Appendix II.—FBI Office of Professional Responsibility Report

FD-263 (Rev. 4-30-85)

FEDERAL BUREAU OF INVESTIGATION

REPORTING OFFICE	OFFICE OF ORIGIN	DATE	INVESTIGATIVE PERIOD	
Boston	FBIHQ	8/13/97	7/08/97 - 8/14/97	
TITLE OF CASE		REPORT MADE BY		TYPED BY:
UNSUB(S); OBSTRUCTION OF JUSTICE; OFFICE OF PROFESSIONAL RESPONSIBILITY (OPR); BOSTON DIVISION; OO: FBIHQ		Joshua Hochberg, FIS, DOJ IIC Charles S. Prouty		tls
		CHARACTER OF CASE ADMINISTRATIVE INQUIRY		

REFERENCE:

Acting Deputy Attorney General memorandum to Attorney General, dated July 3, 1997.

The redacted copy for the Trial Team will be released following review and approval by the Department of Justice and FBI Headquarters.

The Department of Justice copy will not contain the Sensitive Information Section containing informant information.

APPROVED	SPECIAL AGENT IN CHARGE	DO NOT WRITE IN SPACES BELOW
COPIES MADE: 3 - Bureau (263-HQ-1220323) (1 - AD Michael A. DeFeo) (2 - Inspection Team) 1 - Department of Justice 1 - Massachusetts USAO Trial Team		

DISSEMINATION RECORD OF ATTACHED REPORT				Notations
Agency				
Request Recd.				
Date Fwd.				
How Fwd				
By				

COVER PAGE

DELETION CODES

B. Information, the disclosure of which would tend to reveal the identity of an informant.

C. Information obtained from a foreign government or international organization where there is an agreement or understanding that the information received will be treated confidentially.

D. Information protected under the Grand Jury Secrecy provision -- Rule 6(e) of the Federal Rules of Criminal Procedure.

E. Information, the disclosure of which would tend to identify a source of information, where confidentiality is expressed or implied.

F. Administratively designated FBI file numbers, which represent individuals or matters which are not the subject of this file.

G. The Law Enforcement Privilege - the disclosure of this information could cause harm to, impede, impair, or hinder an investigation and/or an investigative interest of the FBI.

H. The Law Enforcement Privilege - the disclosure of this information would impede or impair the effectiveness of an investigative technique, method, or procedure of the FBI.

J. Information, the disclosure of which is prohibited by Federal statute (with citation to the appropriate statute).

P. Information, the disclosure of which would be an unwarranted invasion of the personal privacy of an individual not party to this matter.

A. INVESTIGATIVE TEAM

The investigative team was comprised of the following personnel:

Department of Justice (DOJ) attorneys:

Team Leader Joshua Hochberg (Deputy Chief, Public Integrity Section)
James Cooper (Public Integrity Section)
Bernadette Sargeant (Office of Professional Responsibility)

Federal Bureau of Investigation (FBI) employees:

Assistant Director Michael DeFeo (OPR, FBIHQ)
Inspector in Charge (IIC) Charles S. Prouty (Assistant Special Agent in Charge (ASAC), Columbia)
Patrick A. Patterson (Unit Chief, FBIHQ)

Supervisory Special Agent (SSA) Andrew G. Arena (CID, FBIHQ)
SSA William D. Chase (WFO)
SSA Raymond E. Eganey, Jr. (Nashville)
SSRA Michael A. Mason (Syracuse)
SSA Hal G. Metcalfe (Louisville)
SSA Walter Reynolds (Detroit)
Special Agent (SA) Deborah Bretschneider (New York)
SA Charles E. Frahm (New York)
SA Michael D. Harkins (New York)
SA John J. Hess (New York)
SA Laura E. Youngblood (New York)
E. Carolyn Harris (Pocatello)
Beverly A. Hulsizer (Fort Monmouth)
Elizabeth Kauffmann (Pocatello)
Billy Montalbano (Rapid Start, IRD, FBIHQ)
Tabitha Lynn Stires (CID, FBIHQ)
Tandra Williams (IRD, FBIHQ)

B. ORGANIZATION

The investigative team was divided into five interview teams with each team assigned to investigate one of the four general allegations. Rapid Start was utilized as a case management tool and with more than 180 leads it proved an effective means of summarizing the work accomplished and sorting the results into a form useful for analysis.

C. SCOPE OF INQUIRY

The purpose of this inquiry was to examine whether sufficient proof existed to establish that any Government official committed criminal acts or other misconduct including:

A. That FBI agents improperly authorized informants to commit criminal acts;

B. That FBI agents obstructed justice by warning current or former informants that they were the targets of investigation or were about to be arrested or indicted, in violation of Title 18 U.S.C. Section 1503, 1510, or warned current or former informants that they were subjects of Title III interceptions in violation of Title 18 U.S.C. Section 2511(1)(c) and Title 18 U.S.C. Section 2511(4)(a);

C. That FBI agents improperly received benefits from current or former informants or otherwise maintained improper personal relationships with current or former informants in violation of Title 18 U.S.C. Section 201(c)(1)(B);

D. That current or former FBI agents and/or prosecutors made false or misleading representations to judicial officers in court filings, including, but not limited to, papers filed in connection with applications for electronic surveillance authorizations, Title 18 U.S.C. Section 1503.

Most of the specific allegations we examined were prior to 1990 and, therefore, beyond the five-year statute of limitations for criminal prosecution. We have uncovered no evidence that any potentially criminal acts were part of a continuing crime which would bring the acts within the statute of limitations. In addition, we examined and found a number of violations of FBI rules and regulations which would have warranted administrative action if those employees were still employed by the FBI. However, no current FBI employees were found to be in violation of FBI policies.

In view of this investigation's hybrid (OPR/Criminal) nature, it was decided to interview onboard employees using form FD-644 "Warning and Assurance to Employee Requested to Provide Information on a Voluntary Basis." While functioning as an independent entity, the investigative team coordinated its activities closely with the United States Attorney's Office's (USAO) Salemme prosecutive team. Arrangements were made for the USAO team to participate in every interview it deemed relevant. Liaison was also maintained with the Boston FBI Field Office and it afforded the team access to all its files and provided logistical support.

D. PREDICATION

This investigation is predicated by allegations which have arisen during pretrial proceedings before U.S. District Court Judge Mark Wolf in the District of Massachusetts. This prosecution, U.S. v. Salemme, involves the criminal activities of members and associates of the New England La Cosa Nostra (LCN) family and a Boston organized crime group, the Winter Hill Gang. These organizations have long been involved in criminal activity, such as illegal gambling, extortion, narcotics trafficking and murder. The Government sought and obtained racketeering indictments, which covered a period spanning more than twenty (20) years.

Two of the defendants in this prosecution, James "Whitey" Bulger and Stephen Flemmi, were longtime confidential informants of the FBI's Boston Division. Bulger is currently a fugitive. A third confidential source, Angelo "Sonny" Mercurio, supplied probable cause for a key Title III intercept, the well known LCN "induction ceremony" of 1989. All three of these former FBI sources have become central figures to the allegations of Government misconduct, both criminal and non-criminal, being leveled by the defendants and others.

The Deputy Attorney General, by memorandum dated July 3, 1997, directed the initiation of this investigation. By July 8, 1997, the entire investigative team was on site in Boston and fully operational.

The allegations have been investigated by a team led by the Public Integrity Section of the Department of Justice (DOJ). The investigative team consisted of two attorneys from the DOJ Public Integrity Section, one attorney from the DOJ Office of Professional Responsibility (OPR), and FBI agents supervised by the Assistant Director of the FBI OPR. No personnel assigned to the investigative team had prior connections to the matters under investigation with the exception of SSA Arena, who conducted a preliminary investigation of these matters beginning in approximately April of 1997.

E. EXECUTIVE SUMMARY

This interim report marks the completion of the first phase of investigation. All reasonable and apparent leads have been covered. It is anticipated that the next phase will begin following the pretrial hearings, when new information emerges. The investigation resulting in this report required eighteen persons for five weeks at a cost of approximately $240,000.00, including salary and expenses. One hundred fifty-two (152) interviews were conducted and these were memorialized in eighty-one (81) FD-302s and seventy-one (71) investigative inserts.

The team adopted a historical approach, interviewing many current and retired FBI employees with emphasis on those affiliated with the Boston Organized Crime (OC) Squad. It also conducted an extensive review of relevant informant files. Current and former Assistant United States Attorneys (AUSA), as well as federal, state and local police officers who had worked with the OC Squad, were also interviewed. Despite the investigative team's repeated requests, the Salemme defendants' attorneys failed to provide additional specific information regarding their allegations of FBI misconduct, citing potential loss of "litigation advantage." Retired FBI agent John Morris, a target of many of the allegations, declined to be interviewed. Morris has indicated through counsel that he will assert his Fifth Amendment rights in connection with these matters. Retired FBI agent John Connolly agreed to a limited interview; he declined to answer most questions and gave only limited information, mostly through his attorney, which was restricted to activities other than his own.

What follows is a synopsis of the results of our investigation of the various general allegations. A more detailed analysis of each allegation follows this Executive Summary.

Allegation I

Allegation I concerns whether FBI Agents improperly authorized informants to commit criminal acts.

A total of 35 former/current managers assigned to the Boston Division during the period 1970 to present were contacted. FBI policy allows those managers to authorize informants to participate in criminal activity if operationally necessary. All stated that they did not recall ever authorizing Bulger or Flemmi to participate in criminal activity. Thorough reviews of the Bulger and Flemmi informant files reveal no instances of authorization. The two sources were advised on a total of eleven documented occasions that, pursuant to the Attorney General's Guidelines, they were not authorized to engage in any criminal activity.

Although they were not authorized to commit crimes, Bulger and Flemmi were Top Echelon (TE) informants. Because of their association with and leadership of the Winter Hill Gang, known as the "Irish Mob," as well as their relationship with the LCN, agents in the Boston Division of the FBI must have known they were involved in some form of criminal activity. Through informant file reviews, as well as interviews of current and former employees, it is clear that both sources were involved in gambling, loan sharking, bookmaking and drugs. Other sources also alleged involvement by Bulger and Flemmi in more violent activity, including extortion and murder.

There were 84 references to Bulger and Flemmi's alleged criminal activity in 157 separate reports provided by 49 independent sources during the period from 1970 to 1997. The reports were made with varying degrees of specificity regarding Bulger's and Flemmi's alleged participation in criminal activity. It is often unclear from the reported information whether it is based on first-hand knowledge or rumor. In this limited inquiry, we did not attempt to evaluate the accuracy of the reports or the credibility of the sources.

There is no documented record of these reports of Bulger's and Flemmi's criminal activity being furnished to their handler, John Connolly. However, many of the files were OC-related and, therefore, should have been read by OC supervisors John Morris and James Ring. Thus, it is virtually certain that Connolly and/or his supervisors received some of this information. More problematic are the instances of self-reporting of criminal activity by Bulger and Flemmi. They reported instances of gambling, loan sharking and bookmaking. Because these instances were reported directly, either to Connolly or OC supervisors, they clearly knew of Bulger's and Flemmi's illegal conduct, and the Bureau failed to follow policies requiring initiation of a written review of whether the informants' continued use was justified.

Allegations have been made by Flemmi that former supervisor Morris and unnamed others authorized Bulger and Flemmi to engage in any criminal activity short of murder and assured them that they would be "protected." Morris has refused to be interviewed, and Connolly gave only a limited interview through his attorney. Without the cooperation of Connolly and/or Morris and the defendants, the allegation that these informants' handling agents authorized unlawful activity cannot be further addressed. However, it is noteworthy that one witness reports that in April of 1997, Connolly called the witness and purported to remind the witness that Morris had made such a statement.

Allegations were made by Flemmi that Bulger and he were operated as informants after being closed December 3, 1990. No documentation was found in their files to substantiate this claim. Defendant Salemme's attorneys gave as evidence of this claim (1) a request in Flemmi's file for $5,000 spending authority three months after he was closed and (2) an alleged telephone call to Flemmi in 1993 inquiring about an LCN defendant's phone number. Investigation determined that the request for money was simply a request in the amount of the standard funding increment ($5,000) to pay a nine-month old bill of $68.66, and documentation shows the phone number was actually obtained from another informant.

Connolly was also the handling agent for Angelo Mercurio, who allegedly "set up" a "hit" on June 16, 1989,

targeting LCN member and currently indicted defendant Francis P. Salemme. Though Salemme suffered a gunshot wound during the "hit," he survived. These facts did not trigger the required status review, and Mercurio remained an open and active informant until his indictment several months later. Although the only hard evidence we have seen shows only that Mercurio arranged the meeting at which Salemme was shot, Connolly's supervisor, James Ring, believed that Mercurio was aware of a plan to kill Salemme at the time he set up the meeting. Moreover, the FBI developed information from other sources indicating Mercurio's complicity in this attempt on Salemme's life. We did not attempt, as part of this limited inquiry, to ascertain whether, in fact, Mercurio participated in the Salemme hit.

While no evidence suggests authorization of criminal activity, investigation determined that a wealth of information clearly illustrated, that, with the knowledge of their FBI handler, Bulger and Flemmi participated in criminal activity while serving as informants for the FBI. Likewise, the FBI had information that, while he was an open informant, Angelo "Sonny" Mercurio participated in a murder. The Manual of Investigative Operations and Guidelines (MIOG) rules regarding the operation of informants, specifically "written determination" of continued use, were not followed.

Allegation II

Allegation II concerns whether the FBI warned informants that they were the targets of investigation or were about to be arrested or indicted.

Several allegations arose from affidavits by Stephen Flemmi dated April 27, 1997, and June 25, 1997, and from statements made by Francis Salemme's attorney. Suspicions of leaks and tipping abound during the time Bulger and Flemmi were informants. Many come from area law enforcement officials who believe that the FBI had granted Bulger and Flemmi favored status. These suspicions animated the bitter feelings some of them expressed toward the FBI. Also, during the last twenty years, the Confidential Informants and Cooperating Witnesses (CI/CW) in the Boston Division provided extensive information on law enforcement "leaks."

