict Congressional oversight of the Justice Department.

You have also requested that Mr. Chertoff testify together with Mr. Bryant at the February 6 hearing. I am not inclined to grant your request. I believe that Mr. Bryant is the Justice Department official best suited to respond to the Committee's inquiry. The February 6 hearing will focus narrowly on the question of the history of Congressional access to deliberative Justice Department records. This is an issue which primarily concerns the Office of Legislative Affairs. Indeed, staff from the Office of Legislative Affairs have been discussing this precise issue with my staff for many months. In previous administrations, staff from Mr. Bryant's office were frequently responsible for providing access to the types of documents currently under dispute. There will, however, be an occasion in the future when I will request that Mr. Chertoff and the Attorney General testify about the Justice Department's concerns.

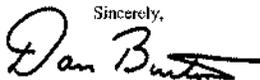
In his February 1, 2002, letter, Mr. Bryant also asked that a meeting between Committee and Justice Department staff take place before the February 6 hearing. I would welcome such a meeting. As you know, my staff and I have met or spoken with Justice Department staff dozens of times trying to resolve this issue. I would be pleased to continue discussions in an effort to

293

The Honorable John Ashcroft  
February 4, 2002  
Page 4 of 4

resolve this disagreement. However, my position is unchanged -- the Committee must have access to the Boston documents it has subpoenaed.

Sincerely,

A handwritten signature in black ink that reads "Dan Burton". The signature is written in a cursive, flowing style with a prominent initial "D".

Dan Burton  
Chairman

cc: Members, Committee on Government Reform



U.S. Department of Justice  
Office of Legislative Affairs

---

Washington, D.C. 20530

February 8, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This is to reiterate again the Department's request to meet with you about the Boston documents that are responsive to the Committee's subpoena of September 6, 2001.

As I indicated at the hearing on February 6, a meeting would provide an opportunity for Department officials to describe each document to you and learn more about the Committee's particularized needs. We believe that such an exchange of information would be helpful to resolving the dispute regarding these documents.

We also believe that a meeting would be helpful to your preparations for the Committee's hearing on February 14. Your web site indicates that Judge Edward Harrington is scheduled to appear at the hearing. One of the documents we have offered to discuss with you was prepared by then Assistant United States Attorney Harrington and contains some information concerning the Deegan matter. Accordingly, I want to reiterate our request to meet with you about the subpoenaed Boston documents so that we can discuss whether the Committee has a particularized need regarding this document in advance of the February 14 hearing.

Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

*Carl P. Thorne / DAAG*  
Daniel J. Bryant  
Assistant Attorney General *for DJB*

cc: The Honorable Henry Waxman  
Ranking Minority Member  
Members of the Committee

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BERNARD MANDERLY VERMONT  
 INDEPENDENT

February 11, 2002

The Honorable Daniel J. Bryant  
 Assistant Attorney General  
 Office of Legislative Affairs  
 United States Department of Justice  
 Washington, D.C. 20530

Dear Dan:

Thank you for your letter of February 8, 2002. I appreciate your assurances that miscommunications by Justice Department staff on January 25, 2002, regarding the status of negotiations between the Committee and Department were clarified that day and that "Department staff ensured that reports about the negotiations contained no inaccurate information."

As you may know, an article on the ABC website by Beverley Lumpkin entitled "Draping History" (attached) contained the following statement: "[a]ccording to sources familiar with the situation, Justice had decided to offer a compromise. It would make relevant portions of the Boston documents available for the committee's perusal. It would not provide copies, however." I would appreciate your clarification as to whether this report is accurate. As you know, this offer was never communicated to the Committee, which leaves one of three possibilities: (1) the Justice Department did make such a decision, never communicated it to the Committee, and did communicate it to Ms. Lumpkin; (2) the Justice Department never made such a decision, and Justice Department personnel misinformed Ms. Lumpkin, or (3) Ms. Lumpkin simply made an error (although she informs me that she did not).

Thank you for your attention to this matter.

Sincerely,

James C. Wilson  
 Chief Counsel

cc: David Ayres, Chief of Staff to the Attorney General



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January 28, 2002

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Attorney General John Ashcroft appears under the Spirit of Justice statue. (Joe Marquette/AP Photo)

### Draping History Halls of Justice: A Weekly Look Inside the Justice Department

By Beverley Lumpkin  
abcNEWS.com

WASHINGTON, Jan. 25 — About three weeks ago, I received a tip. The attorney general was fed up with having his picture taken during events in the Great Hall in front of semi-nude statues.

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STORY HIGHLIGHTS  
New Agent Bonanza Other FBI Tidbits Justice Attorney Diversity Burton Re-Re-Rides



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He had ordered massive drapenes to conceal the offending figures. But initially not only could the story not be confirmed -- it was strongly denied.

As some of you may know the Justice Department building was constructed during the 1930s as a WPA project, completed in 1934. The artwork and fittings were strongly influenced by the Art Deco movement. Much of the ornamentation in the building is made of aluminum, apparently a big Art Deco feature.

Watch when you want  
NIGHTLINE watch it now!

ABC NEWS Shopping Guide

The Great Hall is basically what it sounds like — a large, even grand, two-story room used for department events and ceremonies. The formal entrance up a winding stairway is adorned with murals depicting great figures in the history of law, including Moses, Hammurabi, and John Marshall.

At the opposite end of the hall, on either side of the stage, are two enormous and stylized but largely naked aluminum statues. On the left, the female figure represents the Spirit of Justice; the male on the right is the Majesty of Law. The male is clad in only a cloth draped over his essential parts; the female wears a sort of toga-style garment, but one breast is entirely exposed. She's been fondly referred to for years by at least some as "Minnie Lou."

And she's the one the photographers seek out. The most famous pictures of all were shot when former U.S. Attorney General Edwin Meese proudly released the final report of his commission on pornography. No one in the Great Hall that day could ever forget the spectacle of the still photographers writhing on the floor, flat on their backs, in order to grab the shot of Meese holding up the porn report with Minnie Lou's breast over his shoulder.

So there were some who wondered how Attorney General John Ashcroft, known as a strongly religious and conservative man, would get along with the figures once he

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became attorney general.

For a long time he didn't seem to mind. But last November he and Deputy Attorney General Larry Thompson staged a major event in the Great Hall, to announce their plans for restructuring the Justice Department to address the new challenge of fighting terrorism. Many papers the next day used a photo of the attorney general with — you guessed it — Minnie Lou and that breast right over his shoulder.

According to my original tipster, that was the final straw for Ashcroft, and he ordered that the statues henceforth be draped.

Public affairs people however denied any such thing. They stoutly maintained that the attorney general had never complained and that no draperies had been ordered. They pointed out that periodically, through different administrations, draperies were sometimes rented for particular events.

They noted that former spokeswoman Mindy Tucker always hated the statues; Mindy told me Thursday it was her view that half the women in the department were offended by them and the other half considered them art.

Well, I guess this is a lot of background to get to the point: the draperies have in fact been ordered. Minnie Lou and her male now can only be imagined. The draperies installed last week at a cost of just over \$8,000.

And it turns out that they were indeed ordered by someone in the attorney general's office, who delivered the request to the Justice Management Division and asserted it was the attorney general's desire. I'm told she was the only person in the attorney general's office who knew about it. She's his advance person, and she said it was done for "aesthetic purposes" — she just thought it would look better when staging events in the Great Hall.

So now it appears that rather than making an occasional appearance, the draperies are here to stay — unless and until someone has the temerity to request an event without them. ▲

#### New Agent Bonanza

This week the FBI announced what it is calling its "most aggressive hiring campaign in recent years." With the new counter-terrorism enhancements in its budget, the Bureau is doubling or even tripling the number of agents it will hire this fiscal year compared to the last several years; the plan is to bring in 967 new agents by Sept. 30.

The first new class began Dec. 31; the second Jan. 14. In order to reach the goal, they will have to start a new class of 45-50 spanking new agents every two weeks until the end of the fiscal year.

Along with the new emphasis on counter-terrorism is a focus on recruiting those with "certain critical skills deemed essential" for the new FBI: computer science and info tech; engineering; physical sciences; foreign language — particularly Arabic, Farsi, Pashtu, Urdu, Chinese, Japanese, Korean, Russian, Spanish and Vietnamese; foreign counterintelligence; law enforcement or other investigative work; counter-terrorism; and military intelligence experience.

Of course, anyone with those skills must also meet basic qualifications, including a four-year degree and three years of professional experience. He or she must be a US citizen between the ages of 23 and 36 and possess a valid driver's license; must pass a background investigation including drug and polygraph exams; be willing to carry a firearm, and to relocate to any FBI field office.

New agents receive a starting salary when they show up for training at the Academy in Quantico of \$43,705 and after graduation that rises to a range of \$53,743 to \$58,335

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depending on location.

Several officials pointed out they have no problem getting applications -- it's a question of getting the people they want. Right now there are 60,000 applications in the database of people who've met the basic qualifications. But the bureau is looking for (you guessed it) the "Best and Brightest."

And it is very competitive, even though virtually everyone who joins ends up taking a pay cut. One official pointed out, for example, that lawyers earning six-figure salaries become fed up with law firm drudgery, want to serve their country, or just long for more interesting work. ▲

#### Other FBI Tidbits

There is serious consideration being given to re-opening the immensely popular FBI tour, closed since Sept. 11. They are looking at a re-opening by spring, but it is not yet clear if the tour will, like the White House one just recently reinstated, be limited to school groups, or whether it will be open for all. New tour guides will have to be found; they're usually students and other part-time workers so the previous ones were all let go after the terrorist attacks.

Several groups of FBI agents, from the field offices in Washington, D.C., New York City and Miami have gone to Guantanamo Bay, Cuba, to help question the battlefield detainees. One agent asserted there had been "dozens and dozens" of volunteers from within the bureau for this assignment, explaining it's "a unique opportunity" to participate in something both important and historic. ▲

#### Justice Attorney Diversity

Last week a Justice Department announcement that it had awarded a contract to KPMG Consulting to conduct an analysis of Justice's attorney workforce brought virtually no attention. But I found it rather curious.

No lawsuits had been filed, no complaints heard, from any groups asserting there are problems with diversity. Nevertheless, the study was commissioned by the Strategic Management Council (fondly called the Strategy Council by the pressroom), which is chaired by Deputy Attorney General Thompson. The study will focus on the components with the largest numbers of lawyers, and should be completed by this spring.

But as if prefiguring the study's conclusions, the press release said that the consultant "will develop a strategy for improving diversity in the Justice attorney workforce over the next two years."

At this writing no one from the current lineup has been able to explain the background and genesis of this study. But a former senior aide to former Attorney General Janet Reno shed some light on the question. He said the issue of attorney diversity had been "absolutely bubbling below the surface." But he suggested that those who were concerned had not wanted to cause trouble for fellow Democrats. Further, it was clear that Reno at least focused on the subject quite a bit.

This official recalled that Reno while exhorting her staff to hire only the best, also strongly urged them to engage in outreach to women and minorities. Nevertheless, he said, Reno fretted throughout her term that her staff were still not recruiting enough in minority areas; that there was still too much of a tendency to hire "the friend of a friend or the son of a friend."

There were two additional problems facing Justice officials trying to recruit qualified minorities: the best were in high demand from private law firms, and Justice salaries could not be competitive; and African-Americans just out of school had much higher student loan burdens, so they were less likely to be able to afford a Justice starting salary of \$40,000 compared to law firms' starting range of \$120,000 to \$140,000.

This official speculated — after carefully apologizing if he sounded "crass" — that it's entirely possible Thompson and the department might feel far more vulnerable to complaints about the lack of diversity in a Republican administration. ▲

#### Burton Re-Re-Redux

A new clash between the Justice Department and Dan Burton, chairman of the House Government Reform Committee, was avoided at least in public this week when Burton postponed a hearing scheduled for Wednesday. But behind the scenes, positions were hardening.

The latest contretemps began when President Bush, at the recommendation of Justice, asserted executive privilege for certain internal Justice documents craved by Burton and his counsel.

They fall into two groups: first, those dealing with the scandalous behavior of the FBI in Boston over a 30-year period during which it protected two mobsters who had secretly become informants. That protection allegedly included covering up murders and allowing an innocent man to serve many years in prison.

Not only would many of the relevant documents be 30 years old, but also Justice and FBI officials have acknowledged there was corruption; they have indicted former FBI agents along with the mobsters they allegedly coddled.

However, the second set of documents relate to the Bill Clinton fundraising investigation. They include the briefly notorious "Conrad memo" (the then head of the campaign finance task force wanted to pursue an investigation against Vice President Al Gore but everyone else at Justice disagreed) and other so-called "declination" memos — in which officials set forth their reasons for declining to pursue an investigation.

According to sources familiar with the situation, Justice had decided to offer a compromise. It would make relevant portions of the Boston documents available for the committee's perusal. It would not provide copies, however. And Justice remained adamant that the fund-raising documents absolutely would not be made available.

Assistant Attorney General Mike Chertoff, during a busy week when as two sources pointed out he should have been spending all his time fighting terrorists, climbed into a car and personally set off for Capitol Hill to discuss the offer. But during the brief journey he received a phone call from the committee staff telling him not to bother; the committee still wanted the Boston documents.

Chertoff was far from amused; I'm told steam was almost visibly coming from his ears. Subsequently some of his aides favored just telling the committee to pound sand. But calmer voices may prevail, and there are plans afoot to try again to propose the compromise.