Ten specific allegations of FBI tipping/leaking were investigated and none could be substantiated. Although various persons were able to articulate suspicions, no one provided information containing sufficient specificity to resolve the allegations. For example, the allegation that four separate Title III's were compromised by FBI agents could not be substantiated by any direct evidence. Two of these allegedly compromised investigations -- a 1980 Massachusetts State Police (MSP) Lancaster Garage wire and a 1987 DEA wire -- did not

involve the FBI. According to informant files, the FBI learned of the 1980 wire from Bulger and Flemmi, who said they had learned of it from their sources in the MSP.

In 1984, fearing a possible leak, former OC Squad Supervisor James Ring walled off a Title III drug wire from the rest of the squad. During this inquiry, we noted two unusual situations with regard to how certain organized crime investigations were handled in the Boston Division. During the 1984-85 Bulger/Kaufman DEA wire, two agents from the Boston Division were selected to work that particular investigation separate from the FBI office. They were selected because they were new to the division and essentially had no contacts there. They were detailed to DEA, worked off-site, and were directed not to discuss this case with anyone in the Boston Division of the FBI. The second situation involved the manner in which the "Cleanshave" investigation was handled. This investigation targeted Bulger's extortionate activities, and was assigned to the Terrorism Squad as opposed to the OC Squad. Knowledge about the existence of the investigation was limited to a select few on that squad, and the investigation was walled off from the rest of the office. The Assistant Special Agent in Charge (ASAC) who directed both investigations noted that there had been so many reports of leaks and compromised investigations surrounding Bulger that he felt compelled to wall off the investigation. In light of allegations by local law enforcement that SA John Connolly was protecting Bulger because he was an informant, he wanted to keep those cases secret, even from Connolly.

Three allegations of leaks -- a 1990 MSP wire targeting LCN, a 1991 MSP wire targeting bookmakers, and a 1990 DEA wire -- were that specific FBI Agents tipped off subjects. There was no evidence developed during the investigation to substantiate the allegations. Each of the three Agents involved were interviewed and emphatically denied the allegations. No other investigative avenues are apparent.

In reviewing the CI/CW files, it is apparent that several FBI informants had their own network of sources in local, state and federal law enforcement. In addition, there were several investigations into law enforcement leaks: a "leaker" in the MSP, as well as one in the USAO, were dismissed and prosecuted; two FBI support employees strongly suspected of leaking were dismissed. In 1988, SSA Morris was suspended for 14 days after leaking information to the media regarding Bulger's CI status. SA Connolly received a letter of censure for encouraging SSA Morris to contact the news reporter and "set him straight."

Without the cooperation of the defendants, Connolly or Morris, no additional investigation can be conducted to resolve most of the leak allegations.

In addition, we attempted to determine whether current or former informants were warned of impending indictments and, thereby, afforded the opportunity to flee. Flemmi alleged in an affidavit that he received warning before his 1995 indictment. No evidence has emerged to resolve this allegation. It is noted that he was arrested on the day of the indictment. Flemmi declined to provide further specific information, and those persons we have interviewed all denied giving the warning. In the absence of a full interview with Morris or Connolly, or further information from Flemmi, no further leads are apparent.

Flemmi also asserted that Angelo "Sonny" Mercurio, a former informant, was warned about his 1989 indictment. Mercurio's primary handler, John Connolly, declined a full interview. We did interview Connolly's supervisor at the time, former SSA James Ring, who made several of the last entries in Mercurio's informant files. Ring denied warning Mercurio and asserted that the FBI made extensive efforts to find and apprehend Mercurio when he fled. We have reviewed numerous documents in the informant files. Collectively, these documents suggest that on the day before the indictments were returned, Ring 1) inquired about the whereabouts of Mercurio's LCN associates, persons the FBI knew that Mercurio believed would soon be indicted with him; and 2) may have advised Mercurio to have no further contacts with the FBI except to report a "threat to life or physical well being," or "corruption of the judicial process." Ring maintains that the advice on further contacts occurred months earlier and that his questions about locations of Mercurio's LCN associates were too ambiguous to convey a warning. We have not found evidence of an explicit warning that the indictments would be returned the next day. We are unable to resolve at this time what may be a variance between Ring's stated recollection and the objective facts as set forth in documents created at the time. No further leads are apparent, and Mercurio is not at this time available for an interview.

Allegation III

Allegation III concerns whether current or former SAs received benefits from current or former informants or otherwise engaged in inappropriate relationships with current or former informants.

Numerous interviews, including several of significant former FBI sources, and reviews of investigative files and other documentary evidence were conducted in the course of investigating this allegation. We asked every person interviewed whether or not he or she had any information regarding the allegations.

This investigation has revealed two individuals who have confirmed that at least two Agents received gifts from

informants. One is a former SA, who was himself the recipient of gifts, and the other is the ex-wife of a former SSA, who reported that her former husband received gifts.

Retired SA Nicholas Gianturco advised that he received gifts from informants Bulger and Flemmi on several occasions. These gifts included a black briefcase, a model boat and truck, a Lladro statue and a bottle of cognac. Gianturco advised that the informants' handler, former SA John Connolly, acted as the conduit for these gifts. Gianturco does not recall receiving any gifts after Connolly retired; nor did he receive any more gifts directly from Bulger or Flemmi.

Ms. Rebecca Morris (ex-wife of John Morris) advised interviewing agents that Morris told her that he once received a silver ice bucket and a case of wine as Christmas gifts from Bulger and Flemmi. These gifts were also delivered by Connolly.

John Morris (former SSA) has refused to be interviewed, and only a limited interview was conducted with John Connolly. The Connolly interview concluded before any matters of substance could be discussed.

Three individuals interviewed advised that Bulger and Flemmi were either entertained or debriefed in their homes. SA John Newton, former SA Nicholas Gianturco and Ms. Rebecca Morris, have each acknowledged having them in their homes for entertaining or debriefings. After Connolly was ordered by his supervisor to conduct no further meetings with them at his own home, SA Newton allowed Connolly to use his apartment to debrief Bulger and Flemmi on four or five occasions in the mid-1980's. Newton was generally not present when these debriefings occurred and received nothing in exchange for the use of his apartment. Former SA Gianturco had Bulger and Flemmi as dinner guests in his home on five to seven occasions. Several different agents, including a supervisor, were also guests at these dinners. Ms. Morris advised that Flemmi was a guest in her home on two occasions.

Former SA Richard Baker admitted purchasing liquor for two FBI-sponsored Christmas parties from the South Boston Liquor Mart, a business in which Bulger was known to have an interest. Baker stated that he knew, at the time he purchased the liquor, that Bulger was an FBI informant. In fact, this purchase was revealed when a state law enforcement search warrant was executed and a note with Baker's name and the notation "Friend of John Connolly" was discovered. The Suffolk County assistant district attorney who reported the information to the FBI asserted that the purchase was made at a significant discount. Baker stated that, contrary to the allegation, he did not receive any special treatment in the purchase of the liquor. We are unable at this time to resolve the valuation issue.

Inasmuch as John Morris appears to have been a recipient of gifts from Bulger and Flemmi when he was Connolly's supervisor, he clearly abdicated his responsibility to address such transgressions. Former SA Gianturco also received gifts from Bulger and Flemmi. Both did so in violation of FBI policy. The policy of the FBI is clear on this issue: the MIOG states, "Agents are not to accept gifts from informants."

It was established that Connolly, on one occasion in 1985, tried (without success) to persuade a police officer to quash a subpoena. The subpoena was issued for an associate of Bulger for testimony in a homicide investigation. This Bulger associate (Kevin O'Neil) is the same person who sold liquor to Richard Baker. Since this allegation did not surface until after Connolly's retirement, no action was taken.

Despite the admissions noted above, we have not developed evidence that the gifts received by agents represented a quid pro quo. It has not been determined what, other than small reciprocal gifts, was provided to the informants in exchange for their gifts. Lacking the cooperation of the agents, the question regarding any additional benefits received by Bulger and Flemmi cannot be answered completely.

The second part of the allegation involved the issue of "inappropriate relationships" with current or former informants. This allegation was not as easy to resolve because doing so required a consensus on the definition of "inappropriate relationships." Entertaining or debriefing informants in the homes of agents would be judged by many to be completely inappropriate. The violent character and mercurial nature of some informants would prohibit most agents from having informants in their homes as guests. However, there exists no express prohibition against doing so. Furthermore, not all informants are violent or otherwise undesirable characters. It is conceivable that an informant could have been known to an agent in a completely different capacity that predated the informant relationship, such that entertainment of the informant in the home might not be inappropriate.

Allegation IV

Allegation IV concerns whether or not FBI agents and AUSAs were deceptive in court filings, primarily in connection with three Title IIIs: the 1984-1985 Bulger/Kaufman DEA wire, the 1989 LCN induction ceremony, and the 1991 Hilton Hotel wire. These allegations are relevant to hearings the court will be conducting concerning the use of wiretap evidence.

After a thorough review of available documentation and interviews with the affiants and virtually all the key SAs, managers, and AUSAs involved, no intentional misrepresentations

were found. These matters will be litigated in pre-trial proceedings in United States v. Salemme.

Judge Wolf has raised the issue that the Government may have attempted to mislead the issuing judge by failing to disclose that one of the targets of the 1984-85 DEA Title III was also an informant. If disclosed, the issuing judge could have assessed whether there was a less intrusive method of obtaining the evidence. We do not purport to analyze whether such disclosure was required under the applicable law.

The DEA Title III targeted Bulger, Flemmi, and others. Based upon the investigation completed to date, we conclude that the DEA Agents and AUSAs involved with this wire were not formally aware -- as opposed to strongly suspicious -- that Bulger and Flemmi were FBI informants. It is possible that another individual in the USAO, who had no involvement in the preparation of the Title III application, had learned of Flemmi's and Bulger's status prior to the application. The Title III appears to have been a legitimate attempt to obtain evidence against these individuals, and Bulger and Flemmi were not being operated as informants in connection with the investigation. In fact, as is noted above in the Allegation II summary, their handler was walled off from this investigation.

The affidavit submitted in support of the application was solely the work of DEA, and no FBI source information was utilized. Two FBI SAs were assigned to the Title III during the initial period of authorization. These Agents were newly assigned to the Boston Division and had no knowledge of any relationship between the FBI and Bulger and Flemmi. Although there were numerous rumors regarding some type of relationship between the FBI and Flemmi and Bulger, it does not appear that DEA or the USAO was formally advised on any relationship.

The issue raised in connection with the 1989 34 Guild Street Title III is whether the FBI and prosecutors knew the location of the LCN induction ceremony before obtaining authorization for a roving Title III. Based upon investigation completed to date, it appears that the specific source information regarding 34 Guild Street was not obtained until after the authorization was obtained on Friday evening, October 27, 1989, and that the decision to enter the residence was not made until the following day, Saturday, October 28, 1989. The confidential source who alerted the FBI to the Guild Street location is currently unavailable for an interview. Previously, he has provided statements consistent with those of the agents and prosecutors regarding when the information was obtained.

Judge Wolf and the defense have cited an October 25, 1989, Airtel containing the following language as an indication

that the FBI knew the location of the ceremony on Wednesday, and not Friday as asserted by the Government:

> [S]uch authorization will also help to protect the identity of any confidential sources, who otherwise might be revealed if singular information (in this case, the location of sensitive LCN meeting) provided by the source was incorporated into the affidavit of a traditional Title III application.

The Airtel in question was drafted by SA Robert Walther, who also authorized its dissemination in his capacity as relief supervisor. Walther had little recollection of the Airtel but advised that he did not know the location of the ceremony on Wednesday, October 25, 1989. Walther surmised that he included the above language to show another benefit of the roving Title III technique. He believes it was intended to be generic and not specific to the Guild Street Title III. In any event, we have developed no evidence that any participant in the preparation of the Title III application ever saw the Airtel.

It has also been determined that, contrary to the affidavit submitted by Flemmi, the FBI did not facilitate the furlough of Vinnie Federico. Federico enjoyed many prison furloughs, and the FBI merely inquired whether this furlough would be granted. The furlough application listed the address at which the induction ceremony ultimately was recorded.

The allegation regarding the 1991 Hilton Title III also relates to whether the Government knew the location prior to obtaining authorization for a roving Title III. There is no indication that the FBI knew of the location of the meeting prior to the authorization being obtained. The location was determined through surveillance of the target that was conducted after he landed at Logan Airport. There is also no indication that the FBI had any contact with management personnel at the Hilton at any time in connection with the interception, as has been intimated by the Salemme defense. Finally, there is no indication that any FBI agent or AUSA had any knowledge of any relationship between the targets of the Title III and the FBI.

F. ANALYSIS OF THE ALLEGATIONS

I. That FBI Agents improperly authorized informants to commit criminal acts.

A total of 35 former/current managers assigned to the Boston Division were interviewed. Among the managers were those who could have authorized informants to participate in criminal activity, including Special Agents in Charge (SAC), ASAC and Squad Supervisors covering the years 1970 to present. All 35

managers stated emphatically that they never gave improper authorization for any informant to commit criminal acts. Furthermore, they never authorized Bulger or Flemmi to participate in criminal activity. The FBI MIOG advises that only a manager can give authorization for an informant to commit criminal acts.

We examined the Bulger and Flemmi informant files. The files contained no documented written authorization to engage in criminal activity. We noted in reviewing several other informant control files that the procedures for authorizing criminal activity and documenting the authorization were followed for these other informants. These authorizations went from the field supervisor through the appropriate ASAC and were documented as approved by the division.

The review of informant files reflected the general policy of Agents yearly placing into the informant file a certification that the informant was advised of the Attorney General Guidelines. These guidelines reflect the informant's relationship with the FBI and state that the informants are not protected from prosecution for any violation of federal, state or local law, except where the informant's activity is approved by the supervisor or SAC. The Bulger and Flemmi files contain numerous Attorney General Guidelines certifications.

We also looked for instances in which Bulger and Flemmi were under investigation by a law enforcement agency and in which the USAO or DOJ exercised prosecutorial discretion in their favor due to the value of information provided by Bulger and Flemmi. There is no evidence that prosecutorial discretion was exercised on behalf of Bulger and/or Flemmi.

Cooperation of the defendants, and former agents Morris and Connolly, is imperative to resolve many of the authorization allegations. Morris has refused to be interviewed and Connolly gave a very limited interview through his attorney.

Within this general allegation, the following specific allegations were addressed:

1. That the Boston Division failed to comply with DOJ/FBI regulations or guidelines regarding unauthorized criminal conduct by Stephen Joseph Flemmi and James "Whitey" Bulger.

Informant History

James "Whitey" Bulger

Date opened:	May 13, 1971
Handling Agent:	SA Dennis Condon

Closed:	September 10, 1971 - due to "unproductivity"
Date reopened:	September 18, 1975
Handling Agent:	SA John Connolly
Closed:	January 27, 1978 - due to "legal problems" noted subject of an FBI Rico investigation
Date reopened:	May 11, 1979
Handling Agent:	SA John Connolly
	Rico matter resolved - no prosecutable case against source
Date:	October 7, 1979
	Memo to file notes SSA John Morris as Alternate Handling Agent
Closed:	December 3, 1990 - "Placed in closed status due to the retirement of case Agent"

Bulger was advised of the Attorney General Guidelines on seven occasions, between November 23, 1982 - October 11, 1989.

<u>Stephen Joseph Flemmi</u>

Targeted dates November 1964 - November 1965

Date opened:	November 10, 1965
Handling Agent:	SA Paul Rico
Date:	February 14, 1967
	Approved a TE source
Closed:	September 15, 1969 - Document from Boston to FBIHQ September 15, 1969, "In view of the fact that this informant was indicted for murder on September 11, 1969, by a Suffolk County Grand Jury and a federal warrant has been issued for his arrest, UFAP - Murder, this informant's emotional stability can no longer be justified and he is being closed."
Date reopened:	September 12, 1980
Handling Agent:	SA John Connolly - Boston document to FBIHQ

Closed:	September 23, 1982 - Document from SA Connolly to SAC Boston, "Captioned matter was placed in closed status in that captioned subject was under investigation (Flemmi) in two separate investigations." "Wheeler and Callahan murders."
Reopened:	July 10, 1986
Handling Agent:	SA John Connolly
Closed:	December 3, 1990 - "Placed in closed status due to the retirement of case Agent."

Flemmi was advised of the Attorney General Guidelines on four occasions between October 16, 1986 - November 17, 1989. The relevant Attorney General Guidelines were established on December 2, 1980. Section E of the guidelines requires that informants receive instruction that he/she is not protected from prosecution. Section F details procedures for authorizing informants to engage in criminal activity based on written findings. The FBI manual provisions set forth below effectuate the Attorney General Guidelines.

The following excerpts from the FBI MIOG Section 137-5, effective as of January 12, 1981, are related to "Informant Participation in Authorized and Unauthorized Criminal Activity."

GUIDELINES GOVERNING PARTICIPATION
IN AUTHORIZED CRIMINAL ACTIVITY

1. An informant may not be authorized to engage in any activity that would constitute a crime under state or federal law, if engaged in by a private person acting without the authorization or approval of an appropriate FBI and United States Attorney's Office representative, except as authorized...

2. Participation by an informant in authorized extraordinary criminal activity may only be made by the SAC, or in the SAC's absence, the ASAC after a consultation with the approval of the United States Attorney...Extraordinary criminal activity is defined as that activity which may involve a significant risk of violence, corrupt actions

by high public officials, or severe financial loss to any victim . . . .

3. Approval for participation by an informant in authorized criminal activities of an ordinary nature . . . requires authorization at the ASAC level or above. Participation in the purchase of stolen goods or contraband can be authorized at the level of the Field Supervisor or above . . . . The authorizing official must make a written finding in advance of any such activity . . . . In emergency situations, the ASAC or the appropriate Supervisory Special Agent may verbally authorize the activity and immediately thereafter document that authorization . . . .

INFORMANT PARTICIPATION IN UNAUTHORIZED CRIMINAL ACTIVITY

1. While carrying out an FBI assignment, an informant or confidential source bears a unique relationship with the FBI; therefore, his/her participation in any unauthorized activity in connection with an FBI assignment, even of a minor character, must be carefully scrutinized. Hence, whenever it is determined that an informant or confidential source has participated in criminal activity which was not authorized . . . the field supervisor will ensure that the appropriate law enforcement or prosecutive authorities are advised of any violations of law and make a written determination of whether continued use of the informant is justified.

2. Whenever a field office learns of the commission of an unauthorized criminal act by an informant or confidential source, FBIHQ must be notified immediately . . . .

3. A field office must notify FBIHQ whenever it learns of participation by an informant or a confidential source in an act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified . . . .

There have been revisions in the MIOG during the reporting period 1977 to present. However, the guidelines are consistent to the extent that when an informant participates in

unauthorized criminal activity, the supervisor must "make a written determination of whether continued use of the informant is justified." (MIOG 137-5.2). Prior to any criminal activity of an informant a "determination of participation by an informant in criminal activities requires a written finding by the field supervisor." (MIOG 137-4). Proper authorization must be obtained. "In emergency situations the field supervisor may verbally authorize the activity and immediately thereafter document the decision in the informant's main file."

The Bulger and Flemmi informant files reflect that these sources were part of a criminal family and were recruited by the FBI because of their affiliations. Both informants were categorized as "Top Echelon" (TE), encompassing "those informants providing information concerning [redacted]

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Former OC Supervisor James Ring (1983 - 1989) advised that he had no knowledge of any authorizations for these informants to conduct criminal activities. Ring recalled that he once asked retired SSA Morris about obtaining such authorizations. Morris told Ring it was not worth the trouble, so he (Morris) did not do it. Ring stated that he therefore made a decision not to seek authorization for these informants.

In the early 1980's, the Boston Division separated the OC squads. The traditional OC squad (C-3) handled LCN matters and the non-traditional Squad (C-2) investigated motorcycle gangs, Irish gangs, and Asian gangs. Although they were leaders in the Winter Hill Gang, known colloquially as "the Irish mob," Bulger and Flemmi were not specifically targeted by either C-2 or C-3 while they were informants. In the mid 1980's, these squads merged to form Squad C-3. All OC matters are currently handled by Squad C-3.

We reviewed substantive files referencing sources reporting on Bulger and Flemmi to determine if other sources of information were reporting on their criminal activity. The purpose of this search was to determine whether that information triggered a written finding by the Boston FBI office, evaluating the continued use of the informants. This source reporting covers over 25 years of investigative effort (1970-1997). A total of 157 separate reports were provided by 49 separate informants. Eighty-four of these reports reflected some degree of criminal activity by Bulger and Flemmi. These activities include their involvement in bookmaking, gambling, and loan sharking. There were 39 reports between 1981 and 1990, and 24 references to separate criminal acts. Thirteen of those are of a violent nature (for example, extorting rent from bookmaking, gambling, and drug activity) and four of those relate to murder. Although the accuracy of the reports could not be determined, and

it is unclear in some instances whether they are derived from first-hand knowledge or rumor, it is virtually certain Bulger's and Flemmi's handler and/or the handler's supervisors were aware of some of the reports. Although there is no specific record that they did, much of the information was sent to OC control files which should have been read by the OC supervisor. Further, the information involving Bulger and Flemmi could have been located through an indices search. In fact, SSA Ring stated he "assumed Bulger and Flemmi were involved daily in illegal conduct," but Ring only wanted to know when they had been arrested.

More problematic are the 20 instances of self-reporting by Bulger and Flemmi between 1980 and 1989, all indicating involvement, with varying degrees of specificity, in criminal activity. There were also four instances of Mercurio's self-reporting. The crimes referred to were loan sharking, gambling, and bookmaking. In these cases, the handler was obviously aware of the illegal conduct (Connolly was the handler for all three) and there was little need to do a credibility assessment. This information should have triggered the required status review.

On only two occasions was Flemmi closed as a result of his criminal activity: 1969 through 1980 after he was indicted for attempted murder (acquitted) and 1982 through 1986 while under investigation for another murder (unresolved). Even then, Flemmi continued to provide information; the informant file recites as a reason his constant association with Bulger. Bulger, who was suspected in the same murder, was not closed during this period. On one occasion Bulger was closed: 1978 through 1979, when he was the subject of an FBI Racketeering Influenced and Corrupt Organization (RICO) investigation (case closed). On one occasion, in 1984, when Bulger and Flemmi became targets of a DEA investigation, a written determination was made to keep Bulger open, and FBIHQ was notified. There is also a justification memo in Bulger's file dated December 2, 1980, by handling agent Connolly for maintaining a relationship with Bulger. Otherwise, the Bureau policy in effect since 1981 requiring notification of appropriate authorities and a written determination regarding the informant's continued use was not followed.

2. Non-authorized criminal activity by Bulger or Flemmi reported by FBI Boston sources was not properly disseminated and/or acted upon.

As discussed above, based on an indices search, criminal investigative substantive files that contained source information regarding criminal activity of Bulger or Flemmi were identified. Forty-nine individual sources were found that provided this type of information during the period 1970 through the present. These criminal case files reflect that the

information that was provided during the past 27 years ranges from general intelligence and historical data to informant information linking Bulger and Flemmi to murder. Fifty percent of the information provided was before 1990.

All the above informant information that was reviewed had been put into indices. This information had been disseminated to substantive files depending upon the type of violation. For example, specific gambling information went to an independent file if attributed to an active investigation. General information provided by a source would be disseminated into a control or "zero" file. There is no information directed to Bulger or Flemmi's informant file, and it could not be ascertained whether during the time Bulger and Flemmi were open as informants any of this information was acted on.

Although information was placed into files, the handling agent, management, and others may not have received this separate source information. Even with the current Automated Case Support (ACS) system, the "silent hit" feature has not improved dissemination because it responds only to inquiries, not indexing.

As previously discussed, however, with self-reporting by Bulger and Flemmi, or with other informants reporting on Bulger and Flemmi and handled by the same squad or handler, it is almost unavoidable that there was an awareness that there was informant information implicating Bulger and Flemmi in criminal activity. We believe there should have been "written determination(s) of whether continued use of the informant is justified," MIOG (137-5), based on the information reported by other informants concerning Bulger and Flemmi. This was not done by the management of the Boston Division.

We conducted informant file reviews of other informants. The Angelo Mercurio file reflects information regarding gambling and loan sharking by Bulger and Flemmi received on October 17, 1987. SA John Connolly, the handling agent for Mercurio, Bulger, and Flemmi, received this information; however, he did not disseminate it until May 2, 1988. Other inserts in the Mercurio file reflect the gambling activity of Bulger or Flemmi. SA Connolly disseminated this information on a more timely basis to the organized crime control file or to a substantive case file but did not initiate the required status review based on reports of criminal activity by Bulger and Flemmi.

3. **Stephen Flemmi alleged in his June 25, 1997 affidavit that Supervisor John Morris (retired) told Bulger and Flemmi that they could do anything they wanted as long as they did not "clip anyone."** Flemmi indicated that this conversation took place at Morris's residence.

We have confirmed that Morris met with Bulger and Flemmi at Morris's residence. At a dinner meeting in the mid-1980's, Bulger, Flemmi, Connolly, Morris, and Dennis Condon (retired Agent and Undersecretary at the Department of Public Safety (DPS) for Massachusetts) were present. Morris's ex-wife and Mr. Condon confirm this meeting. Condon reports that the meeting occurred in 1985.

We have not ascertained why Morris or Connolly invited Condon, a non-FBI employee at the time, to this meeting. Condon targeted Bulger as an informant in 1971. In initially opening an informant, indices searches are conducted, criminal history is obtained, and other administrative checks are made, sometimes in advance of direct contact. Condon opened Bulger as an informant briefly in 1971, but he closed him within four months. Condon stated when interviewed that he did not believe he had ever spoken with Bulger as an FBI employee. At the time of the meeting, Condon had served for three years as DPS Commissioner, which is also Commissioner of the Massachusetts State Police. Because of health problems, Condon left DPS for three years, returning in 1983 to the higher organizational position of DPS Undersecretary. Condon recalled being invited to the meeting through a telephone call at his office. Therefore, he probably had returned to DPS by the time of the meeting. It is noteworthy that MSP was actively investigating Bulger and Flemmi during this period. When interviewed, Condon denied discussing business during the meeting.

In April 1997, Connolly telephoned Condon and purported to refresh his memory of this meeting. Condon says that Connolly asked him if he recalled the time Morris was drunk and told Bulger and Flemmi that they could do anything they wanted except commit murder. Flemmi filed his affidavit making this claim (omitting the assertion that Morris was drunk) on June 25, 1997. Condon advised that this statement was not made in his presence and that Morris was not inebriated when Condon left the meeting. Morris's ex-wife said that Morris was always in "self-control" and was a moderate wine drinker.

Special Agent John Newton advised that several months ago, Connolly discussed with him a newspaper article reporting Flemmi's allegation that Morris told him (Flemmi) he could do anything short of "clipping" someone. SA Newton says that Connolly told him that he (Connolly) was of the opinion that John Morris made this statement to Flemmi.

Connolly gave a limited interview and attorney proffer of information. His attorney stated that around 1981 or 1982, Connolly was at a meeting attended by Condon, Morris, Flemmi, and James Bulger. The attorney further stated that Morris told both Flemmi and Bulger that as long as they restricted their

activities to the gambling business, they could continue doing what they were doing.

All leads have been exhausted at this time. Detailed interviews with Morris, Connolly, and defendants are needed to resolve these issues. Further information may emerge at court hearings or as part of defendants' motions.