Meanwhile, Burton announced a new set of hearings, beginning Feb. 6, with Assistant Attorney General for Legislative Affairs Dan Bryant in the hot seat. Counsel James Wilson said the situation is highly complex and it's unfair to suggest Burton is being unreasonable. Wilson said they would never ask for grand jury material or information about open cases. But, he pointed out, "there are times when Congress does need access to these kinds of documents." Stay tuned. ▲

*Beverley Lumpkin has covered the Justice Department for 16 years for ABCNEWS. Halls of Justice appears every Saturday.*

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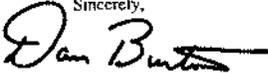
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301

The Honorable John Ashcroft  
February 11, 2002  
Page 2 of 2

Thank you for your assistance in this matter.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member

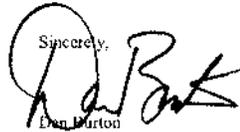


The Honorable John Ashcroft  
February 12, 2002  
Page 2 of 2

Committee on February 14, and the committee has a great interest in knowing what Judge Harrington knew about the evidence in the Deegan murder case, including, but not limited to, the evidence in the case, the reliability of witnesses in the case, and whether key witnesses in the case were government informants. Perhaps as important, Judge Harrington was a prosecutor in a 1968 trial of Raymond Patriarca, and it is important to understand the facts pertaining to this prosecution as well. It appears that the Justice Department agrees that it is essential that the Committee receive the Harrington memorandum in advance of the February 14 hearing, and that the Committee can clearly meet even the high threshold of proof being demanded (inappropriately, in my view) by the Justice Department. If that is the case, please provide the Committee with access to the document now, without a briefing.

While I appreciate the fact that the Justice Department has admitted that one of the 10 withheld documents has great relevance to the Committee's upcoming hearing, the Department's admission reveals the flaws with its approach to this entire matter. The Justice Department only recognized the importance of the Harrington document once the Committee announced that Judge Harrington was testifying at an upcoming hearing. The Department did not know that Committee staff interviewed Judge Harrington almost two months ago, and did not have the benefit of the Harrington memorandum for that interview. The other nine memoranda being withheld by the Justice Department likely have just as much relevance to the Committee's investigation as the Harrington memorandum, except that the Justice Department is unwilling to recognize that fact.

I believe that the Committee's investigation of Justice Department corruption in Boston is far too important to be wasting time with procedural gamesmanship. Rather than seeing this as an opportunity to establish precedents to place roadblocks in the way of Congressional oversight, the Justice Department should see this case as an opportunity to come clean and right past wrongs. I hope you will agree, and that you will provide the Committee with access to the subpoenaed Boston documents.

Sincerely,  
  
Dan Burton  
Chairman

cc: Members, Committee on Government Reform



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

February 13, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated February 12, 2002, regarding the Committee's hearing on February 14, 2002, which will include testimony from Judge Edward Harrington. Judge Harrington was an Assistant United States Attorney in 1967 when he prepared a memorandum that we have identified as one of those responsive to the Committee's subpoena of September 6, 2001.

The Committee has subpoenaed four categories of Department of Justice prosecutorial documents: those relating to (i) the potential appointment of a special counsel for the campaign financing investigation; (ii) the investigation of Mark Middleton; (iii) the investigation of Ernest Howard; and, (iv) the investigation of certain individuals investigated and prosecuted by the Boston United States Attorney's Office (i.e., the Boston matter). In light of the particular facts and circumstances that existed at the time of the Committee's hearing on December 13, including the Committee's articulation of its informational needs and the information already provided by the Department to the Committee, and consistent with long-standing constitutional principles applicable to these extraordinarily sensitive Executive Branch documents, the President on December 12 asserted executive privilege as to those four categories of documents. The President also directed that the Department work with the Committee to continue to accommodate the Committee's informational needs to the extent appropriate and consistent with the constitutional separation of powers.

Since the President's assertion of privilege, the Committee has challenged the privilege assertion with respect to the fourth category, the ten Boston documents. As Judge Gonzales indicated in his January 10 letter, the Boston documents should be assessed in light of the unusual circumstances present here, where the Executive Branch has filed criminal charges alleging corruption in the FBI investigative process. Further, we appreciate the Committee's interest, as articulated in your letter, in learning what information Judge Harrington knew about the Deegan matter, including the evidence and the reliability of witnesses.

Based upon your February 12 letter, other Committee correspondence, and additional information provided by the Committee, the Committee has now demonstrated a particular and

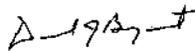
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critical need for access to the one Harrington memorandum sufficient to satisfy constitutional standards and we are prepared to meet with you and make it available for your review in advance of the hearing. Please note that much of the relevant underlying factual information contained in this memorandum has already been provided to the Committee pursuant to other document requests. I am advised that there are legally-mandated redactions in the Harrington memoranda relating to Rule 6(e) of the Federal Rules of Criminal Procedure.

We will contact Committee staff to discuss a convenient time for your review of the Harrington memorandum. In addition, we have previously offered to meet with the Committee to discuss all of the Boston documents, and we reiterate that offer here. It is our hope that we can continue to work with the Committee to meet its informational needs consistent with your interests and ours.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

Subpoena Duces Tecum

By Authority of the House of Representatives of the Congress of the United States of America

To United States Department of Justice Serve: Attorney General John Ashcroft

You are hereby commanded to produce the things identified on the attached schedule before the full Committee on Government Reform of the House of Representatives of the United States, of which the Hon. Dan Burton is chairman, by producing such things in Room 2157 of the Rayburn Building, in the city of Washington, on March 1, 2002, at the hour of 5:00 PM

To Nick Mutton or US Marshals Service to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at the city of Washington, this 19th day of February, 2002

Dan Burton Chairman

Attest: Jeff Traudahl Clerk by Nicholas C. Vaus Asst. to the Clerk

Subpoena for ..... U.S. Department of Justice  
Served by: Attorney General John Ashcroft  
Tenth Street & Constitution Avenue, N.W.  
Washington, D.C. 20530

before the Committee on the .....  
Government Reform.....

Served To: Carl Thorsen  
By: Nick Mutton  
by facsimile 2/19/02 5:00pm  
M.D. Mutton

..... House of Representatives

SCHEDULE A

**Subpoena Duces Tecum  
Government Reform Committee  
United States House of Representatives  
2157 Rayburn House Office Building  
Washington, D.C. 20515**

United States Department of Justice  
**Serve: Attorney General John Ashcroft**  
Tenth Street & Constitution Avenue N.W.  
Washington, D.C. 20530

The Committee hereby subpoenas certain records. Please provide logs which indicate each record's Bates number, author, description, and source file. If you have any questions, please contact Chief Counsel James C. Wilson at (202) 225-5074.

Definitions and Instructions

(1) For the purposes of this subpoena, the word "record" or "records" shall include, but shall not be limited to, any and all originals and identical copies of any item whether written, typed, printed, recorded, redacted or unredacted, transcribed, punched, taped, filmed, graphically portrayed, video or audio taped, however produced or reproduced, and includes, but is not limited to, any writing, reproduction, transcription, photograph, or video or audio recording, produced or stored in any fashion, including any and all activity reports, agendas, analyses, announcements, appointment books, briefing materials, bulletins, cables, calendars, card files, computer disks, cover sheets or routing cover sheets, drawings, computer entries, computer printouts, computer tapes, external and internal correspondence, diagrams, diaries, documents, electronic mail (e-mail), facsimiles, journal entries, letters, manuals, memoranda, messages, minutes, notes, notices, opinions, statements or charts of organization, plans, press releases, recordings, reports, Rolodexes, statements of procedure and policy, studies, summaries, talking points, tapes, telephone bills, telephone logs, telephone message slips, records or evidence of incoming and outgoing telephone calls, telegrams, telexes, transcripts, or any other machine readable material of any sort whether prepared by current or former employees, agents, consultants or by any non-employee without limitation. "Record" or "records" shall also include all other records, documents, data and information of a like and similar nature not listed above.

(2) For purposes of this subpoena, the terms "refer" or "relate" and "concerning" as to any given subject means anything that constitutes, contains, embodies, identifies, mentions, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.

(3) This subpoena calls for the production of records, documents and compilations of data

and information that are currently in your possession, care, custody or control, including, but not limited to, all records which you have in your physical possession as well as any records to which you have access, any records which were formerly in your possession, or which you have put in storage or anyone has put in storage on your behalf. Unless a time period is specifically identified, the request includes all documents to the present.

(4) The conjunctions "or" and "and" are to be read interchangeably in the manner that gives this subpoena the broadest reading.

(5) No records, documents, data or information called for by this subpoena shall be destroyed, modified, redacted, removed or otherwise made inaccessible to the Committee.

(6) If you have knowledge that any subpoenaed record, document, data or information has been destroyed, discarded or lost, identify the subpoenaed records, documents data or information and provide an explanation of the destruction, discarding, loss, deposit or disposal.

(7) When invoking a privilege as to any responsive record, document, data or information as a ground for withholding such record, document, data or information, list each record, document, compilation of data or information by data, type, addressee, author (and if different, the preparer and signatory), general subject matter, and indicated or known circulation. Also, indicate the privilege asserted with respect to each record, document, compilation of data or information in sufficient detail to ascertain the validity of the claim of privilege.

(8) This subpoena is continuing in nature. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date shall be provided immediately upon location or discovery subsequent thereto.

Subpoenaed Items

Please produce to the Committee all records, including reports and draft reports, relating to an FBI Office of Professional Responsibility investigation supervised by Charles Prouty, and focusing on allegations of FBI mishandling of confidential informants.

JIM BURTON, INDIANA, CHAIRMAN  
 ALABAMA: JIMMIE BROWN, YOUTH  
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**Congress of the United States**  
**House of Representatives**

COMMITTEE ON GOVERNMENT REFORM  
 2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

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BERNARD SANDERS, VERMONT, RANKING MEMBER

February 20, 2002

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Washington, D.C. 20530

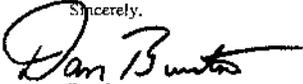
Dear General Ashcroft:

I am writing to request that the Justice Department provide the Committee with a copy of the June 1967 prosecution memorandum drafted by Edward Harrington. My staff made an oral request for this document earlier today, and it was refused.

This document and a number of others were subpoenaed by the Committee in September 2001. Last week, the Justice Department allowed Committee staff to review the memorandum. The Committee's investigative needs require the Committee to have possession of a copy of the Harrington memorandum. Tomorrow and Friday, Committee staff will be in Boston interviewing Dennis Condon, a former FBI agent who is a central figure in the Committee's investigation. It is necessary for Committee staff to show the memorandum to Mr. Condon and ask him questions about it. I also expect that Committee staff will be interviewing other witnesses in the coming weeks who will be questioned about the Harrington memorandum.

The Committee's need for possession of the Harrington memorandum cannot be seriously questioned. As you may know, your own investigators showed the Harrington memorandum to Judge Harrington while interviewing him recently. I believe that Committee staff should have the same opportunity to question witnesses about relevant documents, and that witnesses should have the right to review those documents about which they are questioned.

As my staff will be conducting the interview on February 21 and 22, 2002, I request that you provide a copy of the memorandum to the Committee by 10:00 a.m. on February 21, 2002.

Sincerely,  
  
 Dan Burton  
 Chairman

cc: The Honorable Henry A. Waxman, Ranking Minority Member



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APR 01 2002

GOVERNMENT REFORM  
COMMITTEE

U.S. Department of Justice

Office of Legislative Affairs

---

Washington, D.C. 20530

February 22, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This confirms the agreement reached by Committee staff with Department representatives today concerning the use of a particular document in the deposition of former FBI agent Dennis Condon today.

The document, which has been redacted in accordance with Fed. R. Crim. P. 6(e), is a memorandum, dated June 6, 1967, by Walter T. Barnes and Assistant United States Attorney Edward Harrington, regarding a prosecution of Raymond Patriarca and others. As part of the accommodation process, Committee staff previously reviewed the document on a confidential basis in light of your particularized need in advance of your February 14, 2002 hearing, at which Judge Harrington testified.

In furtherance of that accommodation process, we have agreed that the redacted document may again be reviewed by the Committee staff for the limited purpose of Mr. Condon's deposition and pursuant to your agreement that it will not be publicly disclosed, no copies will be made, and it will be returned to the Department at the end of the deposition. At the deposition, it also may be shown to Mr. Condon and his counsel. This agreement is based, again, on our efforts to accommodate the Committee's particularized need for access to the document in the deposition and should not be considered as a precedent regarding other Boston documents.

I hope that this further accommodation is helpful to the Committee. We look forward to conferring with Committee staff on February 25, 2002 to discuss other Boston documents.

Sincerely,

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

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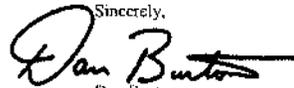
EDWARD SANDERS, VERMONT, MEMBER ALTERNATE

February 25, 2002

The Honorable John Ashcroft  
 Attorney General  
 U.S. Department of Justice  
 950 Pennsylvania Avenue, NW  
 Washington, DC 20530-0001

Dear General Ashcroft:

This letter follows earlier verbal requests to meet with Justice Department officials to discuss evidence held under seal in *United States v. Saleme*. As your staff is aware, I asked Judge Wolf for access to information held under seal and he replied on January 11, 2002. Shortly thereafter, my staff made verbal requests to the Office of Legislative Affairs to arrange for a meeting to discuss the Department's position regarding sealed material from the *Saleme* Case. Unfortunately, there has been no response to date. I write today to request your assistance in arranging a meeting to discuss this matter.

Sincerely,  
  
 Dan Burton  
 Chairman

cc: Judge Mark Wolf  
 United States District Court



U.S. Department of Justice

Federal Bureau of Investigation

Washington, D. C. 20535-0001

March 12, 2002

**RECEIVED**

MAR 13 2002

HOUSE COMMITTEE ON  
GOVERNMENT REFORM

Honorable Dan Burton  
Chairman  
Committee on Government Reform  
United States House of Representatives  
Washington, DC 20515

RE: REQUEST FOR RESPONSES AND DOCUMENTS

Dear Mr. Chairman:

This responds to your letter, dated January 31, 2002, seeking information in connection with your oversight investigation of the FBI's handling of organized crime investigations in Boston, Massachusetts and related matters. Specifically, you requested information concerning any investigation of allegations that retired Special Agent H. Paul Rico suborned perjury. In connection with your inquiry, you submitted a copy of an FBI document which provides details concerning these allegations made by John J. Kelley during testimony given in the murder trial of Louis Manocchio.