4. Stephen Flemmi alleged in his June 25, 1997 affidavit, "On several occasions in the course of similar conversations, Mr. Bulger and I were assured that we could be involved in any criminal activities short of committing murder and we would be 'protected.' I operated on this express agreement with the FBI."

It is not clear from this general allegation when or where the conversations occurred or who assured Flemmi and Bulger that they would be protected and could be involved in any criminal activities short of committing murder.

We determined through interviews and file reviews that many meetings of a mixed business and social nature involving Special Agents and Bulger and Flemmi took place in the 1980's. Nicholas Gianturco (retired) advised that he had Bulger, Flemmi, Connolly (retired) and others at his residence for dinner five to seven times. John Morris was not at these gatherings. Connolly and Newton also utilized their personal residences for meetings with these sources.

The following agents who attended any of the above gatherings responded in the negative when asked if they ever heard a conversation that would lead them to believe that Bulger or Flemmi were told they could "be involved in any criminal activity short of committing murder and . . . would be 'protected'": Michael Buckley, Nicholas Gianturco (retired), John Newton, Joe Pistone (retired), and Condon.

No express authorizations to commit criminal activity were reflected in either Bulger's or Flemmi's informant file. Neither Flemmi nor Bulger were ever officially authorized by the SAC; nor were any documents or memoranda requesting authorization for criminal activity located in the informant files. Bulger's informant file reflects that Connolly advised Bulger of the Attorney General's Guidelines on seven occasions, and Stephen Flemmi was advised of the Attorney General's Guidelines on four occasions.

These guidelines and instructions to be discussed with informants are found in the following excerpts from MIOG 137-6, page 25:

> The following matters must be made clear to the informant at the earliest opportunity but in

no event later than the second contact after being converted. These admonishments must be reiterated at least annually or at any time there is an indication that there is a need. The fact that the informant has been so advised or readvised must be documented in his/her file. The admonishments are as follows:

a. Assistance voluntary.
b. Not an FBI employee or an undercover Agent.
c. Confidentiality.
d. Report positive information.
e. FBI's jurisdiction.
f. Acts of violence - informants will not participate in acts of violence. When asked to participate in an act of violence or when an informant learns of plans to commit an act of violence, the informant is to take all reasonable measures to discourage the violence, and report the incident to his/her handling Agent at their earliest opportunity.
g. Use of unlawful techniques.
h. Informants will not initiate a plan to commit criminal acts.
i. Informants will not participate in criminal activities unless specifically authorized by the FBI.

All leads have been exhausted. Detailed interviews with Morris, Connolly and defendants are needed to resolve these issues. Further information may emerge at court hearings or as part of defendants' motions.

5. Hugh Shields, a convicted felon, recently alleged that in 1973 two Boston FBI Agents offered to procure a machine gun and keys to the Angiulo business office for the purpose of Shields making a "hit" (killing) on the Angiulo Family. Shields recently identified the Agents as SA Dennis Condon (retired) and SA Bob Sheehan (deceased).

SA Condon (retired) was interviewed on July 18, 1997. Mr. Condon advised that he arrested Shields on an Unlawful Flight to Avoid Prosecution murder warrant in the late 1960's. Both Agents made attempts to develop Shields as a witness.

Mr. Condon characterized the statements made by Shields as "totally absurd" and emphatically stated that this event described by Shields never occurred.

6. That FBI informant Angelo Mercurio set up the "hit" of Francis P. Salemme on June 16, 1989.

On page 22 of an affidavit for a surveillance order dated October 27, 1989, a source not indicted in the Salemme case provided information which indicates "that Raymond Patriarca had learned that Salemme was scheduled to meet with Capo Vincent Ferrara and some of his people and that the meeting where the shooting occurred had been set up by LCN member Angelo 'Sonny' Mercurio." Angelo Mercurio was opened as an informant on December 2, 1987 and closed on November 17, 1989.

On June 16, 1989, FBI investigated a matter involving the attempted murder of Francis P. Salemme in Saugus, Massachusetts. There have been no charges, either local or federal, filed against any of the individuals alleged in this attempt. The investigative file on the case notes in a memo dated July 6, 1990, "The Boston faction of the Patriarca Family consisting of capos Vincent Ferrara, Joseph Russo, Robert Carrozza, and soldier Angelo Mercurio resented having to communicate with Patriarca through Salemme."

Mercurio's informant file contains source reports of constant unrest between New England-area LCN groups during the time of the attempted murder. Mercurio provides information reflecting this friction on inserts dated May 26, 1989, June 6, 1989, June 30, 1989, July 26, 1989, and others.

Former SSA Ring advised he was contacted on June 17, 1989 and advised of the shooting. Ring discussed with Connolly what Mercurio told the FBI before the attempted murder of Salemme. Connolly responded "nothing." When interviewed, Ring stated that he believed at the time that Mercurio had been involved in the attempt on Salemme's life. In addition, the FBI received source information indicating that Mercurio was involved. Nevertheless, Ring did not direct closure of Mercurio as a source at that time; nor do the informant files reflect any formal assessment that Mercurio should have remained open.

Ring stated when interviewed that he decided Mercurio would be treated as a "passive" informant. That is, the FBI would receive whatever information Mercurio provided but would not initiate contact. This arrangement, Ring reasoned, would permit the FBI to monitor a volatile and violent situation within LCN.

Mercurio's informant file reviews indicate that numerous contacts occurred after June 17, 1989. We cannot determine whether Mercurio initiated all of these. Given Mercurio's central role in providing the information for the October 1989 roving Title III application, it seems unlikely that the FBI did not initiate some of these contacts. We cannot determine within the scope of this limited inquiry whether or not Mercurio was in fact complicit in setting up the hit on Salemme.

Ring did not advise FBIHQ that Mercurio was possibly involved in a violent act; nor was there any "written determination" evaluating continued use. If FBI procedure had been appropriately followed, a written determination of Mercurio's suitability should have been made and documented.

7. Bulger and Flemmi were operated as informants after being closed December 3, 1990.

There is no documentation contained in the informant files which demonstrates that either Bulger or Flemmi was contacted by any employee of the FBI post-closure. There was no information developed during this investigation which substantiated that Flemmi was in contact with any FBI employee or acted in the capacity of an informant after he was closed on December 3, 1990. The limited interview with Connolly and his attorney failed to develop any information that revealed that other agents of the FBI continued to use Flemmi or Bulger as informants after they were both closed in 1990. Flemmi declined through counsel to cooperate with our investigation. Other defense counsel in the Salemme matter failed to provide specific and credible support for this claim.[1]

We examined whether Serial 102 of Flemmi's informant file, which makes reference to the Boston Division's request to enhance Flemmi's payment authority, is proof that the FBI continued to deal with Flemmi after he was closed on December 3, 1990. A review of the information available with regard to that request, reflects that the Boston Division was merely requesting payment authority beyond the $400 case authority maintained for Flemmi at the time he was closed December 3, 1990. A request for reimbursement of expenses was submitted by John Connolly prior to Flemmi being closed and John Connolly retiring. Records on file in the Boston Division establish that an expense of $162.00 [for room rental and meals] was incurred by John Connolly on April 11, 1990, submitted for reimbursement on August 21, 1990, vouchered April 1, 1991, and paid to Connolly April 1, 1991 [Connolly retired November 31, 1990]. The expense was to be split between the case authorities of both Bulger and Flemmi. The records reflect that when the expense was submitted for payment, a balance of the recorded $400 case authority for Flemmi was noted at $12.34. The teletype to FBIHQ [Serial 101] was thereafter sent, requesting the $5,000 case authority, which was the standard increment authorized, in order to pay the outstanding bill of $81.00.

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[1]On August 13, 1997, Flemmi's attorney made oral representations to the Court regarding Flemmi's alleged post-1990 informant relationship with the FBI. These representations came too late to be investigated and analyzed for this interim report, which was finalized on August 14, 1997.

When FBIHQ advised the Boston Division in a responding teletype [Serial 102] that the case authority for Flemmi at the time he was closed was $1,700, Boston paid the $81.00 from the Flemmi case authority [$12.36 balance added to the $68.66 from the increased case authority] and $81.00 from the Bulger case authority, and issued a check to John Connolly for the amount of $162.00 on April 1, 1991. Supporting documents itemizing the expenses were copied and attached to this report.

A review of the financial records maintained by the Boston Division disclosed no other payments for services or expenses arising out of an FBI relationship with either Flemmi or Bulger after 1990. The last expenses noted for either informant were the items referred to above.

Bulger has been a fugitive since 1995. An active fugitive investigation aimed at locating and apprehending him is ongoing in Boston. During a limited interview with Connolly on August 6, 1997, Connolly stated that after his retirement on November 30, 1990, he was in contact with Bulger on two occasions and Flemmi on one occasion. Connolly advised he spoke briefly to Bulger in 1991 after encountering Bulger on the street. The second instance Connolly dealt with Bulger was in late 1993 or early 1994, after hearing from Vinnie Ferrara's cousin that Frank Salemme intended to "whack" him (Connolly). Connolly met with Bulger and Flemmi about this threat; however, both individuals stated that it was nonsense and that they would have contacted both Connolly and the FBI if the threat was genuine. Connolly was unaware of any other Agents of the FBI who were dealing with these individuals.

It has been alleged that Flemmi was used to obtain a telephone number for a 1993 Title III for Salemme's residence. It was determined that the telephone number for Salemme's residence was provided by another informant, not Flemmi. A review of this other informant's file revealed in Serials six, eight and ten, that the informant provided the telephone number for Salemme's residence in West Roxbury, Massachusetts, as well as the telephone numbers for Salemme's club. There is no documentation in Flemmi's file that reflects any information about providing a telephone number for Salemme's residence.

According to the Boston Division, there were two Title IIIs targeting Salemme. One was a roving Title III and the other targeted his home telephone number.

8. Boston FBI was aware that Bulger and Flemmi were engaged in murder, according to overhears on the Angiulo Title III in 1981.

Former SSA Edward Quinn (retired) was the case Agent and affiant on the Angiulo family Title III in 1981, which targeted Angiulo's headquarters at 98 Prince Street. Quinn

recalled a conversation between LCN members Ilario Zannino and Ralph Lamattina discussing an individual named Jerry Matricia. Lamattina stated, "I know if Stevie or Whitey sees him" and Zannino interjected, "They're going to hit him." Quinn stated that Matricia had stolen $50,000 from the Winter Hill Gang in a racing scam. Quinn said the conversation was about what Bulger and Flemmi might do to Matricia in view of the fact Matricia had stolen money from them. Quinn never believed Matricia was in danger and no consideration was given to warning him. Matricia was never harmed and later became a prosecution witness.

Quinn recalled a conversation on the Angiulo Title III when LCN Underboss Gennaro Angiulo told an unknown male about a conversation that he had with Zannino about a debt owed by Bulger and Flemmi. Angiulo recalled Zannino saying, "I'll tell you right now, if I called these guys right now they would kill any fucking body we tell them to." Quinn believed this was a boast by Zannino that he had the loyalty of both Bulger and Flemmi. He said there was never any evidence obtained on the Title III that Bulger or Flemmi ever committed murder for the Angiulos.

Quinn stated there was never any murder plot discussed, and he evaluated the two conversations by Zannino, who often talked in threatening tones toward other LCN members, as being without substance.

II. That FBI Agents warned informants that they were the targets of investigation or were about to be arrested or indicted.

We examined allegations that FBI agents "tipped" informants that they were the subjects of Title III surveillance or that they were about to be indicted. These tips allegedly compromised ongoing investigations and allowed the informants to flee prior to arrest.

The allegations have emerged in court filings and statements by defendants and their attorneys in U.S. v. Salemme. Additional allegations were developed from interviews of local, state and federal law enforcement. We also examined CI/CW files for reports by informants concerning law enforcement leaks.

By memorandum and order dated May 22, 1997, Judge Wolf found that the defendants had provided substantial evidence that Angelo Mercurio was allowed to flee in 1990. In addition to Flemmi's allegation that Mercurio was "tipped," Salemme's defense attorney alleged to AUSA Fred Wyshak in May of 1997 1) that the control agents for Bulger and Flemmi routinely provided them with information about locations and individuals to be avoided; 2) that Bulger and Flemmi were "tipped" about electronic surveillance so that they could avoid making incriminating statements that might be recorded; and 3) that Bulger and Flemmi

were advised about the identities of other informants so that they could avoid engaging in conversations with those individuals.

This investigation included the following four areas:

* Interviews of current and former FBI employees;
* Interviews within other law enforcement agencies;
* Review of Confidential Informant/Cooperating Witness files; and
* Review of related case files

Retired SAs John Connolly and John Morris, as well as defendant Stephen Flemmi, declined to be interviewed during this investigation. Bulger remains a fugitive.

Within this general allegation the following specific allegations were addressed:

DEFENDANT ALLEGATIONS:

1. On April 27, 1997, Stephen Flemmi swore to an affidavit in which he alleged 1) that Angelo Mercurio was given advance notice of his indictment and fled the jurisdiction; and 2) that, while in a fugitive status, Mercurio continued to report to FBI handlers in Boston until his 1995 arrest.

We found no indication that Mercurio continued to report to the FBI while a fugitive. Mercurio's handler states that he did not tip Mercurio to his 1989 indictment.

According to a memorandum in Mercurio's informant file, dated May 8, 1989, SSA Jim Ring and SA John Connolly (Mercurio's handler) met with Organized Crime Strike Force Chief Diane Kottmyer and the Boston Division Principal Legal Advisor Michael Callahan and decided that Mercurio should be closed as an informant prior to indictment so as not to infringe on the Sixth Amendment rights of the other defendants. Ring advised that Mercurio never reported on defense plans or strategy. While these discussions occurred in May, indictments did not occur until November 14, 1989.

According to the May 8 memorandum, Ring advised Mercurio on May 4, 1989 of the Government's responsibilities under the Sixth Amendment should he and his associates be indicted. Nothing in the memo indicates that Mercurio was, in fact, closed at that time. Nor is there any indication that Mercurio's contact with the FBI should have been more limited. Reported contact between the FBI and Mercurio occurred approximately 36 more times between May 4 and November 13. Ring advised that after the May 8 memo, he decided to keep Mercurio open until just prior to his indictment.

On November 17, 1989, a communication was sent from the Boston Division to FBIHQ stating that the Boston Division was closing contact with Mercurio effective November 13. The substantive informant file also reveals a November 13 contact. That report indicates that, on the day before the indictments, Ring obtained information about the whereabouts of Mercurio's LCN associates, persons the FBI knew that Mercurio believed would be indicted with him (They were.). The November 17 teletype states, "This informant has been instructed to initiate no further contact with the FBI unless A) There is a threat to life or physical well being; B) Information as to corruption of the judicial process. Any contact for these limited purposes will be with other than the primary contact or alternate contact agent." Although no prior entry in any document so reflects, Ring insists that the instructions set forth in the November 17 teletype limiting Mercurio's contact were given in May. However, the May 8 memo from Ring states only that he discussed Sixth Amendment issues with Mercurio on May 4. The May memo does recommend that Mercurio be given the closing instructions set forth in the November 17 teletype and states that the advice of the instruction would be memorialized in the informant file, followed by a confirming teletype to FBIHQ. No document yet identified provides evidence of that advice prior to November 13, the day before indictment. The informant file contains no such reference and we have not identified a confirming teletype.

Ring stated that Mercurio was not told he was being closed as a CI on November 13. Ring did not consider this contact with Mercurio to be a warning to Mercurio that he was going to be indicted. Ring stated that Mercurio was to be arrested in the same manner as the other subjects. Mercurio was not told to run or given any other information regarding his impending arrest.

A plausible reading of all the identified documents relating to Mercurio's closure as an informant suggests that he received closing instructions on November 13. The file indicates that he was asked on that date how persons he knew were about to be indicted could be found. We are unable to resolve what may be a variance between Ring's recollection and the files' contents. It is unclear whether, taken together, these discussions could have constituted a "warning" that indictment was imminent. We have <u>not</u> found evidence of an explicit warning. It is also clear that Mercurio knew that he would be indicted at some point.

Further leads are not apparent. Mercurio is unavailable at this time for an interview, and his handler, John Connolly granted only a limited interview. Thus, our analysis of this issue is at this time limited to Ring's recollection and a review of relevant documents.

On November 14, 1989, a fugitive investigation was initiated to locate Mercurio. Ring stated that there was a real effort to locate and apprehend Mercurio. SA Richard Carter was the case agent for the fugitive investigation. Neither Carter nor anyone else interviewed during this investigation had contact with Mercurio while he was a fugitive. During the fugitive investigation, 25 specific leads were sent and covered. These leads often generated numerous other leads in those particular divisions. Throughout this same time period, contacts were made with friends and family members in an attempt to locate Mercurio prior to his arrest in June of 1994.

2. On June 25, 1997, Stephen Flemmi executed a second affidavit in which he alleged that he was "specifically informed of the precise date that the indictment was to be returned" so that he could flee if he chose to do so.

Although no definitive conclusion can be reached as to whether Bulger and Flemmi were "tipped" about their upcoming indictment, we note that their files reflect that they claimed to have non-FBI sources for law enforcement information. Further, both Bulger's and Flemmi's actions imply that if, in fact, they did receive information about a proposed arrest, that information was not specific as to the exact date the arrest would occur.

An individual provided information that in January of 1995, Bulger overheard a radio broadcast that revealed that Stephen Flemmi was arrested and that Bulger had been indicted. Upon hearing the broadcast, Bulger immediately turned his vehicle around and headed to New York City. This individual advised that this was the first time Bulger had heard of the indictment. Prior to this, Bulger and this individual had been traveling throughout the United States using their true identities. This individual's information was subsequently corroborated with hotel receipts and travel records. Considering the close relationship between Bulger and Flemmi, it seems unlikely that Flemmi would be aware of the indictment and not reveal this information to Bulger. Information was also developed that Kevin Weeks was sitting in a bar and saw the initial arrests on television. According to that information, Weeks literally jumped out of the window of the bar to flee. Weeks was not named in the indictment, but was Bulger's right hand man. Flemmi was arrested on the day of the indictment, but he claimed that he was tipped about the indictment and just happened to be in town at that time.

SA Connolly gave a very limited interview and Flemmi refused a request for additional information. More information concerning this allegation may emerge at pretrial hearings.

LAW ENFORCEMENT ALLEGATIONS:

3. Following Connolly's retirement, FBI associates from Squad C-3 continued to tip Connolly as to what was happening in the case which had targeted Bulger and Flemmi.

The following Boston FBI Agents have had contact with John Connolly since his retirement in 1990: Edward M. Quinn, John Ross, Richard Baker, Richard Carter, Daniel Grant, Michael Buckley, Walter Steffens, John Newton, and Nick Gianturco. No other agent interviewed in this investigation has admitted to having any contact with Connolly. The agents who have had contact with Connolly have each advised that their contacts with Connolly were social, with the exception of Nick Gianturco, who now works with Connolly at Boston Edison. At no time did any of these agents discuss with Connolly current FBI criminal operations and/or informant issues. John Connolly stated during a limited interview that he had a chance contact with Bulger on one occasion and met with Bulger and Flemmi on one other occasion since his retirement, and there was no discussion of FBI investigations.

4. In 1980, the FBI leaked information that compromised the Lancaster Garage Title III investigation. Bulger and Flemmi stopped frequenting this location after they were tipped.

In 1980, the MSP conducted an investigation that developed probable cause for a Title III. MSP Detective John Namovich was a participant and MSP Lieutenant Ricky Fraelick was the Title III affiant. According to former MSP Lt. Robert Long, besides MSP, Sergeant Bob Ryan of the Boston Police Department (BPD) was the only other law enforcement officer aware of the Title III. Retired MSP Detective Bobby Long stated that the FBI was not made aware of this investigation. Mark Nezor was privately contracted by the MSP to do the installation, which was completed on July 24, 1980. On August 1, 1980, SSA John Morris approached Sergeant Bob Ryan at a social gathering and asked if the MSP had a wire up at the Lancaster Street Garage. Morris's contact with Ryan is documented in a memorandum to the file. The wire was compromised shortly thereafter. The MSP and, specifically, Colonel John O'Donovan, suspected that the FBI became aware of the Title III and tipped the subjects.

Morris, OC Squad Supervisor at the time, declined to cooperate with this investigation. Therefore, we were unable to resolve this issue fully. A review of Bulger's CI file revealed that Morris documented that he learned about the Lancaster Street Garage wiretap from Bulger himself. Morris reported that Bulger told him he had an MSP source who revealed the investigation. According to the file, SAC Lawrence Sarhatt contacted Bulger and asked him to reveal the MSP source, but Bulger refused. We found no evidence that contradicted the representations in the file.

Nor did we find evidence that supported them. Bulger stated that he did not receive any information regarding the Lancaster Street Garage wire from FBI employees. Local, state and federal law enforcement officials that were interviewed on this matter stated that they had no direct evidence that the FBI leaked information that compromised this investigation.

5. In 1984 and 1985, the FBI leaked information that compromised a DEA Title III investigation.

In 1984, the DEA and MSP conducted an investigation that developed probable cause for a Title III. According to DEA agents Daniel Doherty and Steve Boeri, MSP was requested to leave the investigation just prior to the installation of the wire. Boeri stated that the DEA believed that the MSP was leaking information that was getting back to the targets of the investigation. A review of the CI files revealed a report by SA John Connolly stating that at this same time, Bulger and Flemmi were receiving information from their MSP source that they were under investigation, that pen registers had been put on their phones, and that law enforcement officers were illegally listening to their phone calls. It was noted in the file that this information was disseminated to the DEA orally by SAC Lawrence Sarhatt.

During the investigation, the DEA developed information regarding Title 18 violations. Because of this, DEA SAC Robert Stutman contacted FBI SAC James Greenleaf and requested the assistance of the FBI. FBI SSA James Ring assigned SA Brian Rossi and SA Rick Carter, both new to the Boston Division, to work with the DEA. Ring told Rossi and Carter that he wanted them to remain out of the office while they worked on this case and instructed them not to report to him about it. Ring effectively walled off this investigation from the rest of the squad. Ring advised that he "walled off" Rossi and Carter from everyone else, including himself, because he wanted to make sure that the FBI would not be blamed if the Title III was compromised. Rossi and Carter did not become aware that Bulger and Flemmi were FBI informants until after the investigation, when they returned to the FBI Office.

There were several mishaps throughout this investigation. DEA agents tripped the home alarm of one of the targets while attempting to install a bug. Also, two DEA agents were changing the batteries in the bug in Bulger's car when they encountered Bulger. The car bug went dead shortly after this encounter. After this, Bulger reported to Connolly that he had found a bug in his car. Local, state, and federal law enforcement officials that were interviewed on this matter stated they had no direct evidence that the FBI leaked information that compromised this investigation.

6. There was a DEA investigation that ran from 1987 to 1990 targeting Bulger and Flemmi in which 51 subjects, including many Bulger and Flemmi subordinates, were indicted. The FBI leaked information that compromised this investigation.

In 1987, the DEA conducted an investigation targeting Bulger and Flemmi that developed probable cause for a Title III. On April 27, 1988, DEA SAC John J. Coleman submitted a memo to Terrence M. Burke, Deputy Assistant Administrator of Operations, requesting the embargo of any data-sharing requirements with the FBI. This request was based on "the remote but real possibility that should certain FBI personnel in Boston become aware of the investigation the targets would be warned." Coleman advised that this request was granted and that the FBI was not made aware of this investigation until some later date. This investigation was successful except that Bulger and Flemmi were not charged. DEA agents advised that Bulger and Flemmi were very guarded in their conversations. We have been unable to interview Bulger, Flemmi, or their handlers to learn more specific information. A review of the informant files for Bulger and Flemmi does not reveal whether they were aware of this Title III investigation. Local, state, and federal law enforcement officials that were interviewed on this matter stated that they had no direct evidence that the FBI leaked information that compromised this investigation.

7. In 1993, the FBI leaked information that compromised an FBI Title III investigation. Jackie Salemme was overheard on a wire saying, "They've got the roving thing out."

This Title III investigation was conducted by the FBI and the BPD. SA Walter J. Steffens stated that Jackie Salemme was overheard telling Mark Rossetti about the rover. Steffens still does not know how Salemme learned about the rover. Local, state, and federal law enforcement officials that were interviewed on this matter stated that they had no direct evidence that the FBI or other law enforcement agencies leaked information that compromised this investigation.

8. In 1991, SA William Shay was provided recordings from an MSP wire for the purpose of voice identification, and the wire went dead shortly thereafter.

SA William J. Shay was interviewed and stated that in late 1991, while he was assigned to the Providence, Rhode Island Resident Agency, he was asked to listen to a tape to identify the voices of the individuals on the tape. Shay has worked OC in the Boston Division for most of his career and is familiar with many of the OC members in this area. The request came from SA Tim Sullivan and Lt. Tom Foley of the MSP. Shay listened to approximately 2 to 5 minutes of the tape. From the context of the conversation, not from the sound of their voices, Shay was

able to identify the individuals he heard on the tape and provide those names to SA Sullivan and Lt. Foley. Shay stated that he never revealed to anyone that there was an ongoing Title III investigation.

9. [redacted] during a Title III investigation, [redacted] contacted SSA Bruce Ellavsky and asked if [redacted] was an FBI source. [redacted] believed the wire was compromised immediately after SSA Ellavsky was contacted.

SSA Bruce E. Ellavsky was interviewed and said he did not recall [redacted] making this request, but if it had occurred he would not have provided or confirmed the identity of an FBI CI. SSA Ellavsky is not currently aware whether [redacted] is or ever was an FBI CI. SSA Ellavsky was the FBI Drug Squad Supervisor at the time and later became the Organized Crime and Drug Enforcement Task Force (OCDETF) Coordinator. No additional evidence of this alleged leak is available at this time.

10. In 1991, the MSP advised SSA Edward Quinn that they were going to move against a certain bookmaker. Shortly afterward, an MSP undercover agent learned that the bookmaker was aware that he was a target. SSA Quinn told them that a young agent had mistakenly tipped the bookmaker.

Retired SSA Edward Quinn advised that he had no recollection of an MSP Title III targeting this bookmaker and had absolutely no recollection of any comment made by him (Quinn) regarding a young agent mistakenly tipping a bookmaker.

11. In 1987 or 1988, MSP Officer John Namovich was arrested and prosecuted for leaking information. MSP became aware that an FBI employee was also leaking information, but was not prosecuted.

Namovich was targeted with a Title III investigation. He was indicted and arrested in 1988 by the MSP and FBI and later acquitted. FBI Stenographer [redacted] was targeted by the FBI based on good source information that she was disclosing confidential information regarding OC activities in November of 1987. No specific information could be attributed to [redacted]. At the time, an extensive investigation was conducted and [redacted] was interviewed and denied culpability. She resigned from the FBI and later refused to take a polygraph examination. On August 18, 1989, DOJ declined to prosecute [redacted] was contacted during this inquiry and stated that she never leaked FBI information to anyone, but again refused to submit to a polygraph examination.

12. The DEA sent a letter to the FBI dated February 1, 1995, stating that they had source information that an FBI agent named Callahan had provided information to Bulger in the past.

DEA ASAC Lee Wayne Nicks was contacted and advised that DEA SA [redacted] CI provided this information in 1995 and the information was several years old at the time. Since then the CI has been closed and ASAC Nicks has been unable to locate this individual, but will continue to attempt to do so. Chief Division Counsel John M. Callahan was interviewed and advised that he has never met Bulger and never spoken to him on the telephone. Callahan denied ever providing any information to Bulger. It should be noted that the DEA informant may have mistakenly used the name Callahan instead of Connolly.