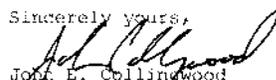
As reflected in the document enclosed with your letter, at the time these allegations were made, H. Paul Rico was retired from the FBI. No investigation was undertaken by the FBI's Office of Professional Responsibility (OPR), which has jurisdiction to investigate allegations of serious misconduct or criminal activity on the part of on board FBI employees. The Department of Justice Office of Professional Responsibility has advised that they have found no record of an investigation of Mr. Rico in connection with these allegations. Furthermore, a search of FBI indices has not uncovered any criminal investigative files which suggest that an investigation was undertaken by the FBI's Criminal Investigative Division, which includes the Organized Crime Section, in response to Mr. Kelley's allegations.

Honorable Dan Burton

In response to your query concerning the handwritten notations that appear on the right side of the document and that resemble the letter "J," we believe, based on non-scientific comparisons, the initial that appears next to the handwritten notations is that of Special Agent David Flanders, an Inspector assigned to OPR in 1983. Please be advised, Mr. Flanders retired from the FBI in 1994.

Please let me know if we can be of additional assistance to the Committee.

Sincerely yours,

  
John E. Collingwood  
Assistant Director  
Office of Public and  
Congressional Affairs

1 - Honorable Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform  
House of Representatives  
Washington, DC 20515



U. S. Department of Justice

Office of Legislative Affairs

---

Office of the Assistant Attorney General

Washington, D.C. 20530

April 8, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your subpoena, dated February 19, 2002, for the records relating to the FBI Office of Professional Responsibility (OPR) investigation supervised by Charles Prouty and focusing on allegations of FBI mishandling of confidential informants.

As we have advised Committee staff, the Report was subject to protective orders in U.S. District Court in Massachusetts, but we have moved for modifications to those orders so that we could make the Report available to you. The orders have now been modified by the courts and the Report has been reviewed to determine whether any of the redacted information could be restored in light of public disclosures since the Report was initially prepared. That process is now completed and, as a result, additional information has been restored in the enclosed version. While our public disclosure of the Report might be prohibited by the Privacy Act, we are providing it to the Committee in response to your oversight request. We note, however, that the Report continues to implicate individual privacy interests and request that you treat it with appropriate sensitivity.

We hope that these materials will satisfy the Committee's needs for information about this matter and will look forward to working with you if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Bryant".

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

DAN BURTON, INDIANA  
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April 12, 2002

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Tenth and Constitution Avenue, N.W.  
 Washington, DC 20530

Re: Request for Document

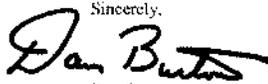
Dear General Ashcroft:

Pursuant to its authority under Rules X and XI of the House of Representatives, the Committee on Government Reform hereby requests the following document.

Please produce the following item to the Committee:

- 1. An unredacted copy of the enclosed Federal Bureau of Investigation document numbered 183B-NK-1832.

Please produce the requested item by April 19, 2002. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
 Dan Burton  
 Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member

DBK/dbk

ET AL;  
RICO;  
OO: NK  
183B-NK-1832

On Ma 2, 1991 [redacted] advised SA [redacted] as follows

Source learned that [redacted] during the time of the CRAPORATTA murder. TACETTA is that he was [redacted] the of the murder [redacted] (phonetic) in either [redacted] or [redacted]. Source related TACETTA [redacted] the murder in a [redacted] after it had occurred. Those present at the murder of CRAPORATTA were [redacted] and [redacted] (note: [redacted]) it was recorded that MARTIN TACETTA was also present at the murder of CRAPORATTA. This was an error by the contacting agent [redacted] regarding MARTIN TACETTA being present at the CRAPORATTA murder and source stated that TACETTA [redacted]

Regarding [redacted] source related [redacted] is [redacted] who is presently doing some work at [redacted] [redacted] is an associate of [redacted] who source believes [redacted] influential in obtaining the work for [redacted]

(SOURCE WILL NOT TESTIFY TO ANY OF THE INFORMATION CONTAINED HEREIN OUT OF FEAR OF REPRISALS BY THE NAMED INDIVIDUALS. NONE OF THIS INFORMATION SHOULD BE DISSEMINATED OUTSIDE THE FBI WITHOUT INITIALLY ADVISING THE CONTACTING AGENT.)

*Handwritten initials/signature*

OCIS: [redacted]  
E: [redacted]  
MR: [redacted]  
D: [redacted]

67c

183B-NK-67130-92  
SEARCHED  
SERIALIZED  
INDEXED  
MAY 1991  
FBI - NEWARK  
[redacted]

DAN BURTON (R) INDIANA  
 CHAIRMAN  
 ELIOT L. LITWACK (D) NEW YORK  
 GUYTON (R) MISSOURI  
 CHRISTOPHER SMITH (R) CONNECTICUT  
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 DAVE BRIDEN (R) ALABAMA  
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 JOHN H. RUTHERFORD (R) FLORIDA  
 G. L. BENTON (D) MISSOURI  
 EDWARD J. SCHROEDER (R) MISSOURI  
 JOHN J. DUNCAN, JR. (R) MISSISSIPPI

ONE HUNDRED SEVENTH CONGRESS  
**Congress of the United States**  
**House of Representatives**  
 COMMITTEE ON GOVERNMENT REFORM  
 2157 RAYBURN HOUSE OFFICE BUILDING  
 WASHINGTON, DC 20515-6143

tel: 202-225-3800  
 fax: 202-225-3801  
 www.house.gov/reform  
 April 16, 2007

HENRY A. WAXMAN (D) CALIFORNIA  
 BARRIE SCHWARTZ (R) ARIZONA  
 TOM LANTOS (R) CALIFORNIA  
 MAX BAILEY (D) NEW YORK  
 EDWARD R. ROYCE (R) NEW YORK  
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 ELIZABETH HURD (R) MISSISSIPPI  
 GREGORY E. MEYER (R) CALIFORNIA  
 BLAKE E. CANNON (R) MISSISSIPPI  
 MICHAEL R. JOHNSON (D) MISSISSIPPI  
 EDWARD M. GIBBS (R) MISSISSIPPI  
 JOHN F. TERRY (R) MASSACHUSETTS  
 JOE CLAYTON (R) MISSISSIPPI  
 THOMAS H. ALLEN (R) MISSISSIPPI  
 JAMES H. SARGENT (R) MISSISSIPPI  
 WALTER L. CLAY (R) MISSISSIPPI  
 GENE E. WATSON (R) MISSISSIPPI  
 STANLEY E. HATCH (R) MISSISSIPPI

The Honorable John Ashcroft  
 Attorney General  
 U.S. Department of Justice  
 Tenth and Constitution Avenue, N.W.  
 Washington, D.C. 20530

Re: Request for Documents

Dear General Ashcroft:

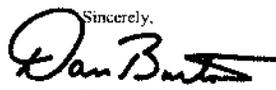
Pursuant to its authority under Rules X and XI of the House of Representatives, the Committee on Government Reform hereby requests certain records.

Please produce the following items, in unredacted form, to the Committee:

1. All records relating to Peter Poulos;
2. All records relating to Anthony Stathopoulos;
3. All records relating to Robert Daddico;
4. All records relating to John E. Fitzgerald;
5. All records created by the Federal Bureau of Investigation relating to Ronald G. MacKenzie;
6. All records created by the Federal Bureau of Investigation relating to Joseph C. DiCarlo;
7. All records relating to the electronic surveillance of the Piranha Finance Company;

8. All records relating to the FBI stenographer referred to on page 34 of the 1997 Office of Professional Responsibility investigation supervised by Charles Prouty that focused on allegations of FBI mishandling of confidential informants;
9. All records relating to testimony provided by William Geraway against Stephen J. Flemmi.

Please produce the requested items by April 30, 2002. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member

DAN BURTON INDIANA  
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**House of Representatives**

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 April 25, 2002

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 LAMAR C. SMITH ARIZONA  
 GUY R. COOPER ARIZONA  
 GUY R. COOPER ARIZONA  
 DAN Rostenfelder FLORIDA  
 DAN Rostenfelder FLORIDA

The Honorable John Ashcroft  
 Attorney General  
 U.S. Department of Justice  
 Teath and Constitution Avenue, N.W.  
 Washington, D.C. 20530

Re: Request for Documents

Dear General Ashcroft:

Pursuant to its authority under Rules X and XI of the House of Representatives, the Committee on Government Reform hereby requests certain records.

Please produce the following items, in unredacted form, to the Committee:

1. All documents from the files of the following government informants that were produced to defendants in any trial, prior to 1995, pursuant to discovery requirements:
  - a. BS-955-TE or B5-955-C-TE
  - b. BS-1544-TE or BS-1544-C-TE
  - c. BS-919-PC
  - d. BS-868-C
2. Testimony provided to grand jury proceedings by James Vincent Flemmi pertaining to the murder of Edward Deegan.
3. All documents produced by the Department of Justice during *U.S. v. Salemme* that were sealed pursuant to orders of Judge Mark Wolf.

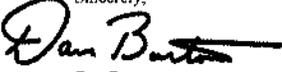
In addition, please answer the following questions:

- a. When were documents subject to a claim of executive privilege by President Bush pursuant to the Committee on Government Reform's September 6, 2002, subpoena first produced to Judge Mark Wolf or parties in *U.S. v. Salerno*?
- b. When were documents subject to a claim of executive privilege by President Bush pursuant to the Committee on Government Reform's September 6, 2002, subpoena first obtained by Assistant United States Attorney John Durham?

Please also arrange for Committee staff to receive a briefing regarding the purpose and execution of the Office of Professional Responsibility investigation conducted in 1997 that focused on possible misconduct relating to law enforcement activities in the New England region.

Please produce the requested items by May 15, 2002. If you have any questions about this matter, please have your staff contact the Committee's Chief Counsel, James C. Wilson, at (202) 225-5074.

Thank you in advance for attending to this request.

Sincerely,  
  
Dan Burton  
Chairman

cc: The Honorable Henry Waxman, Ranking Minority Member



**U.S. Department of Justice**  
Office of Legislative Affairs

*Washington, D.C. 20530*

May 8, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20510

**RECEIVED**

MAY 09 2002

GOVERNMENT REFORM  
COMMITTEE

Dear Mr. Chairman:

This follows up on our recent conversations with the Committee's Chief Counsel, Mr. James C. Wilson, about the Committee's interest in using two prosecution memoranda, which were subject to the President's assertion of executive privilege, at a hearing in Boston on May 11, relating to the Committee's investigation into the FBI's handling of informants in Boston.

As we have advised Mr. Wilson, the Department has significant concerns about the potentially adverse effect of this hearing on our prosecution of former FBI Special Agent John Connolly, the trial of which began in U.S. District Court in Boston on May 6. Specifically, we are concerned that the hearing publicity could lead to a defense motion for a mistrial based upon grounds that it improperly influenced the jury and jeopardized the defendant's right to a fair trial. While we recognize the Committee's legitimate interest in the FBI's handling of informants in Boston, we want to apprise you of the potential risks presented by the May 11<sup>th</sup> hearing and request that you limit the publicity that could adversely impact the criminal justice proceedings. We appreciate Mr. Wilson's report today that the appearance of one witness, former Assistant United States Attorney Jeremiah O'Sullivan, has been postponed in order to limit the publicity at the hearing.

We also have conferred with Mr. Wilson about your interest in using two of the prosecution memoranda, which we have previously made available for review by Committee staff pursuant to a confidentiality agreement that we reached with the Committee in February. We are now advised that the Committee does not seek to use the first memorandum, dated January 29, 1979, which was written by Mr. O'Sullivan, because he is not now scheduled to testify at the hearing. The memorandum pertains to the prosecution of twenty-one individuals for their participation in a horse race fixing scheme, not including Messrs. Bulger and Flemmi, who have been identified in other records as FBI informants. We understand the Committee's interest in providing the memorandum to Mr. O'Sullivan and questioning him about it, and we will agree to the Committee's use of the document for those limited purposes at a future time. This agreement is based on the Committee's articulation of a particularized need to question Mr. O'Sullivan about his memorandum and should not be considered as a precedent regarding other

Boston documents. The agreement is consistent with the accommodations we have previously made on the Boston prosecution memoranda based on the unusual circumstances surrounding this matter, where the Department has filed criminal charges alleging corruption in the FBI investigative process. Based on our conversations with Mr. Wilson, we understand that when the memorandum is used to question Mr. O'Sullivan, it will not be publicly disclosed, no copies will be made, and it will be returned to the Department's representative at the close of the questioning. We will advise Mr. O'Sullivan's counsel of this agreement.

The second memorandum, dated June 6, 1967, concerns the prosecution of Raymond Patriarca and others for actions relating to a conspiracy to murder a Mr. Willie Marfeo. We understand that you would like to show this memorandum to former Suffolk County prosecutor Jack Zalkind and question him at the May 11<sup>th</sup> hearing about information in the memorandum relative to the 1965 murder of Mr. Teddy Deegan. That information, which is set forth in two paragraphs, is derived from the Patriarca wiretap log recorded in FBI documents dated March 12, 1965 and May 7, 1965. While both of these documents have been previously provided to the Committee, copies are enclosed for your convenience. The Committee is free to use both of these documents at the hearing and we believe this accommodation is preferable to any further disclosure of the 1967 memorandum, in which we have continuing confidentiality interests.

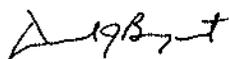
In a further effort to accommodate the Committee's interests, we also have reviewed some of the FBI documents and local court records available to the Committee in response to your particular interests regarding what information was provided to local law enforcement authorities and the defendants in connection with the Deegan murder prosecution. A memorandum by Special Agent Paul Rico, dated March 15, 1965, indicates that information regarding the participants in the Deegan murder, including Jimmy Flemmi, had been provided by the FBI to the Police Department in Chelsea, Mass. (See Committee Exhibit 14, February 14, 2002 hearing.) A second FBI document, dated March 19, 1965, reiterates that the information about Jimmy Flemmi's reported involvement in the Deegan murder had been provided to the Chelsea Police Department and describes the investigative steps that the Police Department was taking based upon that information. We have enclosed copies of the relevant documents, which were previously provided to the Committee, for your convenience. The Committee is free to use these documents at the hearing without restriction.

The Department also has received information which indicates that two of the defense lawyers in the Deegan murder trial - Joseph Balliro and Ronald Chisholm - previously had access to the Patriarca wiretap logs which detailed Jimmy Flemmi's participation in Deegan's murder. Several months before Deegan's murder, Messrs. Balliro and Chisholm represented two individuals who became defendants in that state case in a separate federal criminal case in Boston, United States v. Raymond Patriarca, Henry Tameleo and Ronald Cassesso (No. 67-193-F Crim.). On September 18, 1967, the judge in that case directed that Messrs. Balliro and Chisholm be given access to the Patriarca wiretap logs and subsequent hearing transcripts indicate these attorneys did in fact review the logs. (See attached copies of the Judge's order and docket sheet for that date plus the transcript for an October 10, 1967 hearing.) Finally, the 1968

edition of Martindale-Hubbell indicates that, at the time of the Deegan murder trial, Mr. Balliro shared his office with Chester C. Paris, the lawyer for Joseph L. Salvati in that case. A copy of the relevant attorney entries is enclosed.

We appreciate Mr. Wilson's sensitivity to our interests in following the President's guidance in connection with his assertion of executive privilege regarding these documents and in avoiding any action that would interfere with our ongoing law enforcement efforts, particularly the trial of former Special Agent Connolly. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

Enclosures

cc: The Honorable Henry Waxman  
Ranking Minority Member



## U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

May 10, 2002

The Honorable Dan Burton  
 Chairman  
 Committee on Government Reform  
 U.S. House of Representatives  
 Washington, DC 20510

**RECEIVED**

MAY 13 2002

GOVERNMENT REFORM  
COMMITTEE

Dear Mr. Chairman:

This confirms our conversations over with last two days with the Committee's Chief Counsel, Mr. James C. Wilson, about the Committee's interest in using a prosecution memorandum, which was subject to the President's assertion of executive privilege, at a hearing in Boston on May 11, relating to the Committee's investigation into the FBI's handling of informants in Boston. The memorandum, dated June 6, 1967, pertains to the prosecution of Raymond Patriarca and others for actions relating to a conspiracy to murder a Mr. Willie Marfeo.

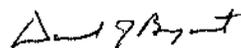
We understand that you would like to show this memorandum to former Suffolk County prosecutor Jack Zalkind on a confidential basis and question him in a closed portion of the May 11<sup>th</sup> hearing about information in the memorandum relative to the 1965 murder of Mr. Teddy Deegan. Based upon our conversations with Mr. Wilson, we understand that the memorandum would not be placed in the hearing record or otherwise publicly disclosed, nor would the transcript relating to the closed portion of the hearing regarding the memorandum be publicly disclosed, and all copies of the memorandum would be returned to the Department at the close of the hearing.

After careful consideration of your offer, Mr. Wilson's indication that the Department will be subpoenaed to provide a witness at the hearing if we do not accept the offer, and our responsibilities relating to the ongoing trial of former FBI agent John Connolly, we agree to the Committee's use of the memorandum on these terms. As indicated in my letter of May 8, 2002, the Department continues to have questions about the Committee's need to use the memorandum at the hearing and significant concerns about the impact that publicity relating to the Committee's hearing could have on the Connolly trial, which began on May 6, 2002. These concerns are exacerbated by the prospect of testimony from a Department witness, albeit compelled by a Committee subpoena, which might be perceived as inconsistent with our ethical obligations, including those set forth in the Massachusetts Rules of Professional Conduct, and the Department's long-standing policies. We have concluded that accepting Mr. Wilson's offer is the only certain way to avoid these unacceptable risks to our ongoing law enforcement efforts.

We will make arrangements to provide the memorandum to Mr. Wilson, Mr. Zalkind, and Minority Counsel Mr. Michael Yeager in advance of the hearing tomorrow morning if you provide us with appropriate facsimile numbers for each of those individuals. All copies of the memorandum should be returned to the Department through a representative from the United States Attorney's Office in Boston who will be available at the close of the hearing. Mr. Wilson previously advised that the hearing will occur in the Ceremonial Courtroom on the fifteenth floor of the JW McCormack Federal Building in Boston, beginning at 10:00 a.m. on May 11<sup>th</sup>. Please advise me as soon as possible today if there are any changes in the time or place.

We appreciate your cooperation in resolving these issues and hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,



Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member



## U.S. Department of Justice

Office of Legislative Affairs

Washington, D.C. 20530

May 21, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letters, dated April 16 and 25, 2002, which requested information and documents in connection with the Committee's investigation about the FBI's handling of informants in Boston. Based upon conversations with the Committee's Chief Counsel, Mr. James Wilson, we understand that these documents requests are limited to FBI records.

With regard to the April 16<sup>th</sup> letter, we have informally advised Mr. Wilson that a search of Bureau indices indicates a large volume of potentially responsive records. On April 30, Mr. Wilson advised that, in light of that information, he would supply additional information to identify the Committee's priorities and to assist the Bureau in identifying responsive records, particularly as to Peter Poulos (item number one). Mr. Wilson further withdrew the Committee's request with regard to an FBI stenographer (item number eight). While he also advised that the Geraway testimony against Steven Flenuri (item number nine) may have occurred in a Florida case during the 1960s, the Bureau requested additional information in order to identify responsive records if, in fact, they exist in Bureau files.

The FBI also has conducted a search for records responsive to the April 25<sup>th</sup> letter. With regard to the first item, which requested documents from certain government informant files that were produced to defendants in any trial prior to 1995, the Bureau advises that it does not routinely archive separate copies of documents produced in criminal discovery. In an effort to identify documents responsive to the first item, the FBI is searching the informant files for the identified symbol numbers for any indication that such disclosures were made. Bureau records on BS-955-TE/BS-955-C-TE and BS-1544-TE/BS-1544-C-TE (items 1.a and b, respectively) reviewed to date indicate only that records or information were provided to prosecutors, but not whether records were subsequently produced to defendants. Bureau records contain no indication that documents regarding BS-919-PC (item 1.c) were disclosed to prosecutors or defendants, although both Headquarters and Boston Field Office files have been provided to the Committee. We will supplement this response when additional information regarding this request becomes available.

The FBI has not located any records of grand jury testimony by Vincent James Flemmi pertaining to the murder of Edward Deegan. Since this crime was prosecuted by local law enforcement officials, it is not likely that the Bureau would have such records. The Department would, of course, be prohibited by Rule 6(e) of the Federal Rules of Criminal Procedure from disclosing any federal grand jury testimony.

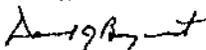
We have advised Mr. Wilson of our substantial concerns about the task implicated by the third item in your April 25<sup>th</sup> letter, which seeks copies of all documents produced by the Department during *U.S. v. Salemme* that were sealed by the Court. During the prosecution, the Court issued a number of protective orders, some of which were subsequently lifted, covering a large number of documents. FBI records are not maintained in a way that would permit ready identification of the universe of documents which remain under seal. Hence, the process of identifying those documents would be very time-consuming and, once accomplished, would necessarily require the filing of appropriate motions to unseal those documents in which we do not have continuing confidentiality interests. Since we would like to accommodate your information needs as efficiently as possible, we request that you identify the Committee's particular interests with as much specificity as possible so that our efforts can focus on those materials.

In response to your questions about the documents subject to the President's assertion of executive privilege, I am advised that those documents have not been produced by the Department to Judge Wolf or the parties in *U.S. v. Salemme*. Additionally, the Department requests that you inform us if the Committee has information indicating that any of those documents were produced by anyone to Judge Wolf or parties in *U.S. v. Salemme*. We are unclear about the Committee's interest in the date on which Assistant United States Attorney John Durham first obtained any of those documents and Mr. Durham has advised that he did not maintain a record of such information.

Lastly, your April 25<sup>th</sup> letter asked that we arrange a briefing about the purpose and execution of the 1997 Office of Professional Responsibility investigation that focused on possible misconduct by FBI officials in Boston. As you know, a copy of the Report of that investigation has been furnished to the Committee. We will be pleased to schedule that briefing at a mutually convenient time during the week of May 20, 2002. Please advise us if there is any particular information that you would like to be included in that briefing.

I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

  
Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

### FAX TRANSMISSION

DATE: May 21, 2002

ATTENTION: The Honorable Dan Burton (Joni Wilson)  
The Honorable Henry Waxman (Michael Yeager)

FAX NO: 225-3974 ; 226-3348

PHONE NO: \_\_\_\_\_

FROM: Faith Burton, Special Counsel

PHONE NO: 202/514-1653

FAX NO: 202/305-2643

PAGES: 3 (Including Cover Sheet)

COMMENTS: \_\_\_\_\_  
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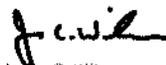


331

The Honorable Dan Bryant  
June 5, 2002  
Page 2

Please have your staff contact me directly if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "J.C. Wilson". The signature is written in a cursive, slightly slanted style.

James C. Wilson  
Chief Counsel





U.S. Department of Justice  
Office of Legislative Affairs

---

Office of the Assistant Attorney General

Washington, D.C. 20530

July 1, 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

This responds to your letter, dated June 18, 2002, which requested personnel records for four former FBI Special Agents in connection with the Committee's oversight investigation regarding the Bureau's handling of informants in Boston.

Enclosed are the FBI personnel records of former Special Agents H. Paul Rico, John J. Connolly, Jr., and John Morris. While the Department's public disclosure of these records might be prohibited by the Privacy Act, we are providing them to the Committee in response to your oversight request. See 5 U.S.C. 552a(b)(9). Nonetheless, these records implicate individual privacy interests and we request that you treat them with appropriate sensitivity. They have been provided to litigants in pending civil litigation pursuant to protective orders. An FBI deletion code sheet explaining the redactions is enclosed with each volume.

The FBI has advised that additional records responsive to your requests, including the personnel file of former Special Agent Dennis Condon, should become available in the near future. I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink that reads "D. Bryant".

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry Waxman  
Ranking Minority Member

IN INDIANA,  
 I. JAMAIN, NEW YORK  
 E. A. MOORE, MARYLAND  
 ER. SHAYS, CONNECTICUT  
 KUHTINEN, FLORIDA  
 HUGHES, NEW YORK  
 OHM, CALIFORNIA  
 J. FLORES  
 DAVIS, VIRGINIA  
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 GILBERT  
 I. FLORES  
 CALIFORNIA  
 KENTUCKY  
 W. WILSON  
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 ONI, FLORIDA  
 JON, UTAH  
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**House of Representatives**

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 PAMUNGKUHSHVY, MISS.

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 HARRIS WATSON, CALIFORNIA  
 STEPHEN L. YOUNG, MISSOURI

BERNARD SANDERS, VERMONT  
 HOFFSCHLAGER

November 4, 2002

The Honorable John Ashcroft  
 Attorney General  
 United States Department of Justice  
 Washington, DC 20530

Dear General Ashcroft:

The Committee on Government Reform has been conducting an investigation of the Justice Department's use of informants in New England over a forty year period. In order for the Committee to complete its investigation of the use of Joseph Barboza as a cooperating witness in the 1968 trial for the murder of Edward "Teddy" Deegan, I request that you provide the Committee with information about certain confidential informants employed by the FBI during the 1960s. I realize that this is a request that will cause some concern. Nevertheless, I believe that the only way to complete any investigation of the Deegan prosecution, and to bring at least some appropriate closure to this matter, is for all relevant facts to be made available to Congress. Certainly, once Congress is privy to the information requested, we will be able to have productive discussions about whether these facts should be released to the public.

As you are aware, the Justice Department's use of Joseph "The Animal" Barboza as a cooperating witness, the miscarriage of justice that resulted from the Deegan murder prosecution, and the protection of the Flemmi brothers and James "Whitey" Bulger are significant events in the history of criminal law enforcement in the United States. I have called what happened in New England the greatest failure in the annals of federal law enforcement, and I believe the facts support this opinion. I will not restate all my concerns in this letter. Nevertheless, there is compelling evidence that:

- The federal government had information that Joseph Barboza intended to commit perjury, and did commit perjury, in a capital murder case. Four men were sentenced to death, and two received sentences of life imprisonment.
- At the time of his testimony during the Deegan murder prosecution, Joseph Barboza was protecting Vincent James Flemmi, a personal friend and co-conspirator in several murders, including the Deegan murder. Vincent James

The Honorable John Ashcroft  
 November 4, 2002  
 Page 2 of 5

- Flemmi was also an important government informant at the time that Deegan was murdered. Vincent James Flemmi also appears to have been protected from prosecution for the murder of Deegan by Department of Justice personnel.
- FBI Director J. Edgar Hoover wanted to use Vincent James Flemmi as an informant even after he had been informed that Flemmi would continue to commit murders. More specifically, there is evidence that Vincent James Flemmi was to be used as an informant after the FBI was aware that he murdered Edward "Teddy" Deegan.
- At the same time that Barboza was testifying that Vincent James Flemmi was not involved in the Deegan murder, Vincent James Flemmi's brother, Stephen "The Rifleman" Flemmi, was being recruited as a Top Echelon federal informant.
- Vincent James Flemmi and Stephen Flemmi appear to have committed a large number of homicides during their service as Justice Department informants. The Justice Department had information that Vincent James Flemmi had killed at least seven individuals, and yet it decided to put him on its informant payroll notwithstanding a belief that he would continue to commit murder. The Justice Department has also recently taken the position that at least one of its employees was aware that Stephen Flemmi committed homicides while serving as a Justice Department informant.