INFORMATION DEVELOPED CONCERNING OTHER SOURCES OF LEAKS:

In reviewing the Bulger and Flemmi CI/CW files, as well as eight other CI/CW files, which detailed 49 separate allegations of "leaks," it is apparent that these FBI informants had their own network of sources in law enforcement. According to the reporting, the law enforcement sources included members of the FBI, MSP, BPD, Medford PD, DOJ in Washington, D.C., the U.S. Coast Guard, Suffolk County Clerk's Office, the USAO, U.S. Probation and the U.S. Marshal's Service. These CI/CW's had sources in the telephone company with specific knowledge of wiretaps by law enforcement agencies. They were also receiving information from federal courthouse employees. This information was evaluated and disseminated to other law enforcement agencies when deemed appropriate by the SAC.

The following is a list of possible law enforcement leaks developed from the information provided by these CI/CWs:

13. FBI Stenographer [redacted]

In 1987, a CI advised that the FBI had a leak in their office. The CI identified the leak as coming from "a female who worked for the FBI as an assistant supervisor in charge of girls who do typing." A review of an OPR investigative file indicated that in 1987 an FBI surveillance identified [redacted] meeting with Vinnie Ferrara (a known LCN member). [redacted] was identified as a [redacted] FBI stenographer [redacted] The investigation revealed that FD-302 information was leaked from the FBI to [redacted] She resigned from the FBI and later refused to take a polygraph examination. On August 18, 1989, DOJ declined to prosecute [redacted]

14. MSP Trooper John Namovich.

A CI provided information that an MSP Trooper was providing information to Ferrara through Bookmaker Francis McIntyre. The CI refused to divulge his/her source at MSP. A review of the 1988 FD-302 of Francis McIntyre revealed his source as MSP Trooper John Namovich. A Title III investigation led to the indictment and arrest of Namovich by the FBI and MSP in 1988. Namovich was tried and acquitted of four of the five counts in the indictment. The fifth count was dismissed in an agreement between Namovich, MSP, and the USAO in which Namovich agreed to resign from MSP. It has been confirmed through MSP personnel that Namovich had access to sensitive information from the 1970's through 1988. Namovich was technically trained to install electronic eavesdropping equipment and did so in many MSP investigations, but according to MSP Captain McLauglin, it is impossible to determine which wires he worked on.

15. Then-AUSA (now U.S. District Judge) Mark Wolf and a female who works for the USAO.

On August 8, 1983, a CI advised that leaks were coming from Howie Rubin's girlfriend, who worked for the USAO and AUSA Mark Wolf. The source advised that Wolf is very close to an unknown Jewish male and this unknown Jewish male is close to Howie Rubin. The unknown Jewish male was identified as Stephen Ricci. Ricci died in August of 1993.

16. Unknown MSP Trooper

In 1989, a CI advised that Tommy Gandolfo, a Lynn, Massachusetts bookmaker, had an individual on the MSP who was providing him with law enforcement information.

17. Anthony Cardinale

In 1988, a CI advised that Cardinale was advising the Mafia as to the timing of indictments. Cardinale was also providing information that was enabling the LCN to track down who potential witnesses might be. In 1989, Cardinale advised Vinnie Ferrara that he had learned that the Grand Jury had been continued to March of 1990.

18. Federal Parole Officer

In 1989, a CI advised that Vinnie Ferrara had a connection with a woman in the Federal Parole Office in Boston. SSA James Ring identified this individual as [redacted] from Everett, Massachusetts.

The source information provided in 15, 16, 17 and 18 was not specific enough to be further investigated at this time.

The following are additional law enforcement leaks that have been identified:

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19. FBI Clerk [redacted]

A review of the 1988 FD-302 of [redacted] revealed that an FBI clerk was fired for copying FBI OC documents in 1987. [redacted] was hired in January of 1987 and fired approximately two months later. A review of [redacted] personnel file indicates that [redacted] Despite attempts, [redacted] has not yet been located and interviewed.

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20. AUSA David Twomey

In 1980 Twomey was arrested for leaking information to a drug smuggler named Frank LePere. Twomey was convicted after LePere cooperated with the Government and testified against Twomey. LePere was associated with Bulger. [redacted]

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21. Unauthorized Press Release

On March 2, 1989, based upon a request from the SAC of the Boston FBI Office and the Acting United States Attorney at the time, the FBI OPR initiated an investigation into leaks to the Boston Globe about the public corruption investigation, known as "75 State Street," focused on Thomas Finnerty and William Bulger, "Whitey" Bulger's brother, formerly Massachusetts State Senate President and currently President of the University of Massachusetts. Finnerty was a well known defense attorney and former District Attorney in Boston. A portion of the information leaked to the press included information that may have confirmed the fact that James Bulger was an informant for the FBI and handled by SA John Connolly. The personnel files reflect that Connolly received a letter of censure while Morris was placed on one year administrative probation, was suspended for fourteen days without pay, and received a letter of censure.

22. Unauthorized Press Release

On June 29, 1994, based on information provided by the United States Attorney at the time, OPR initiated an investigation into sensitive investigative information appearing in a Boston Globe article. The article reported information from a federal investigation that was being coordinated through the Organized Crime Strike Force of the USAO. The FBI SAC recommended the investigation based upon the large number of people from various agencies who were privy to the material that had been provided to the news media. Former SSA Jim Ring was

interviewed by OPR and stated that he could not say with any certainty who released this information to the press.

III. That FBI agents improperly received benefits from current or former informants or otherwise maintained improper personal relationships with current or former informants.

The relationship between confidential sources and their handling agents has always been a closely guarded one. The identity of sources is released on a need-to-know basis, even among members of the same investigative squad. There are only a few occasions when an informant must be in the company of more than his or her handling agent and those occasions are as follows: (1) the supervisor of the squad is required to meet the confidential informants being operated by members of his/her squad; (2) any payments made to an informant must be made in the presence of a "witness" agent (in some cases this role may be performed by a task force participant who is a sworn officer); (3) an informant's identity must be revealed to law enforcement personnel when the CI is participating in an undercover operation that will conclude with an arrest in which the CI might be involved; and (4) every informant is to be assigned an alternate agent whom the informant will presumably meet. Items 1, 2, and 4 are found in the FBI's MIOG, Section I37. Item 3 is a normal safety consideration.

The relationship between an agent and a confidential source should be based on the relevance and value of the information the source has to provide to the FBI. The conduct of the agent and the informant must be in compliance with the Attorney General's Informant Guidelines.

Within the above general allegation as stated above, the following specific allegations were addressed:

1) That SA Richard Baker (now retired) purchased liquor from the South Boston Liquor Mart (SBLM), at significantly discounted prices, for a Christmas party sponsored by the FBI. The allegation further alleged that $204 was paid for liquor valued at $350-375. The SBLM was run by Kevin O'Neil and James "Whitey" Bulger was alleged to have had an interest in this store. During the execution of a search warrant at the store (by law enforcement agencies other than the FBI), a note was found on a piece of paper related to the purchase of the liquor. The note read, "Dick Baker, friend of John Connolly."

Richard W. Baker, Jr. was interviewed on July 31, 1997, and he advised that he purchased liquor from SBLM for two successive Christmas parties, in the late 1980's, which were sponsored by the Boston Division of the FBI. He stated that on both occasions he paid retail prices for the liquor. Baker stated that he knew that O'Neil was an associate of Bulger's and

was also aware that O'Neil was thought to be a "straw" owner for Bulger. Baker was aware that Bulger was an informant who was handled by John Connolly. Baker acknowledged that, in hindsight, purchasing the liquor from SBLM was inappropriate and that doing so was reflective of poor judgment.

Baker said that he has never met Bulger, Stevie Flemmi or Kevin Weeks (the listed owner of the SBLM). Occasionally he would see Bulger and Flemmi standing in front of the SBLM (which no longer goes by that name) as he was driving home. He advised that after it became known that the "FBI" had purchased liquor from SBLM, he became the object of ceaseless comments from his law enforcement colleagues and thereafter made no more purchases from SBLM. Baker stated that his purchase of liquor from SBLM did not result in any quid pro quo arrangement between Bulger or O'Neil and him.

A note was found at the SBLM during the execution of a search warrant. The note was located with the receipt of the purchases made by Baket. The note said, "Dick Baker, friend of John Connolly." Baker said that such a note was not necessary to arrange for the purchase of liquor. However, Baker advised that when he called O'Neil to arrange to purchase the liquor, he began the conversation by saying that he was a "friend of John Connolly." Baker then reminded O'Neil that he (Baker) had purchased a refrigerator from O'Neil in 1981 when O'Neil owned an appliance store. Between the time Baker purchased the refrigerator from O'Neil and the liquor (approximately eight years), he did not have any contact with O'Neil.

No supporting documentation could be located to support the computation of value for the liquor purchased by Baker. It has not been ascertained exactly how the figure of $350-375 was determined.

Former SAC Thomas A. Hughes prepared a memorandum indicating that he had received the information regarding the alleged discount from SBLM to Baker from Leonard Hensen, Chief, Organized Crime Division, Suffolk County District Attorney's Office. SAC Hughes placed the memorandum in the 263 Control File. SA Baker placed a memorandum in the same file indicating that he had received no special treatment. SAC Hughes recommended no further action be taken on this matter as of June 17, 1990.

FBI policy states that Special Agents are prohibited from engaging in business or financial relationships with informants. The MIOG Section 137-4 (20) states in part:

> In order to avoid the appearance of impropriety, Agents are prohibited from engaging in business or financial

relationships with informants. If an exemption to this general prohibition is deemed necessary, the SAC must articulate sufficient background to demonstrate to FBIHQ that the relationship will not create an appearance of impropriety or otherwise reflect adversely upon the FBI.

2) **SA James Lavin (Boston) told Chief Division Counsel Dennis Callahan that a source of his (Lavin) gave him pictures in December of 1987, that appeared to depict Boston city employees erecting either a fence or guardrail in front of a business owned by Bulger. The pictures were taken by the source in August of 1984 (correct date). Lavin eventually shared this information with SA John Connolly. Within the next 30 days, Lavin's source called him again to tell him that the guardrail (fence) was now gone.**

SA James Lavin was interviewed at his residence on July 25, 1997 and essentially confirmed the story as it is stated above. He stated that he did not intend to imply that something criminal or otherwise inappropriate had occurred. He meant only that it was odd that shortly after advising Connolly about the pictures his source had given him, the guardrail was gone. Lavin felt that the whole thing could have been coincidental. He stated that Connolly advised him that the owner of the store was providing the office with good information. He recalled (although he was emphatic that he was not positive about this recollection) that Connolly questioned him about his intentions regarding the information.

Lavin advised that after his source called him a second time to tell him that the guardrail was gone, he mentioned it to Callahan and no one else. Lavin did not want to appear to be accusing someone of wrongdoing in the absence of more substantial evidence.

It cannot be determined from the information available that 1) the fence or guardrail was not legitimately being installed or repaired; 2) that the timing of its removal was anything other than coincidence; or 3) that anything of a criminal nature occurred either in its installation, repair, or removal. No further investigation can be conducted without the cooperation of Connolly.

3) **That John Morris received gifts from informants and had them as guests in his home.**

Paul Coffey, Chief, Organized Crime and Racketeering Section, DOJ, was interviewed on July 16, 1997. He advised that after a meeting with Flemmi and his attorney in Judge Mark L.

Wolf's chambers, in which Flemmi was told by the Court that his informant status would be disclosed, Flemmi told Coffey that if he was "going down," he intended to take others with him. Flemmi identified SSA Morris as a person with whom he exchanged benefits.

On July 23, 1997, John Morris' ex-wife, Rebecca Morris, was interviewed. Ms. Morris has been divorced from John Morris since 1989. Ms. Morris believes that Bulger and Flemmi came to the Morris residence twice in the mid-1980's. In the first instance, Ms. Morris recalls that her husband told her that Bulger and Flemmi were coming. She went upstairs. She did not see anyone, but heard muffled voices. The second time, Ms. Morris was in the kitchen when Flemmi arrived with wine and champagne. She recalled John Morris stating that he had received a silver wine bucket and a case of wine as Christmas gifts from Bulger and Flemmi. She said that John Connolly acted as a conduit for the gifts from Bulger and Flemmi to Morris.

Former SA Dennis Condon was interviewed. Condon advised that circa 1985, he was invited to Morris' home for coffee by either Morris or Connolly. Aside from Connolly and Condon, the other invitees were James "Whitey" Bulger and Stephen Flemmi. Condon stayed for about an hour. Condon had no information regarding the exchange of gifts or other gratuities.

We reviewed an FD-302 prepared by Morris regarding a conversation with Bulger, which occurred on October 13, 1995. In that document, Morris advised that Bulger called and threatened him. Bulger stated that Morris had ruined his life and had made him a marked man. Bulger alleged that Morris had accepted money from him and claimed that he had witnesses.

This specific allegation can only be addressed by interviewing Morris or Bulger. Morris has refused to be interviewed and Bulger is currently a fugitive.

4) That gifts were exchanged between confidential informants and FBI agents at dinners hosted by SA Nicholas Gianturco at his residence.

AUSAs Fred Wyshak and James Herbert advised that at a meeting in Washington, D.C. a few months ago, SSA John Gamel, currently supervisor of the OC Squad, Squad C-3, Boston Division, stated that former SA Nicholas Gianturco had hosted dinner parties at his home that were attended by Bulger, Flemmi, and FBI supervisors. SA Michael Buckley, Squad C-3, advised that Connolly once introduced him to Flemmi and Bulger at Gianturco's house in the mid-1980's. They discussed a variety of topics. There was a very limited amount of business discussed. Buckley did not witness, nor is he aware of, any exchange of gifts.

Nicholas Gianturco provided the following information: Upon being assigned to the Boston Division in 1977, Gianturco worked an undercover assignment under the supervision of SSA John Morris. In March of 1979, SA Connolly told Gianturco he had a few guys who wanted to meet him. Connolly brought Bulger and Flemmi over to Gianturco's residence. Gianturco prepared an Italian dinner, and the four discussed the Operation Lobster case.