As should be obvious to everyone, a conspiracy by Justice Department personnel to facilitate perjury in a capital case, and the subsequent protection of men who were committing numerous homicides, should not be covered up in any manner. Nor should the Justice Department permit a perception that this matter is being covered up.

As you are aware, there are currently over two billion dollars in civil claims against the federal government that flow from the Justice Department's use of the two Flemmi brothers as informants. Until the relevant facts are made public, and the Justice Department demonstrates that it is not withholding significant information regarding the use of the Flemmi brothers as informants, there will be widespread concern that the federal government does not want the truth to be known. More important, Congress will not be able to discharge its responsibilities. I respectfully request that, when you consider this matter, you take into account the damage to people's perceptions of the rule of law that would follow a decision to refuse Congress access to the information requested.

Please provide information, in the form of a briefing or documents, regarding the following:

Document 1

A memorandum prepared by FBI Special Agent Dennis Condon states that an individual whose name was redacted was contacted on May 22, 1964, and provided information that Vincent James Flemmi "told him that all he wants to do now is kill people, and that it is

The Honorable John Ashcroft  
November 4, 2002  
Page 3 of 5

better than hitting banks." The same informant indicated that Flemmi "feels he can now be the top hit man in the area and intends to be." The Committee requests the identity of the informant. This information is potentially significant because it goes to the credibility of Dennis Condon's representations to the Committee, and because it might shed significant light on later representations made by informants.

Document 2

A memorandum prepared by Dennis Condon states that an informant provided information that Joseph Barboza told the informant that he heard that Vincent James Flemmi killed Frank Benjamin and cut off his head. The Committee requests the identity of the informant. This information is potentially significant because it goes to the credibility of Dennis Condon's representations to the Committee, and because it might shed significant light on later representations made by informants.

Document 3

A memorandum prepared by FBI Special Agent H. Paul Rico indicates that an informant said that Vincent James Flemmi wanted to be considered the best hit men in the area. The Committee requests the identity of the informant. This information is potentially significant because it might shed significant light on later representations made by informants.

Document 4

The FBI learns from an informant that Vincent James Flemmi wants to kill Edward "Teddy" Deegan. The Committee requests the identity of the informant. This information is potentially significant because it may shed additional light on the extent of Barboza's perjury at the Deegan trial. It may also shed additional light on whether Barboza's testimony was known to be perjurious, and whether investigative steps were taken to preserve Barboza's viability as a potential witness in the Deegan trial.

Document 5

A memorandum from H. Paul Rico indicates that an informant provided information that Vincent James Flemmi said that Raymond Patriarca "has put out the word that Edward "Teddy" Deegan is to be "hit" and that a dry run has already been made[.]" The Committee requests the identity of the informant. This information is critical to an understanding of what happened in the Deegan murder prosecution.

Document 6

A report prepared by Charles Reppucci states: "BS 837-C\* advised on 3/9/65 that James Flemmi and Joseph Barboza requested permission from Patriarca to kill Edward "Teddy" Deegan, as they are having a problem with him. Patriarca ultimately furnished this 'OK'." Please confirm that BS 837-C\* refers to microphone surveillance of Raymond Patriarca.

The Honorable John Ashcroft  
November 4, 2002  
Page 4 of 5

Document 7

A memorandum prepared by H. Paul Rico indicates that an informant provided specific information on the perpetrators and details of the Deegan murder. The informant purportedly received the information provided to Rico directly from Vincent James Flemmi, and the information implicates Vincent James Flemmi in the murder. The Committee requests the identity of the informant. This information is critical to an understanding of what happened in the Deegan murder prosecution.

Document 8

FBI Director Hoover is told that "[i]nformants report that . . . Vincent James Flemmi, and Joseph Barboza . . . were responsible for the [Deegan] killing." The Committee requests the identity of the informants. This information is critical to an understanding of what happened in the Deegan murder prosecution.

Document 9

An FBI memorandum refers to a "PCI" who provided information about the Deegan murder. The Committee requests the identity of the informant. This information is critical to an understanding of what happened in the Deegan murder prosecution.

Document 10

A memorandum to FBI Director J. Edgar Hoover provides information from an informant about the Deegan murder that corroborates the information about the Deegan murder obtained by microphone surveillance of Raymond Patriarca's place of business. The Committee requests the identity of the informant. This information is critical to an understanding of what happened in the Deegan murder prosecution.

Document 11

A memorandum to FBI Director J. Edgar Hoover recommending that H. Paul Rico and Dennis Condon receive salary increases states: "BS 955 C-TE was developed by these agents and via imaginative direction and professional ingenuity utilized said source in connection with interviews of Joseph Baron, a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in this area to be the most dangerous individual known. SAs Rico and Condon contacted Baron in an effort to convince him he should testify against the LCN. Baron initially declined to testify but through utilization of BS 955 C-TE the agents were able to convey to Baron that his present incarceration and potential for continued incarceration for the rest of his life, was wholly attributable to LCN efforts directed by Gennaro J. Angiulo, LCN Boston head. As a result of this information received by Baron from BS 955 C-TE, said individual said he would testify against the LCN members." Please confirm that BS 955 C-TE is Stephen Flemmi. In addition, please provide an unredacted copy of this document to the Committee.

The Honorable John Ashcroft  
November 4, 2002  
Page 5 of 5

Document 12

In discussions with FBI Special Agent H. Paul Rico, FBI informant "BS 955-CTE" indicates that "he will, when talking to Flemmi, point out to him that Barboza could end up seriously hurting him, Jimmy Flemmi, if he, Flemmi, did anything to attempt to discredit Barboza." Please confirm that the informant described as BS 955-CTE is Stephen Flemmi. This information is important because it would stand for the proposition that Stephen Flemmi discussed with Justice Department personnel that Barboza had the ability to hurt his brother, Vincent James Flemmi, if Vincent James Flemmi attempted to discredit Barboza.

Document 13

A memorandum to FBI Director J. Edgar Hoover states that FBI Special Agent H. Paul Rico developed four Top Echelon informants. The memorandum indicates that these informants were instrumental in developing the testimony of Joseph Barboza, the government's cooperating witness in the Deegan prosecution. The Committee requests the identity of the informants. This information is critical to an understanding of what happened in the Deegan murder prosecution.

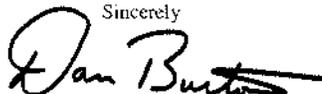
Document 14

A memorandum that appears to be to FBI Director J. Edgar Hoover with Dennis Condon's initials at the bottom indicates that "subject is being designated a target under" the Top Echelon Criminal Informant Program. Is the subject referred to in this memorandum Joseph Barboza?

It is important for you to understand that it does not necessarily follow that the information I have requested will be disclosed to the public. Only where there is a compelling need would I consider making such information public. However, just as the Justice Department shared the Vincent James Flemmi informant file with Congress, I believe that there are extremely strong reasons, in this case, for providing Congress with the information requested in this letter.

Thank you in advance for taking the time to consider this request.

Sincerely



Dan Burton  
Chairman

Enclosures

cc: Hon. Henry A. Waxman  
Hon. Robert S. Mueller, III

SUBJECT: VINCENT JAMES FLEMMI, Aka.

Memo of SA Dennis H. Condon 5/25/64 captioned:

[redacted] was contacted on 5/22/64, advised that within the last few days he was in contact with [redacted] and JAMES FLEMMI. FLEMMI told him that all he wants to do now is to kill people, and that it is better than hitting banks. FLEMMI said that [redacted] have taken money for about six contract hits which they have not fulfilled. They spent the money for these hits drinking.

Informant said, FLEMMI said that he feels he can now be the top hit man in this area and intends to be.

FLEMMI told the informant that there was a big piece of money that came out of the hit on [redacted] and the informant gathered from FLEMMI's talk that he, FLEMMI, had made the hit.

Boston letter to Director & SAC, Newark 5/25/64 captioned:

Informant stated that it appears that JAMES FLEMMI, a Roxbury, Mass. hoodlum, will probably become the "contract man" in the Boston area.

Boston letter to Director 6/4/64 captioned:

This letter sets out information to the Bureau on [redacted] Under the heading CRIMINAL ASSOCIATES the following information appears concerning JAMES FLEMMI.

The informant is presently associated with [redacted] and JAMES FLEMMI. FLEMMI

000017

000334

SUBJECT: VINCENT JAMES FLEMMI, Aka.

[redacted]-313 (Cont'd)

had heard the same thing about Barboza.

[redacted] stated that FLEMMI is extremely conscientious for "stool pigeons."

Informant said that from his contact with FLEMMI he gets the definite indication that George Mc Laughlin is not around the Boston area.

[redacted]-314 F

Memo of [redacted] 9/9/64 captioned:

Informant [redacted] advised on [redacted] that JAMES FLEMMI had shot himself by accident and it had nothing to do with gang war.

Informant advised on night of [redacted] that within one hour of the shooting that [redacted] had been killed in a gangland war. B

[redacted]-315

Memo of [redacted] 9/22/64 captioned:

The informant advised on [redacted] that he had heard that [redacted] has a couple of bullet wounds [redacted] as a result of [redacted] and his gun battle with [redacted]. He said that any assistance with [redacted] would get would more than likely come from JAMES VINCENT FLEMMI, but that [redacted] might give [redacted] some help. B

F [redacted]-313

Memo of [redacted] 10/29/64 entitled:

Informant contacted [redacted] advised that from his contact with JAMES FLEMMI [redacted] he is of the opinion that [redacted]. He plans to maintain close contact with FLEMMI to obtain information relative to [redacted]. B

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F.H.

(Cont'd)

Deegen told FLEMMI that he intends to remain in hiding for a few weeks in order to avoid being questioned by police.

FLEMMI told the informant that Deegen told him that [redacted] was going to hit one of the members of the Boston Italian group at the Coliseum Restaurant. FLEMMI told informant that his was obviously an attempt to get the Italian element in Boston interested in eliminating [redacted]

FLEMMI told informant that he wants to kill Deegen. Information relating to Deegen's participating in the killing of [redacted] was furnished to the Everett, Mass., Police Department on 10/18/64. [redacted] mentioned as [redacted]

F.H.  
B

Boston airtel to Director, FBI 10/15/64 captioned: [redacted]

M

[redacted] told the informant that [redacted] had offered to help FLEMMI and his brother to "whack out" an individual with whom the FLEMMI'S were having trouble at [redacted] safe in [redacted] provided the FLEMMI'S would first join him in "hitting" [redacted]

F.H.  
B

Memo of E. Paul Rico to SAC, Boston 10/8/64 and captioned: [redacted]

R

M

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F  
[redacted] (cont'd)

M

[redacted]

B

Informant advised 10/5/64, that he is friendly with the FLEMMI's, but VINCENT FLEMMI is an extremely dangerous individual. For example, he said that approximately Monday night, 9/28/64, VINCENT FLEMMI came into [redacted] bar room and immediately engaged [redacted] in a fight. During the fight FLEMMI took something out of his pocket and threw it into [redacted] eyes and then knocked him unconscious. [redacted] has not regained his sight since this episode and is under a doctor's care. Informant also advised that he suspects that FLEMMI had committed several murders, but he did not wish to discuss them.

Informant advised that [redacted]

M

[redacted] and "JIMMY" FLEMMI wanted to be considered the "best hit men" in the area.

B

Informant advised also that he has had no unfavorable reaction over [redacted] arrest from either FLEMMI or from Romeo Martin.

B.F

Memo of E. Paul Ricolo 8/64 to SAC, Boston entitled: [redacted]

M

[redacted]

M

Informant advised he again met with [redacted] at approximately nighttime on 10/6/64, and [redacted]

[redacted]

At this time [redacted] offered to help VINCENT FLEMMI and his brother "check out" an individual that the FLEMMI's were having trouble with in [redacted] Cafe in [redacted] if the FLEMMI's would first join him in "checking out" [redacted]

B

000327

000010

UNITED STATES GOVERNMENT

Memorandum

TO : SAC [redacted] F

DATE: 10/19/64

FROM : SA H. PAUL RICO

CI  SI  
 PGI  PSI

SUBJECT: [redacted] b

Date of Contact 10/18/64	
Title and File # on which contacted [redacted]	
Purpose and results of contact <input type="checkbox"/> NEGATIVE <input checked="" type="checkbox"/> POSITIVE Informant advised he got a telephone call from JAMES PLEMMI the previous evening and PLEMMI told him that he had been with EDWARD "TEDDY" DEEGAN and an individual referred to as "TONY" at the West End Social Club Saturday morning. Informant said that ANTHONY SACRIMONE's name came up in the conversation and that DEEGAN had said something concerning SACRIMONE, but PLEMMI could not recall what it was.  PLEMMI said that he definitely knows that DEEGAN, later that morning, murdered ANTHONY SACRIMONE and he was very concerned about leaving his prints in the car; that DEEGAN is going to lay low for a couple of weeks until he finds out what, if anything, the police have on him to tie him in to this murder.  PLEMMI told the informant that DEEGAN has been knocking him (the informant) in indicating to the Italian element that the informant was going to "hit" someone from the	
<input checked="" type="checkbox"/> Informant certified that he has furnished all information obtained by him since last contact.	Coverage 92'a

Personal Data  
[redacted] F

[redacted] 27  
[redacted] 13

(Everett PD)

HPR:po'b  
(5)

ex 0

000747

[REDACTED] F  
[REDACTED] - 270

Coliseum Restaurant. FLEMMI told the informant this obviously was just an attempt to get the Italian element interested in eliminating the informant.

←  
6.4

FLEMMI advised that DEEGAN owes FLEMMI's brother, STEVIE, some money, and that he told him once to get the money up. He has not gotten the money up, and FLEMMI wants to kill DEEGAN and wanted the informant to go with him on the "bit."

[REDACTED]

The information concerning DEEGAN perpetrating this killing was disseminated telephonically to Det. HENRY DOHERTY of the Everett, Mass. PD on 10/18/64.

Det. DOHERTY recontacted this office on 10/19/64 and advised that he believes the information concerning DEEGAN is correct but that they have been unable to come up with any fingerprints in the car that are identifiable and DEEGAN has taken off from his usual haunts.

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA FPMR (41 CFR) 101-11.6

Tab 3

(1/2)

UNITED STATES GOVERNMENT  
**Memorandum**

TO : SAC [REDACTED]

DATE: 3/15/66

FROM : SA H. PAUL RIFE B.F.

JIC  M

POC  PDI

SUBJECT: [REDACTED]

Date of Contact

3/10/66

DOC. 5

Title and File no. on which contacted

EDWARD F. DEEGAN

T.M.  
B

Purpose and results of contact

NEGATIVE

POSITIVE

Informant advised that he had just heard from "FLECK" FLECK that FLECK told the informant that RAYMOND PATRIARCA has put out the word that EDWARD "FRANK" DEEGAN is to be "hit" and that a dry run has already been made and that a close associate of DEEGAN's has agreed to set him up.

FLECK told the informant that the informant, for the next few evenings, should have a probable alibi in case he is suspected of killing DEEGAN. FLECK indicated to the informant that PATRIARCA put the word out on DEEGAN because DEEGAN evidently pulled a gun and threatened some people in the Sub Tide restaurant, Revere, Mass.

Informant certified that he has furnished all information obtained by his above last contact.

Rating

Coverage  
92%

Personnel Data

1- (DEEGAN)

HRHpo\*  
(5)

0000 1

2623  
Riposte GAC

FD-203 (Rev. 3-3-59)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE BOSTON	OFFICE OF ORIGIN BOSTON	DATE 7/20/65	INVESTIGATIVE PERIOD 3/13 - 8/8/65
TITLE OF CASE RAYMOND L. S. PATRIARCA, aka		REPORT MADE BY CHARLES A. REPPUCCI	TYPE OF REPORT pb*b
CHARACTER OF CASE AR			

**REFERENCE:** Report of SA CHARLES A. REPPUCCI dated 3/12/65 at Boston.  
 New York letter to Boston, 3/19/65. (Interoffice)  
 Los Angeles letter to Boston, 3/30/65. "  
 Newark letter to Boston, 4/14, 27/65. "

- P -

**ENCLOSURES:**

TO BUREAU

Original and one copy of a Interhead memorandum, dated and captioned as above at Boston, characterizing informants mentioned in instant report.

APPROVED <i>[Signature]</i>	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN SPACES BELOW	
COPIES MADE: 3 - Bureau (92-2961) (Info) (SSB) 1 - USA, Providence, R. I. 1 - New York (92-788) (Info) 2 - Boston (92-118)		92-2961-1044	REC-45 EX-113
1 - Add 1539		JUL 23 1965	
DISSEMINATION RECORD OF ATTACHED REPORT		NOTATIONS	
AGENCY	L. C. AIG. Criminal Division	81	
DATE FWD.	Original Copy and Receiving	STAT. SECT.	
BY	70 AUG 19 1965		

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ENTIRETY FOR THE FOLLOWING REASON(S): \_\_\_\_\_ B, 0-3 \_\_\_\_\_

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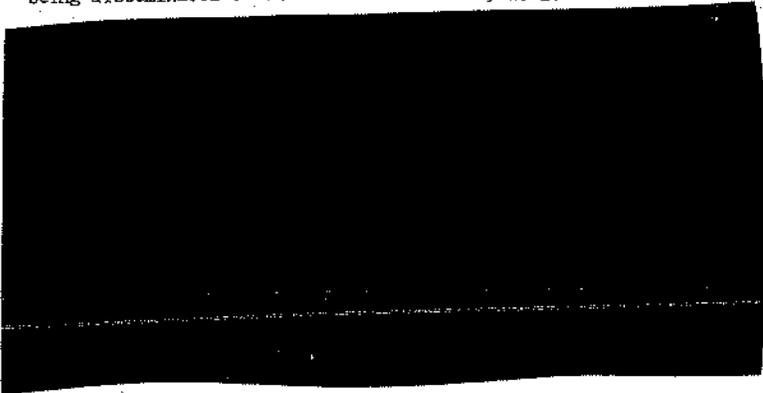
BS 92-118

ADMINISTRATIVE (Continued)

0-3



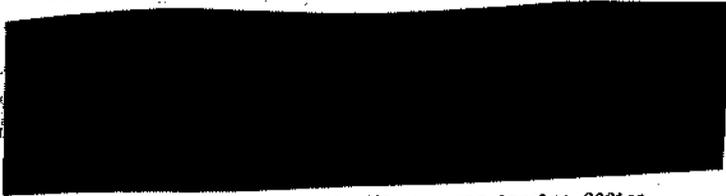
The following investigation of the NYO is being placed in the administrative section in that the report of SA CHARLES A. REPPUCCI dated 3/12/65 at Boston, Mass., on Cover Page J, reflects the original information was obtained through BS 837-C\* and, for that reason, this information is not being disseminated to the USA at Providence, R. I.



BS 92-118

ADMINISTRATIVE (Continued)

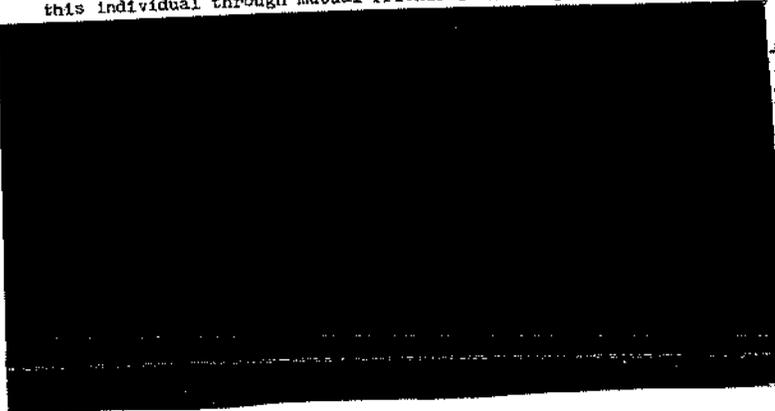
0-3



By letter dated 3/30/65, the Los Angeles Office advised as follows:

The following investigation was conducted based on information supplied by BS 837-C\* to the effect that PATRIARCA had been contacted by an individual who lives at 8215 Glade Avenue, Canoga Park, Calif., and advised that his partner had swindled him out of the business. PATRIARCA was to help this individual through mutual friends in Los Angeles.

0-3



BS 92-118

ADMINISTRATIVE (Continued)

The following investigation was conducted by SA GUY R. BAILEY at Maine in reference to Bosairtel to Bureau dated 4/16/65 entitled, "RAYMOND L. S. PATRIARCA, aka, AR."

Since the original information did not appear in the details of any reports, and obtained from BS 837-C\*, the following is being reported on the administrative pages for the protection of the source:

On 4/29/65, Chief JOHN CLARK, Old Orchard Beach, Me. PD, advised the Old Orchard Beach PD had received a telephone call from Rhode Island from RICHARD GABRIEL's wife requesting that GABRIEL be contacted and informed that the picture window in their home had been smashed.

Chief CLARK advised on 5/12/65 that applications for a liquor license have been filed by the Chequinn Corporation by RICHARD GABRIEL and by DORIS MC CUE, and the Town Council has declined to issue any license because of disagreement between the parties requesting a license for the same location.

BS 92-118

## ADMINISTRATIVE (Continued)

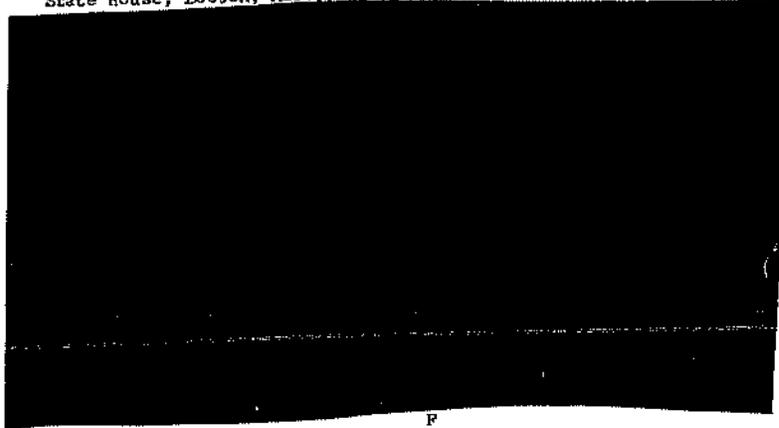
Chief CLARK advised one of the parties has obtained services of an attorney by the name of PERKINS from Portland and the other party has an attorney by the name of ELLIOTT from Saco, Me., and it appears that there may be negotiations. He stated the applications for the liquor license can be filed each time the local council sits for hearings on liquor licenses.

The following investigation was conducted by IC FRANCIS D. CAREY in reference to Bosairtel to Bureau dated 4/16/65, entitled, "RAYMOND L. S. PATRIARCA, aka, AR."

Since the original information did not appear in the details of any reports, and obtained from BS 837-C\*, the following is being reported on the administration section for the protection of the source:

RE: HENRY J. MC CUE

On 5/3/65, a review of the marriage records at the State House, Boston, Mass., disclosed that HENRY JOSEPH MC CUE,



F  
COVER PAGE

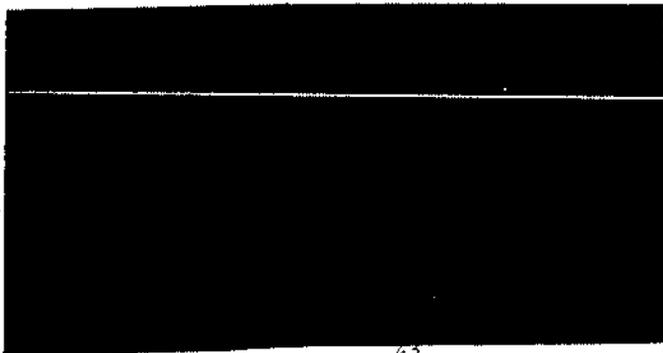
PAGE       G-U       HAS BEEN DELETED IN IT'S

ENTIRETY FOR THE FOLLOWING REASON(S):       B.C-3      

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BS 92-118  
CAR:po'b

ADMINISTRATIVE (Continued)



BS 837-C\* advised on 3/9/65 that JAMES FLANNERY and JOSEPH BARBOZA requested permission from PATRIARCA to kill EDWARD "TEDDY" DEEGAN, as they are having a problem with him. PATRIARCA ultimately furnished this "OK."

On 3/10/65, FRANK SMITH and JOSEPH MODICA sought PATRIARCA's permission to open up a gambling establishment in East Boston, Mass. PATRIARCA refused to furnish this permission until he cleared with MICHAEL ROCCO of East Boston, Mass. (It should be noted that the informant advised that SMITH never did obtain this permission.)

On 3/17/65, informant advised that PATRIARCA was concerned about a "leak" in the organization. After such discussion he reached the conclusion that the "leak" was in NYC and not in Providence, R. I.

BS 92-118  
CAR:po'b

ADMINISTRATIVE (Continued)

On 3/19/65, the informant advised that PATRIARCA was attempting to settle a dispute between Mr. LOUIS GABRIEL, Old Orchard Beach, Me., and his partner who was squeezing GABRIEL out of the business. The informant was not aware of the results of this settlement.

On 3/22/65, informant advised that PATRIARCA had received word from TOMMY RYAN of NYC requesting that he attend a meeting in New York on 3/17/65. PATRIARCA refused to do so because he was fearful of receiving a subpoena while in New York to appear before the FGJ there.

On 3/31/65, informant advised that PATRIARCA furnished the permission to ROMEO MARTIN of Boston, Mass. to burglarize the home of a millionairess.

Informant also advised that PATRIARCA was attempting to ascertain whether a LEONARD LEIBOWITZ (probably of Suffolk, N. J.) was in any way connected with LCN. BARBOZA was attempting to collect a large sum of money from LEIBOWITZ for a Mr. FEINBERG in the automobile financing business.

On 5/5/65, informant advised that PATRIARCA had been approached by JOSEPH BARBOZA, RONALD CASSESSA, and JAMES WYKEMI in order to obtain permission to kill SAMMY LINDEN of Revere, Mass. The reason for this killing was that LINDEN was furnishing a considerable amount of money to the MC LAUGHLIN group in their efforts to kill various individuals of the MC LEAN group. Subsequently the informant stated that PATRIARCA had not given a definite "OK" for the killing, but BARBOZA and his group was of the opinion that he did. LINDEN heard of the fact that he was marked for a "hit" and went to JOSEPH LOMBARDO of Boston, Mass. LOMBARDO, in turn, sent word to PATRIARCA, and after explaining the situation the "hit" was called off.

On 5/27/65, informant advised that FRED GARROZZA, who is PATRIARCA's partner in the cigarette vending machine business, had access to a casino license in Puerto Rico. He was attempting to locate an individual who would act as a "front" for him. GARROZZA needed \$1½ million for this license and was interested

BS 92-118  
CAR:pc'b

ADMINISTRATIVE (Continued)

to contact BOBBY RICE of the Dunes Hotel in Las Vegas, Nev., for possible financial assistance.

On 6/7/65, informant advised that JOHN CANDELMO, who is a member of LCN, had attempted to lease some trucks from Branded Liquors, Boston, Mass., for the purpose of hauling liquor from Indiana to Boston. He apparently contacted WILLIAM J. MC CARTHY, Head of Local 25, Truck Drivers Union, Boston, Mass., and Vice President of the International Union. PATRIARCA was very perturbed that he, CANDELMO, would contact MC CARTHY without his, PATRIARCA's, knowledge. He instructed CANDELMO to do nothing more concerning this matter.