Operation Lobster was an undercover operation set up to purchase stolen goods. Gianturco was the undercover agent assigned to Operation Lobster. Gianturco advised that during October of 1978, he was to meet with an individual he identified as McConagle at 2:00 a.m. to look at $35,000 worth of stolen jewelry that McConagle wanted to sell. Gianturco advised that he felt uneasy about the meeting. Gianturco ultimately did not attend the meeting because he felt that McConagle might try to kill him. Connolly called Gianturco the evening after the meeting with McConagle was scheduled and asked Gianturco if he was planning to meet with McConagle and his crew. Connolly advised Gianturco that his (Connolly's) "guy" had told him that McConagle and his crew were going to kill Gianturco at the aforementioned meeting. Bulger is alleged to have been the individual responsible for passing the warning about McConagle to Connolly. Gianturco advised that he felt comfortable talking to Bulger about the case, though doing so is a violation of the FBI prohibition against discussing investigative matters that are ongoing.

A year later, they had another dinner at Gianturco's residence, at which Bulger gave Gianturco a set of wine glasses. Gianturco had dinner with Connolly, Flemmi and Bulger five to seven times in his (Gianturco's) home. SA Buckley attended the last dinner at Gianturco's home. On one occasion, SA Joseph Pistone and New York ASAC Jules Bonavolonta attended. On one occasion, Gianturco, Connolly and Bulger went to Stephen Flemmi's mother's house for dinner. Gianturco received Christmas gifts from Bulger and Flemmi; Connolly delivered the gifts on behalf of Bulger and Flemmi. Gianturco reciprocated, giving Connolly gifts to deliver to Bulger and Flemmi. Gianturco gave shirts, sweaters and a silver belt buckle, which he paid for out of his own funds. Gianturco received as gifts, from either Bulger or Flemmi, a black briefcase, a model boat and truck, a Lladro statue and a bottle of cognac. Gianturco did not recall receiving gifts from Bulger or Flemmi after Connolly retired. Gianturco had no recollection that John Morris ever attended one of the dinners at his home when Bulger and Flemmi were present.

Joseph Pistone, former SA, recalled attending dinner at Gianturco's house on one occasion along with Jules Bonavolonta, Connolly, Flemmi and Bulger. They talked about what a good cook

Gianturco was. No gifts were exchanged. Pistone recalled that during this time period, he was in Boston to testify at a trial.

Jules Bonavolonta, former ASAC, recalled that he and Joe Pistone attended a dinner at Nicholas Gianturco's house in Boston on one occasion prior to 1987. "Whitey" Bulger and Steve LNU were guests. Bonavolonta believes he knew that Bulger was a source at the time and thought that Steve LNU was a source. Bonavolonta advised that the subject of Bulger's stay in San Quentin prison was one topic of discussion. Bonavolonta advised they ate dinner and opined that nothing inappropriate occurred. Bonavolonta's recollection was that no gifts were exchanged. Bonavolonta advised that he was in Boston either to testify at a trial or attend an OC conference.

The receipt of items of value could constitute receipt of an illegal gratuity in violation of 18 U.S.C. 201 (c)(1)(B). However, there is no indication, at this time, that any gift was received by any agent within the applicable five year statute of limitations.

In addition, FBI policy states that SAs are not to accept gifts from informants; gifts may be given to informants in lieu of payment for services with prior SAC approval. The Manual of Administrative Operational Guidelines (MAOP) section 137-8.11 states in part:

> Because of the appearance of improper conduct or conflict of interest usually involved in such relationships as well as the high potential for actual impropriety inherent in such relationships, Bureau employees are prohibited from engaging in private business and financial relationships with individuals furnishing information to the FBI (including informants) . . . .
>
> <u>This prohibition includes giving or receiving gifts</u>.

The MIOG section 137-8.1 states in part:

> A gift may be made to an informant in lieu of a payment for services with the prior approval of the SAC, or in his/her absence, the ASAC.

Agents are not to accept gifts
from informants.

MAOP section 137-8.11 further states that FBIHQ approval can be sought for an exception to the general prohibition if the employee can demonstrate that the proposed transaction will not create an appearance of impropriety, involve a conflict of interest or otherwise adversely impact upon the FBI.

Although Connolly has not, as of the date of this report, been identified as a recipient of any gifts, he was the handling agent for both Bulger and Flemmi and facilitated the gift exchanges. As such, Connolly, former SSA Morris and former SA Gianturco were clearly in violation of FBI policy. Connolly refused to be interviewed in depth regarding this matter, but he did state that no gifts of value were exchanged. Bulger is a fugitive, and Flemmi, through his attorney, has declined to be interviewed. Likewise, Morris refused to be interviewed.

The MIOG does make allowances for the giving of gifts to informants, but prior approval from the SAC is required. A review of the informant files of Bulger and Flemmi does not indicate that the approval of the SAC was obtained to permit agents to give gifts to either informant.

5) That FBI agents engaged in inappropriate relationships with former or current informants.

SA Michael Buckley advised that he was introduced to Bulger and Flemmi at the home of Nicholas Gianturco. Buckley was at Gianturco's residence attending a dinner. Gianturco said that he hosted several dinners at his home at which Bulger and Flemmi were guests and during which gifts were exchanged (the exact number of dinners at which gifts were exchanged is not known). Joseph Pistone, former SA, advised that he attended one dinner at the home of Nicholas Gianturco at which Bulger and Flemmi were guests. Pistone had been invited to the dinner by Connolly. Connolly told Pistone that he had a couple of guys he wanted him to meet. SA Charles Gianturco, brother of Nicholas Gianturco, advised that his brother told him of one occasion where he (Nicholas) hosted a dinner at which Bulger and Flemmi were present.

James Ring stated that he became aware that John Connolly was debriefing Bulger and Flemmi at his residence and ordered him to cease this practice. Ring is not aware of any agents who have received gifts from current or former informants.

SA John Newton stated that he allowed John Connolly (pursuant to a request made by Connolly) to meet with both Bulger and Flemmi at Newton's residence on four or five occasions during the course of a year during the mid-1980's. He was not present

for the majority of the meetings. He advised that he never received any gifts or other tokens for the use of his apartment. He further stated that he is unaware of whether Connolly ever received any gifts from Bulger or Flemmi. SA Newton is not aware of any agents who have received gifts from current or former informants.

Rebecca Morris, ex-wife of former SSA John Morris, advised that John Morris once told her that he believed that John Connolly may have been crossing the line with his informant because either Connolly had taken a vacation with Bulger or Bulger had arranged a vacation for Connolly.

Marianne Vicanti, ex-wife of John Connolly, said that Connolly had been acquainted with William Bulger, "Whitey" Bulger's brother and former President of the Massachusetts State Senate, since his (Connolly's) youth. During the time they were married and living together (1970-1976), Connolly frequently socialized with William Bulger at a private club and at William Bulger's home. Vicanti advised that she does not recall Connolly ever bringing associates home (neither co-workers nor anyone else). She was not aware of any relationship between Connolly, "Whitey" Bulger, and Flemmi.

Connolly was the handling agent for both Bulger and Flemmi and was present at each of the meetings/dinners where Bulger and Flemmi were guests in the homes of FBI agents. Connolly is a native of South Boston and has been well acquainted with the Bulger family since his youth. According to his former wife Marianne Vacanti, William Bulger was a significant influence on Connolly and was viewed as being responsible for encouraging Connolly to go to college. This longstanding relationship appears to have ultimately led to social contacts which created an appearance of impropriety.

There are no specific policies which prohibit holding meetings between agents and informants at the agent's residence. However, given the violent nature and mercurial loyalty of many informants, such meetings remove any barrier of safety for the agent and the agent's family should the informant ever feel betrayed by the agent. The propriety of such meetings is questionable because they may give the impression that the relationship between the informant and agent has become personal or intimate. The agent is unnecessarily exposed to charges that could be brought by the source regarding the nature of their relationship.

6) Connolly was alleged to have attempted to persuade a detective from the BPD to quash a state grand jury subpoena issued for Kevin O'Neil for his testimony in a homicide investigation.

Captain Brendan Bradley, BPD, was the detective who was approached by Connolly on September 8, 1986, regarding a subpoena that Bradley issued to O'Neil. Bradley advised that O'Neil was issued the subpoena in the hopes that he could provide testimony regarding the perpetrator(s) of a homicide Bradley was investigating. Bradley advised that Connolly told him that O'Neil was a "good guy" and questioned whether he really had to subpoena him before the grand jury. Bradley stated that he did not think O'Neil should get a pass on the grand jury because it involved James "Whitey" Bulger and a murder. Bradley indicated that O'Neil was a suspect in the homicide. Bradley advised that O'Neil and Bulger were close associates and he (Bradley) believed that it was possible that Bulger was also involved in the homicide. Bradley did not offer any evidence to support his supposition. Bradley was aware that O'Neil and Connolly were friends.

Bradley opined that he thought Connolly was a "fine agent," but he nevertheless thought it was wrong for him to try to prevent O'Neil's grand jury appearance. Connolly's efforts on behalf of O'Neil were unsuccessful.

On February 7, 1992, Bradley was interviewed by Boston SSA John Gamel regarding Connolly's attempt to have O'Neil's subpoena quashed. During that interview Bradley advised that Connolly referred to the murder victim as a "piece of shit and an asshole anyway."

Former SA Richard Baker stated that Connolly had been very good friends with Kevin O'Neil's brother, Jackie O'Neil. Note that Kevin O'Neil is the person who allegedly sold discounted liquor to Baker, possibly because he was a friend of John Connolly.

This allegation was not reported to the FBI until after Connolly had retired. Hence, no OPR investigation was conducted when it was initially reported.

7) [redacted] alleged that when [redacted] started talking about SA John Connolly, the FBI cut off communications with [redacted]

B

AUSA Fred Wyshak advised that [redacted] told him that [redacted] recorded conversations with [redacted] for the FBI. Wyshak wanted to hear the tapes of these conversations, but never did. SSA John Gamel told Wyshak that there was nothing on the tapes. [redacted] AUSA Wyshak further advised that DEA SA Dan Doherty had also heard about the FBI misconduct allegations from [redacted] DEA SA Dan Doherty recalled one conversation with [redacted] wherein [redacted] stated that [redacted] claimed to have had a relationship or "connections" with the Boston FBI office from a long time ago.

[redacted] mentioned the names John Connolly and "Wendall" Kennedy and told Doherty that the "whole thing was on tape." Source further told Doherty that [redacted] provided information regarding misconduct on the part of FBI agents. [redacted] (not assigned to the Boston Division) advised that he was the handling agent for a confidential informant (CI) [redacted] CI advised him that [redacted] was making it obvious that he was a "source" for someone. [redacted] CI said that [redacted] was sooner or later going to get himself killed. [redacted] passed this information on to the appropriate [redacted] officials and was advised that there was another CI [redacted] providing information to the Boston FBI office. [redacted] contacted the Boston Office to apprise them of the information he received from his CI. ([redacted] CI did not know [redacted] he was reporting on was a CI as well.) A determination was made to [redacted] based on information provided by [redacted] CI as well as information independently obtained by [redacted]

b)

Gamel stated that he became aware of the alleged threats against [redacted] from information received from another FBI Division. Gamel did not recommend that [redacted] Gamel did cause a letter to be written by the SAC advising [redacted] officials that [redacted] had become a potential security risk. The letter did not recommend [redacted]

8) That Gamel told [redacted] that the equipment [redacted] used during consensually monitored conversations was working perfectly and that Gamel had promised [redacted] in exchange for [redacted] cooperation. [redacted] further stated that he crossed out the word "promises" on a consent form [redacted] signed because, in fact, promises had been made to [redacted] by Gamel.

b)

Gamel produced a journal from which he showed the interviewing agents pages he produced during the time the recordings were made that indicate he was telling [redacted] how to correctly wear the microphone and that parts of the recordings were garbled. Gamel advised that the two tapes, produced on two consecutive days, were virtually worthless. Gamel also produced the consent form (FD-473) signed by [redacted] and it clearly illustrated that the word "promises" does not exist on the form and therefore could not have been "crossed out."

9) That SAs John Connolly and John Newton were selling information to Bulger and Flemmi.

A review of Headquarters file 263-HQ-545 reflected that investigation into the above allegation revealed that the source of the information was the girlfriend of convicted drug dealer Joseph Paul Murray, Jr. She (the girlfriend) was initially known only as "Tina." "Tina" initially contacted the office of William Weld (former Massachusetts Governor), who was then the Assistant Attorney General for the Criminal Division. "Tina" made approximately three such calls before being referred to FBI Headquarters, where she spoke to Michael Wilson, Section Chief, Organized Crime Section. The matter was eventually referred to the Boston FBI office. "Tina" did not speak to anyone in the Boston office. At the time the allegations were made, Murray was incarcerated at the Danbury Correctional Facility. He is now deceased.

SA John Newton acknowledged that he had allowed John Connolly to use his apartment to debrief Bulger and Flemmi. SA Newton advised, however, that he has never given information to either Bulger or Flemmi under any circumstances.

FBI Boston, by communication dated August 4, 1989, advised the OPR, FBIHQ, that "in view of the unsubstantial and unspecific allegations, and the official relationship between SSA Connolly and the sources, this matter should be closed and no administrative action taken." This case was referred to the Criminal Investigative Division and closed administratively by OPR.

**The following allegations were made by [redacted] as reported to him by [redacted]

10) That former SA John Connolly facilitated contact between [redacted] James "Whitey" Bulger, and Robert Daddieco. [redacted] said that [redacted] wanted to [redacted] Daddieco [redacted] and thereby not be available to testify against Flemmi in the Fitzgerald bombing matter.