On 6/17/65, Informant advised that SAMMY LINDEN owed ABE SARKIS, notorious Boston bookmaker, the sum of \$7,800. SARKIS made many efforts to collect this debt without success. He subsequently approached either JERRY ANGIULO or JOSEPH MODICA for assistance in collecting this debt. PATRIARCA became involved in that neither MODICA nor ANGIULO were able to collect the debt. PATRIARCA told TAMELEO to instruct SARKIS to go to JOHNNY WILLEBRAND, LCN member who is in partnership with SARKIS in the bookmaking business, and have WILLIAMS collect this debt.

On 7/8/65, informant advised that UNMAN had a lengthy discussion with PATRIARCA concerning a loan made to "MONGE" ROSSETTI, subject of case entitled, "ANGELO MONGE ROSSETTI; SPORTSDAY WEEKLY, INC., ITRI." It appeared that "MONGE" ROSSETTI had borrowed money from the Pan American Finance Co., which is operated by JOSEPH MODICA. PATRIARCA has an interest in this finance company.

"MONGE" borrowed \$1,600 one time and just prior to the time he was sent away for one year, in connection with the above-mentioned case, he borrowed an additional \$2,000. MODICA is putting the pressure on "MONGE" ROSSETTI's brother-in-law, FRED PRATT, to pay the \$3,600.

BS 92-118  
CAR:po'b

ADMINISTRATIVE (Continued)

MODICA contacted HENRY TAMELEO when he was unsuccessful with the brother-in-law. PATRIARCA, upon hearing the details of this loan, was infuriated at MODICA for loaning ROSSETTI money without his, PATRIARCA's OK. He indicated that he has a piece of SPORTSDAY WEEKLY and should know what is going on in the operation of this race wire service.

PAGE 1-26 HAS BEEN DELETED IN IT'S

ENTIRETY FOR THE FOLLOWING REASON(S): B, O-3

---

UNITED STATES GOVERNMENT

Memorandum

Tab 7

TO : SAC [REDACTED]

DATE: 3/15/68

FROM : SA H. PARRIAGO B.F.

info  M  
 PCI  PR

SUBJECT: [REDACTED]

Date of Contact

3/13/68

Telephone No. on which contacted  
EDWARD P. BERGAN

[REDACTED] F.M.  
B

Purpose and results of contact

NEGATIVE  
 POSITIVE

Informant advised that "JERRY" FERRELL contacted him and told him that the previous evening BERGAN was lured to a finance company in Chelsea and that the door of the finance company had been left open by an employee of the company and that when they got to the door ROY GREEN, who was setting BERGAN up, shot BERGAN and JOSEPH HENRY MARTIN and RONNIE CALESSA came out of the door and one of them fired into BERGAN's body. While BERGAN was approaching the doorway, he (FERRELL) and JOE BARONZA walked over towards a car driven by TOM "SPATH" and they were going to kill "SPATH" but "SPATH" saw them coming and drove off before any shots were fired.

FERRELL told informant that RONNIE CALESSA and HOMER MARTIN wanted to prove to RAYMOND PATRIARCA they were capable individuals, and that is why they wanted to "hit" BERGAN. FERRELL indicated that they did an "awful sloppy job."

Informant certified that he has furnished all information obtained by him since last contact.

Rating

98%

Personal Data

[REDACTED] F.B.  
[REDACTED] (BERGAN)

Re: (5)

0000 2

[REDACTED] F  
[REDACTED] 2/23/68  
[REDACTED] 3/15/68  
[REDACTED] FBI  
Rippon

[REDACTED] FB

This information has been disseminated by  
SA DONALD V. SHANNON to Capt. ROBERT HENPREW (MA) of the  
Chelsea, Mass. PD.

3/19/65

Tab 8

AIRTEL

TO : DIRECTOR, FBI [REDACTED] F

FROM: SAC, BOSTON [REDACTED] P

CRIMINAL INTELLIGENCE PROGRAM  
BOSTON DIVISION

The following are the developments during the current week:

On 3/12/65, EDWARD "EDDY" DEEGAN was found killed in an alleyway in Chelsea, Mass. in gangland fashion.

Informants report that RONALD CASESSA, ROMEO MARTIN, VINCENT JAMES FLEMMI, and JOSEPH BARBOZA, prominent local hoodlums, were responsible for the killing. They accomplished this by having ROY FRENCH, another Boston hoodlum, set DEEGAN up in a proposed "breaking & entering" in Chelsea, Mass. FRENCH apparently walked in behind DEEGAN when they were gaining entrance to the building and fired the first shot hitting DEEGAN in the back of the head. CASESSA and MARTIN immediately thereafter shot DEEGAN from the front.

ANTHONY STATHOPOULOS was also in on the burglary but had remained outside in the car.

3-Bureau  
1-Boston  
JFK:ipo'b  
(4)

SEARCHED \_\_\_\_\_  
SERIALIZED 0  
INDEXED \_\_\_\_\_  
FILED 0

F [REDACTED] -1820

0000 4

000321

When FLEMING and BARBOZA walked over to STATHOPOULOS's car, STATHOPOULOS thought it was the law and took off. FLEMING and BARBOZA were going to kill STATHOPOULOS also.

Immediately thereafter, STATHOPOULOS proceeded to Atty. AL FARESE. FARESE called the Chelsea, Mass. PD before Chelsea knew of the killing and FARESE wanted to bail out ROY FRENCH and [REDACTED]. Shortly thereafter the Chelsea PD found the body of IRENE and immediately called Atty. FARESE's office, and Atty. JOHN FITZGERALD, FARESE's law partner, came to the Chelsea PD.

Efforts are now being made by the Chelsea PD to force STATHOPOULOS to furnish them the necessary information to prosecute the persons responsible.

It should be noted that this information was furnished to the Chelsea PD and it has been established by the Chelsea Police that ROY FRENCH, BARBOZA, FLEMING, CASESSA, and MARVIN were all together at the Ebb Tide night club in Revere, Mass. and they all left at approximately 9 o'clock and returned 45 minutes later.

It should be noted that the killing took place at approximately 9:30 p.m., Friday, 3/13/65.

[REDACTED]

[REDACTED]

Informant also advised that [REDACTED] had given the "OK" to JIM BARBOZA and "JIMMY" FLEMING to kill [REDACTED] who was killed approximately one month ago.

FD-204 (Rev. 7-1-63)  
OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

# Memorandum

TO : SAC BOSTON [REDACTED]

DATE: 4/6/65

FROM : SA [REDACTED]

CI  R  
 FBI  FBI

SUBJECT: [REDACTED]

Date of Contact	3/23/65
Title and File no on which contacted	91-1659
CRIMINAL INTELLIGENCE	94-536
CONTROL FILE FOR TOP HOODLINS	[REDACTED]
[REDACTED]	80-3042
HAYWARD L. S. PATRIARCA, AR	92-118
COSA NOSTRA	92-605

Purpose and results of contact:

NEGATIVE  
 POSITIVE

On 3/23/65, PCI advised that JOE BARBOSA who is from East Boston and an ex-fighter, was very friendly with ROBERT MARTIN, ROBERT CASSELL and [REDACTED]. PCI stated that BARBOSA was supposed to have hit FRANCIS from Revere and RAY. He stated that BARBOSA reportedly killed RAY with a Magnum gun. PCI stated that BARBOSA was in prison with BENJAMIN who was murdered after he left prison and beheaded.

He stated that BARBOSA is a Portuguese kid who would otherwise be accepted into the Cosa Nostra except for his nationality. He stated that BARBOSA claims that he had shot TEDDY DEEGAN with a .45 caliber gun.

PCI related that BARBOSA indicated that ROY FRENCH was with DEEGAN and another individual when DEEGAN was shot by BARBOSA and two other individuals, one of whom informant believed was ROBERT MARTIN.

Character of Informant	Very good	Coverage	Criminal
------------------------	-----------	----------	----------

- 1 - [REDACTED]
  - 1 - 91-1659
  - 1 - 94-536
  - 1 - [REDACTED]
  - 1 - 80-3042
  - 1 - 92-118
  - 1 - 92-605
- HFD:ras

SEARCHED INDEXED  
SERIALIZED FILED  
APR 1965  
FBI - BOSTON

000768

██████████ f

Informant stated that he had heard BARBOSA indicate that one of the guys with DEEGAN whom they had planned to kill along with DEEGAN ran off when the law showed up and fled.

PCI stated that rumors have it that ROY FRENCH actually set up DEEGAN to be killed.

PCI stated that he had heard that JOE BARBOSA was extremely friendly with JIMMY FLEMMA from Dudley Street. He stated that BARBOSA had tried to reach JIMMY FLEMMA a short time ago and wanted to know if FLEMMA had gone to Providence to see RAYMOND (PATRIARCA).

PCI subsequently determined from a source that JIMMY FLEMMA had gone to Providence, R.I. earlier on the day that BARBOSA had tried to contact FLEMMA.

PCI stated that JIMMY FLEMMA had gone to Providence just before TEDDY DEEGAN was slain in Chblesa.

M.B

FD-76 (Rev. 3-22-64)

Tab 10

FBI

Date: 3/24/65

Transmit the following in \_\_\_\_\_  
(Type in plaintext or code)

Via AIRTEL REGISTERED MAIL  
(Priority)

*Steph...*  
*[Handwritten signature]*

TO : DIRECTOR, FBI (92-2961)  
FROM: SAC, BOSTON (92-118)(P)  
RAYMOND L. S. PATRIARCA, aka  
AR  
(OO: BOSTON)

Rebosairtel, 3/12/65 and Buairtel, 3/16/65.

In connection with the information furnished by BS 837-C\* relative to the possible perpetrators of the murders of ANTHONY SACRIMONE and EDWARD DEEGAN, Capt. ROBERT RENPREW (NA), Chelsea, Mass. PD, was advised of the same information, as furnished by [redacted]. This informant also furnished basically the same information as did BS 837-C\* relative to the murder of EDWARD DEEGAN on 10/17/64. This information was furnished to Inspector HENRY DOHERTY of the Everett, Mass. PD on 10/18/64.

Relative to the DEEGAN murder, subsequent investigation by the Chelsea, Mass. PD reflected that TONY STATHOPOULOS was at the scene, saw some activity and thought it was the Chelsea Police moving in to make an arrest of DEEGAN and ROY FRENCH who were perpetrating a "breaking and entering" and he left the scene and got a hold of Atty. ALBERT PARESE.

3-Bureau (RM)  
1-Boston

JPK:po'lb  
(4)

REC-18

92-2961-1012

10 MAR 26 1965

c.c. WICK

EX-102

60 APR 26 1965 Agent in Charge

Sent \_\_\_\_\_ M Per \_\_\_\_\_

BS 92-118

Atty. FARESE called the Chelsea Police and wanted to bail out DEEGAN and ROY FRENCH.

The Chelsea Police at that time had no knowledge of the murder; however, when the body was discovered, they immediately started to look for ROY FRENCH. FRENCH told them he was at the Ebb Tide night club, Revere, Mass., all night and their investigation has indicated that FRENCH got a telephone call about 8:45 p.m. After the phone call he left the Ebb Tide with JOSEPH BARBOZA, VINCENT FLEMMI, RONNIE CASESSA, ROMEO MARTIN, and FRANK IMBRUGLIA. Further investigation reflected that they all returned about 45 minutes later. The time of the murder was approximately 9:30 p.m., 3/12/65.

ROMEO MARTIN's car was identified by a Chelsea Police Officer as being parked with two men in it in the vicinity of the murder. When the police officer approached the car, it sped off.

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA FPMR (41 CFR) 101-11.6  
UNITED STATES GOVERNMENT

Tab 11

# Memorandum

TO : Director, FBI

DATE: June 20, 1967

FROM : SA Boston

SUBJECT: SA H. PAUL RICO  
BOD: 2-26-51  
SA DENNIS M. CONDON  
EOD: 1-29-51

## RECOMMENDATIONS FOR QUALITY SALARY INCREASE

7/2/67  
1-138746-150  
36-138746-150  
7/2/67

SA H. PAUL RICO has been assigned exclusively to the development of Top Echelon Criminal Informants in the Boston Office since September 16, 1963. SA DENNIS M. CONDON has been assigned to the Top Hoodlum Program since 1962.

SA RICO was successful in developing [redacted]

[redacted] Based on the development of SA RICO was able to determine the basic reasons for each gangland slaying, the identities of the majority of individuals involved, the latter information, where significant, disseminated to pertinent law enforcement agencies. Only as a result of this informant was the Boston Office able to separate the true reasons for the slayings as distinguished from the camouflage put forth by the [redacted] and/or the LCN.

During this period, SA RICO and SA CONDON were making continuing efforts to develop as an informant an active LCN member. When intensified efforts in this area were not immediately productive, SA RICO was able to have [redacted]

[redacted] and through this contact, able to follow the philosophy of the LCN, particularly concerning the infamous Boston gangland slayings.

[redacted] and through these contacts the Boston Office had continuing high quality information concerning LCN activities.

[redacted] was based on the guidance and counsel said informant received from SAS RICO and CONDON.

REC-145

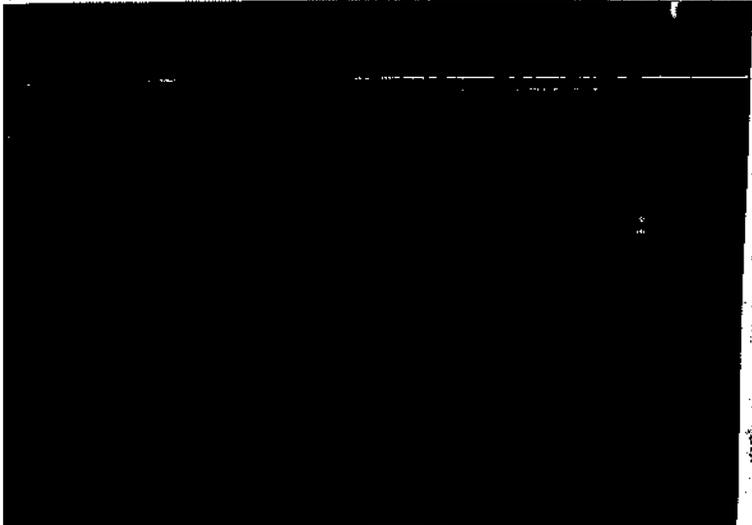
67-138746-150	
Searched	Numbered
JUL 7 1967	
27	

4 - Bureau  
2 - Boston  
JJJ:CAK JUL 12 1967  
(6) 73

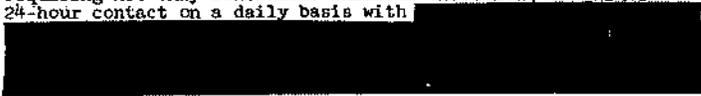


Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan



*B*

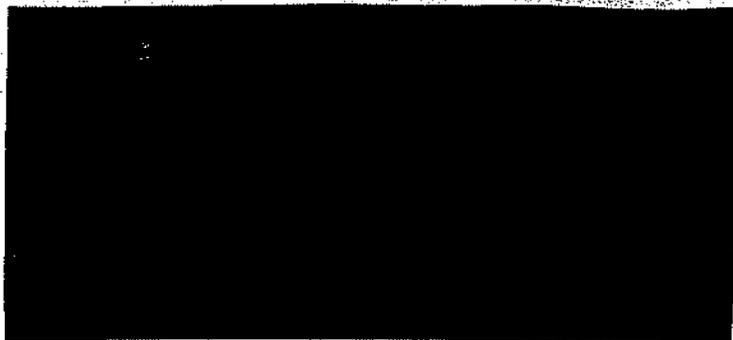
The handling of this source, obviously, was an extremely delicate and sensitive problem requiring not only continuous skillful direction, but almost 24-hour contact on a daily basis with



Realizing the potential that [redacted] might one day be victim of a homicide, SAS CONDON and RICO have continued vigorous attempts to obtain additional high quality LCN sources. Accordingly, BS 955 C-TE was developed by these agents and via imaginative direction and professional ingenuity utilized said source in connections with interviews of JOSEPH BARON, a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in this area to be the most dangerous individual known.

B, D

SAS RICO and CONDON contacted BARON in an effort to convince him he should testify against the LCN. BARON initially declined to testify but through utilization of BS 955 C-TE, the agents were able to convey to BARON that his present incarceration and potential for continued incarceration for the rest of his life, was wholly attributable to LCN efforts directed by GENNARO J. ANGIULO, LCN Boston head. As a result of this information received by BARON from BS 955 C-TE, said individual said he would testify against the LCN members.



The indictments against PATRIARCA, TAMELEO and CASSESSO are the first major blow to the LCN in New England. PATRIARCA, as LCN boss and possible Commission member, and his top lieutenant, HENRY TAMELEO, were felt to be beyond prosecution by top state and local police officials based on what for years resulted in frustration in securing witnesses who would testify. The Providence, Rhode Island Police and Rhode Island State Police have, for over twenty years, concentrated a large number of men in efforts to secure even a minor prosecution, unsuccessfully.

SAS CONDON and RICO were assigned to develop a prosecutable quality case against top LCN members in New England. They have done so via highest devotion to duty, requiring personal sacrifices, in time, on a continuing basis. Their time would have been wasted were it not for the skillful, unprecedented ability to develop the highest type criminal intelligence data, coupled with securing as a witness a professional killer who, in the past, would never furnish data other than his name to any law enforcement agency. Their performance for over twelve months

has been of the highest caliber; their drive and desire to fulfill a vital objective of the Bureau have been rewarded with the prosecution of top ICM members.

In view of the above, noting we have broken what at times has seemed to be an insurmountable barrier, I am recommending Quality Salary Increases be awarded to SAS RICO and CORDON.

FD-263 (Rev. 3-8-67) Tab 12

## FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE <b>BOSTON</b>	OFFICE OF ORIGIN <b>BOSTON</b>	DATE <b>9/18/67</b>	INVESTIGATIVE PERIOD <b>6/74 - 9/12/67</b>
TITLE OF CASE <b>[REDACTED]</b>		REPORT MADE BY <b>SA CHARLES A. REPPUGGI</b>	TYPE OF CASE <b>AR</b>
CHARACTER OF CASE <b>AR</b>			

**REFERENCE:** Report of SA CHARLES A. REPPUGGI dated 6/21/67 at Boston.

- P -

**ENCLOSURES TO BUREAU (2)**

Original and one copy of letterhead memorandum characterizing informants mentioned in this report.

**LEADS**

**LAS VEGAS**

**AT CARSON CITY, NEVADA**

**Walls of Dining Control Board, if feasible,**

CONVIC.	AUTO.	FUG.	FINES	SAVINGS	RECOVERIES	ACQUIT-TALS	CASE HAS BEEN:
							PENDING OVER ONE YEAR <input type="checkbox"/> YES <input type="checkbox"/>
							PENDING PROSECUTION OVER SIX MONTHS <input type="checkbox"/> YES <input type="checkbox"/>

APPROVED: *[Signature]* SPECIAL AGENT IN CHARGE

COPIES MADE: *[Handwritten]*

DO NOT WRITE IN SPACES BELOW

**3083**

3 - Bureau (Encs. 2)  
1 - USA, Providence, R.I.  
2 - Las Vegas  
1 - Boston

SEARCHED *[Handwritten]*

INDEXED *[Handwritten]*

FILED *[Handwritten]*

006813

Pages B through S of serial 3083 are being deleted in their entirety for code: F, B, M.

[Redacted] F

B.M

On August 28, 1967 BS 958-CTE furnished the following information to SA H. PAUL FICO:

The informant advised that LARRY BAIONE asked the informant to contact JIMMY PLEMMI on behalf of GENARO J. ANGILO to see what PLEMMI can do to keep NICK PERRIA from testifying against anyone and to see if PLEMMI can find some way to destroy JOE BARBOZA's testimony against PATTI IAFCA and ANGILO. The informant advised that this puts JIMMY PLEMMI in a very bad position because JIMMY PLEMMI owes ANGILO over \$1,000. and is therefore indebted to him. The informant knows that JIMMY PLEMMI would just as soon see PATTI IAFCA and PERRIA get hurt but that he has always looked down on ANGILO as a source of money for him and he feels that PLEMMI would want to help ANGILO. The informant advised, however, that he will, when he is talking to PLEMMI, point out to him that BARBOZA could end up seriously

- T -

000815

[Redacted]

[REDACTED] F  
hurting him, JIMMY FLEMMI, if he. FLEMMI, did anything  
to attempt to discredit BARBOZA.

Informant further advised that he has learned  
that LARRY BAIONE and PETER LIMONE have received informa-  
tion that JOE BARBOZA is going to testify for Suffolk County  
on the murder of TONY DEEGAN and that they in all probability  
will attempt to make sure that TONY STACOPOLIS will not be  
around to corroborate BARBOZA's testimony. The informant  
advised that he believes that STACOPOLIS' life is in  
danger.

OPTIONAL FORM NO. 10  
MAY 1962 EDITION  
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI  
DATE: March 29, 1968

FROM : SAC, Boston

SUBJECT: SA H. PAUL RICO  
RECOMMENDATION FOR QUALITY-SALARY INCREASE

SA H. PAUL RICO has been assigned exclusively to the develop-  
ment of Top Echelon Criminal Informants and related matters in  
the Boston Office since September 16, 1963.

Through his intensive and most skillful efforts, SA RICO developed four Top Echelon Informants, namely, [REDACTED] B

PS 955 C-TE and [REDACTED]  
The Top Echelon informants have furnished the day-to-day activities of RAYMOND L. S. PATRIARCA, LCN boss from Providence, Rhode Island, and LCN hierarchy in the New England area. More importantly, they also provide the results of decisions made by RAYMOND PATRIARCA in connection with LCN policy. This enabled the Boston Office to exploit and harass the LCN in the New England area.

Through the careful, selective use of the information derived from these informants, SA RICO was able to exploit same and develop JOSEPH BARON, aka Joseph Barboza, to a point where he testified against RAYMOND L. S. PATRIARCA; his underboss, HENRY TAMELEO; and LCN member, RONALD CASSESSO. This resulted in the conviction of above-named individuals and also, the indictment of LCN members RALPH LAMATTINA and PETER LIMONE in the gangland slaying of EDWARD DEEGAN, which case is awaiting trial in Suffolk County, Massachusetts.

SA RICO has accomplished this great penetration of the LCN with the highest devotion to duty, requiring many personal sacrifices on a continuing basis. His performance has been of the highest caliber; his initiative, drive and desire to fulfill the Bureau's objective of convicting an LCN boss and many LCN members have been rewarded.

The manner in which SA RICO has performed is substantially above normal requirements. His work has been highly effective. His high level of effectiveness has been sustained over a period of time and is expected to continue.

10 APR 16 1968

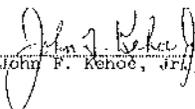
2 - Bureau  
2 - Boston  
JLH:CAK  
(4)

name Boston to Boston  
4-8-68  
LDR: [initials]

SUBJECT TO PROTECTIVE ORDER

375

In view of the above, noting that we have accomplished what at times seemed to be an insurmountable barrier, I am recommending a Quality-Salary increase be awarded to SA RICO.

  
John F. Kehoe, Jr., Supervisor

SUBJECT TO PROTECTIVE ORDER

2.

DIRECTOR, FBI

4/14/69

JOSEPH BARON, aka.  
Joseph Barboza;

B.F.

Investigation is being initiated in connection with the TECIP to develop Subject as a top echelon criminal informant; therefore, Subject is being designated a target under this program.

The Boston Office by letter dated April 1, 1969, furnished pertinent background concerning Subject, which is set forth below. The Boston Office advised that there will be occasions when that office will desire that Subject be contacted on various matters of extreme importance to the Boston Division. Further, as PC becomes acquainted in the San Francisco area, he will undoubtedly be in a position to furnish worthwhile information concerning criminal activities.

M. B.

[Redacted]

P

- 2 - Bureau (RM)
- ② - Boston
- 2 - [Redacted]

F

CNH:jab  
(6)

[Redacted]

SEARCHED \_\_\_\_\_ INDEXED \_\_\_\_\_  
 APR 18 1969  
 FBI - BOSTON

000964

377

F. M. B

000965

CNH:jab

convictions were obtained on March 8, 1968, on RAYMOND L. S. PATRIARCA, recognized leader of the LCN in the New England area; HENRY TAMELEO, LCN member and lieutenant for RAYMOND L. S. PATRIARCA; and RONALD CASSESSO, LCN member, for violating the AR Statutes

the gangland death of EDWARD "TEDDY" DEEGAN this information was disseminated to Suffolk County in a murder trial which resulted in the conviction of LCN members HENRY TAMELEO, RONALD CASSESSO, PETER LIMONE and LOUIS GRIECO, all of whom received "the death sentence." Also convicted at this trial

IDENTIFICATION RECORD

LEAD

BOSTON

At Boston, Massachusetts.

000966



U.S. Department of Justice  
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

DEC 16 2002

The Honorable Dan Burton  
Chairman  
Committee on Government Reform  
United States House of Representatives  
Washington, D.C. 20515

RECEIVED

DEC 16 2002

HOUSE COMMITTEE ON  
GOVERNMENT REFORM

Dear Mr. Chairman:

This supplements our prior responses to your requests for documents relating to the Committee's oversight investigation about the FBI's handling of organized crime investigations in Boston, Massachusetts and related matters. The FBI has provided the enclosed documents in response to your request for specific material as follows:

In response to your letter, dated April 16, 2002, seeking, *inter alia*, all records relating to the electronic surveillance of the Piranha Finance Company, enclosed are copies of surveillance logs, consisting of two volumes. While the FBI was not able to identify responsive records based on an indices search for the Piranha Finance Company, these records are believed to be responsive, in that they were generated in connection with the FBI's investigation of Joseph Modica. These documents are released to you without redaction.

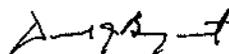
In response to a specific request made by Committee Chief Counsel Jim Wilson during a briefing on December 2, 2002, enclosed is a copy of an FBI investigative report entitled "Boston Gangland Murders; Criminal Intelligence Program." This document, dated January 14, 1966, contains a summary of the Deegan murder. The FBI has redacted information that would disclose the identity of FBI informants from this document.

Finally, a portion of the handwritten logs from the Patriarca wiretap for June 22, 1965, which Mr. Wilson also specifically requested on December 2, 2002, was faxed to him and minority staff on December 13, 2002. A second copy is enclosed here for your convenience. While we have previously released to the Committee copies of the summary airtels recording the substance of the information obtained as a result of this electronic surveillance, we have not provided the Committee with a copy of the complete hand-written logs. We understand, based upon conversations with Mr. Wilson, that you seek a complete log and we will make every effort to provide it to you in the next week. I apologize for any misunderstanding that has delayed our response to this portion of your request.

While our public disclosure of these documents might be prohibited by the Privacy Act, we are providing them to the Committee in connection with your oversight investigation. See 5 U.S.C. 552a(b)(9). We note that they may implicate individual privacy interests and request that the Committee treat them with appropriate sensitivity. We continue to work to identify additional material responsive to the Committee's pending request and will supplement this production as releasable material becomes available.

I hope that this information is helpful. Please do not hesitate to contact me if you would like additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Daniel J. Bryant".

Daniel J. Bryant  
Assistant Attorney General

cc: The Honorable Henry A. Waxman  
Ranking Minority Member