Robert Daddieco confirmed that he did have a telephone conversation with [redacted] in the early 1970's in which [redacted] However, Daddieco further stated that he contacted [redacted] on his own initiative [redacted] Daddieco denied knowing John Connolly. He further stated that he has never [redacted] He also advised that he was not asked to testify against Flemmi by any prosecuting attorney. Daddieco also said that he did not [redacted]

[redacted] denied any relationship with Connolly. [redacted] advised that he met Connolly only once, at a [redacted]

[redacted] also denied any knowledge that Bulger or Flemmi had a relationship with Connolly. At the same time, [redacted] said that if [redacted] were aware of such a relationship, [redacted] would not disclose it to the interviewing agents.

10a) That Connolly and agent Kennedy, whom [redacted] identified as "the number two man in the FBI," seized money in the Cayman Islands from an account belonging to a Bulger associate (Michael Murray). Connolly and Kennedy are alleged to have kept a portion of the money for themselves.

Weldon Kennedy, former FBI Deputy Director, was interviewed on July 28, 1997. Kennedy advised that he has never been to the Cayman Islands and has never accompanied John Connolly anywhere to seize any assets. Kennedy stated that he has never kept the proceeds of any FBI seizure for his personal benefit.

SA Paul Foley was assigned the forfeiture investigation regarding the laundering of funds by Joseph and Michael Murray. He advised that he has no knowledge of John Connolly ever traveling to the Cayman Islands to seize assets related to the Murray drug investigation or any other case. Foley said that SA Roderick Kennedy (retired) may have traveled to the Cayman Islands in an attempt to recover money alleged to have been deposited in Cayman Island banks.

SA Roderick Kennedy (retired) was interviewed and advised that he was the case agent on the Murray drug investigation. He stated that he has never traveled to the Cayman Islands with John Connolly to seize assets. Kennedy advised that he has never traveled anywhere with John Connolly to seize assets from anyone. Kennedy further advised that, to the best of his recollection, none of the cash involved in the Murray drug investigation was ever recovered by the United States Government.

Absent receiving the cooperation of Connolly, this allegation cannot be further investigated.

10b) [redacted]

Attempts to enhance the tapes at the FBI laboratory were unsuccessful.

[redacted] Connolly has not been interviewed regarding this allegation. Attempts are currently underway to obtain rental records from the Charles River Park apartment complex.

B

It is difficult to draw any firm conclusions regarding the [redacted] allegations reported by [redacted] has proven reliable at different times in his relationship with the FBI. [redacted] has also proven unreliable and failed an FBI administered polygraph on one occasion. The polygraph was administered in an attempt to evaluate [redacted] credibility regarding information he claimed to have received from [redacted] (national security information). [redacted] denied that he had any relationship with Connolly; however, [redacted] also stated that if such a relationship had existed, [redacted] would not disclose it.

It is impossible to ascertain if [redacted] reported the statements made by [redacted] correctly, fabricated allegations, or if [redacted] embellished the information he received with what he was able to read in the newspapers. Assuming that [redacted] reported the allegations of [redacted] accurately, it is impossible to determine what [redacted] may have lied about or embellished.

While [redacted] provided some accurate information, [redacted] he has also been described as a "flake," uncooperative, and manipulative. [redacted] clearly lied when [redacted] advised that he had crossed out the word "promises" on the consensual monitoring consent form. It is clear from speaking with SSA Gamel (and reviewing documents he provided in support of his version of the facts) that [redacted] lied about the conversations [redacted] had with Gamel regarding the quality of the tape recordings and promises Gamel was alleged to have made.

[redacted]

IV. THAT CURRENT OR FORMER FBI AGENTS AND/OR PROSECUTORS MADE FALSE OR MISLEADING REPRESENTATIONS TO JUDICIAL OFFICERS IN COURT FILINGS, INCLUDING BUT NOT LIMITED TO, PAPERS FILED IN CONNECTION WITH APPLICATIONS FOR ELECTRONIC SURVEILLANCE AUTHORIZATION.

Within the general allegation as stated above, the following specific allegations were addressed:

1984 - 1985 DEA TITLE III

(1) That the Government misled the issuing judge by including informants as targets in a Title III application.

In approximately April of 1984 the DEA SAC advised the FBI Boston Division that DEA had submitted a special enforcement operation proposal to its Headquarters, which targeted large-scale cocaine and marijuana trafficking in South Boston. The primary targets of the investigation were James "Whitey" Bulger and Steve Flemmi. By airtel dated April 12, 1984, the Boston Division notified FBIHQ of the DEA proposal, which alleged that Bulger and Flemmi were in control of a narcotics trafficking group. The airtel noted that DEA anticipated extensive investigation, including surveillances and pen registers, to develop probable cause for electronic surveillance of the principals. FBIHQ was further advised that the Boston Division would not be a participant in this investigation; however, the SAC had offered technical assistance to DEA. The Boston Division noted that the Flemmi informant file had been closed and that the Bulger informant file would be kept open due to past, present, and future valuable assistance to the FBI. It was further noted that, at that time, the DEA allegations were unsubstantiated, and DEA had furnished no specific information relative to the involvement of Bulger in criminal activities.

By memorandum dated October 17, 1984, SSA James A. Ring set out the current status of Flemmi and Bulger as FBI informants. Ring noted that Flemmi was presently closed. However, information volunteered by Flemmi was accepted. Ring also noted that both of these individuals were in the constant company of each other and when contacts were made, both sources were generally present. In his memorandum, Ring advised that he first became aware that the informants were targets of an investigation by DEA and the Quincy Police Department when DEA made a proposal that the FBI participate in this joint investigation. Ring further noted that it was his recommendation that the FBI not participate in this investigation. Ring stated that at the time of the DEA proposal, he advised the case agent for Bulger and Flemmi that they may be subject to investigation by other agencies and that he (Ring) would advise of no further details because of his feeling that if the investigation did not succeed, allegations would be made against both their handling

agent, John Connolly, and Ring, claiming that the FBI acted contrary to the interest of the investigation to protect these informants.

In the memorandum, Ring also summarized recent information from the sources that indicated their knowledge that the Quincy Police had entered Bulger's residence claiming that his alarm had gone off. Ring was unaware of the details of the probable cause or specific acts alleged against Bulger and Flemmi and also stated his wish not to know any of the details "for obvious reasons." Ring concluded by stating that the position of both Connolly and him was that if these individuals were violating the law and subject to investigation, it was their problem. Ring stated that there were not and would not have been any authorizations by the FBI for these individuals to commit any criminal acts unless such authorization conformed to Bureau regulations.

On July 25, 1997, former SAC James W. Greenleaf was interviewed regarding his involvement in the 1984 - 1985 Title III. Greenleaf advised that at this time there was a positive working environment between the FBI and DEA. Greenleaf stated that he cherished his personal and professional relationship with DEA SAC Stutman. Greenleaf recalled that Stutman had approached him for assistance in a case targeting Bulger and Flemmi. The case also had generated evidence regarding violations of Title 18, United States Code, of which the FBI had interest. Greenleaf advised that during his meetings with Stutman regarding this investigation, he never confirmed the informant identities of Bulger or Flemmi. Greenleaf surmised that he similarly did not disclose the identity of Bulger and Flemmi as FBI informants to the USAO, believing that any direct disclosure may have been inappropriate.

Greenleaf recalled that there were attempts to compartmentalize the investigation to control the possible exposure of Bulger and Flemmi as informants. Greenleaf felt that because of leaks in the law enforcement community, the FBI would be blamed for any disclosure of case work, whether or not the FBI helped or assisted another organization such as the DEA. Greenleaf felt that although Bulger was an informant, it was the FBI's duty to assist the DEA in any case in which informants might be involved in criminal activity.

Stutman advised that he had an excellent relationship with the FBI, and considered Greenleaf to be a very good friend. Stutman was aware that during his tenure in Boston, DEA had been targeting Flemmi and Bulger for investigation. DEA had tried a number of times to target both Flemmi and Bulger, and Stutman was aware of Title III intercept orders that were obtained by his agency targeting these individuals. Stutman advised that some of the DEA Agents in his office were convinced that both Flemmi and

Bulger were informants for the FBI and that this was the reason that DEA and other law enforcement agencies had been unsuccessful in charging them with crimes. Stutman advised that several investigators in his office felt that the 1984 - 1985 DEA Title III was compromised by SA John Connolly. Stutman never received any direct evidence which confirmed that SA Connolly did anything to compromise this investigation.

Stutman stated that his agency vigorously targeted Bulger and Flemmi for prosecution. He recalled that many in DEA assumed that both these individuals were informants, but that no one from the FBI ever confirmed that Bulger or Flemmi were informants.

In an ex parte submission to the court, the Government has already informed Judge Wolf that "neither Flemmi or Bulger were referred to in any way as informants in the 1984 and 1985 applications for electronic surveillance which named them, among others, as targets." (See April 9, 1997 Coffey Affidavit). Judge Wolf has ruled that the defendants are entitled to a Franks hearing to determine whether this omission was made with an intention to mislead and whether it was material to the issuing judge's decision to authorize the electronic surveillance.

The affiant on the 1984 - 1985 Title III was DEA SA Steve Boeri. Boeri confirmed that the FBI was invited to assist on the case because of possible evidence of federal criminal violations that would be obtained in the Title III targeting of George Kaufman. Boeri also recalled that the FBI was requested to provide technical assistance in connection with the installation of an electronic device in Bulger's vehicle. Boeri advised that all of the information supporting probable cause in the affidavit came from DEA. The FBI did not provide any source information for inclusion in the affidavit. Boeri stated that there were rumors during the investigation that Flemmi and Bulger were informants. These rumors could have been discussed with the AUSA who prepared the application and draft order, but Boeri was not certain. Boeri said he did not think about the possibility of these individuals being informants during the investigation.

The applicant for the Title III was AUSA Gary Crossen. Crossen advised that he was never told that either Flemmi or Bulger were informants for the FBI. Crossen recalled that there were rumors to the effect that Bulger was in the FBI's "stable." Crossen could not recall any discussions regarding this issue; however, he believed it was likely that he discussed it with the DEA case agent. Crossen advised that the Title III was a legitimate attempt to collect information regarding the criminal activities of the targets. There was no intention to mislead or deceive the issuing judge, and the Title III was not used as a subterfuge to protect source identities.

Crossen advised that he would have discussed the affidavit, application, and order with his superior, Rick Stearns, and probably Robert Mueller. Mueller was the chief of the Criminal Division at the time, and William Weld was the United States Attorney. Crossen advised that he had no recollection regarding any discussions with Mueller or Weld regarding the Title III. Crossen stated that he would have discussed the Title III with Mueller for tactical reasons and that he never had a Title III that he did not discuss with the United States Attorney. He could not recall any discussions with either Mueller or Weld regarding the rumors that Bulger may have been a Bureau source.

On July 29, 1997, William F. Weld, was interviewed regarding his involvement in the 1984-1985 DEA Title III targeting Kaufman, Bulger, Flemmi, and others. Weld advised that he never learned officially of any relationship between the targets of the DEA Title III, specifically Bulger and Flemmi, and the FBI or any other law enforcement agency. Weld stated that he shared in the suspicions regarding a possible relationship between Bulger and the FBI, but these suspicions were never confirmed. Mueller, who is now an AUSA in the District of Columbia, was also contacted. He advised that he had no knowledge of any relationship between the targets of the DEA Title III and law enforcement.

On July 30, 1997, retired SSA James Ring was interviewed regarding the FBI's participation in the DEA Title III. Ring advised that he was instructed by former SAC Greenleaf to provide two agents from Ring's squad to assist DEA in a Title III targeting individuals in South Boston. Ring attempted to convince Greenleaf not to provide this assistance because he felt it was unwise to build on another agency's work. Ring was concerned that there was no way for the FBI to know what had gone on in the case before the FBI became involved. Greenleaf was unconvinced by this argument and instructed Ring to make two agents available to DEA to assist in monitoring the Title III. Ring advised that he selected SAs Brian Rossi and Rick Carter for this assignment. Ring stated that it was his practice to rotate Title III responsibilities to agents on the squad. At the time, both Rossi and Carter were new to the division and less involved in the squad. Ring instructed Rossi and Carter to have no contact with him or anyone else in the office regarding the Title III. Ring advised that it was his intention to wall off Rossi and Carter from everyone else, including himself, because he was concerned that the FBI would be blamed for any future compromise. Ring never knew the targets of the Title III, never reviewed the affidavits, and did not know who acted as the affiant.

This arrangement was confirmed by both SAs Rossi and Carter. During his interview on July 21, 1997, Rossi advised that he was instructed by Ring to report to a DEA off-site

location to work on the wire. He was further instructed to have no contact with the FBI office, C-3 Squad, or Ring, regarding the Title III. This occurred in early January of 1985 and was Rossi's first assignment in the office. Rossi recalled that Ring was emphatic that Rossi have no contact with the FBI office. Ring provided no explanation for this arrangement. Rossi stated that he was new to the Boston Division and had no historical knowledge of Bulger, Flemmi, or the so-called Winter Hill Gang. He also had no knowledge of law enforcement relations in the Boston area and knew little about the Boston factions of the Patriarca LCN family.

Rossi had no recollection of whether he was told to report to anyone in particular in connection with his assignment. Shortly after reporting to the DEA off-site, Rossi was advised that there was a possibility that gambling information would be obtained through the Title III. He believed that this was the justification for the FBI's participation in the case. Rossi had no knowledge that any of the targets of the Title III were informants or had any type of relationship with law enforcement. Rossi could not recall any discussions to the effect that anyone involved in the Title III was an informant.

During his interview on July 23, 1997, SA Rick Carter advised that he was assigned to the DEA wire because he was a new agent in the division and had no first-hand knowledge of the subjects or informants in the Boston Division. Carter was aware that the FBI's Boston office had been accused by other law enforcement agencies of leaking information. He believes, in retrospect, that he was specifically assigned to the DEA wire because it targeted Bulger and Flemmi, who he later discovered were FBI sources. Carter confirmed that he was instructed not to discuss the matter with agents on Squad C-3. Carter had no recollection of ever discussing the results of the wire, and upon returning to the FBI office, he was not asked any specific questions about his experience.

After the completion of this assignment, Carter became aware that Bulger was an FBI informant. Carter received this information from Connolly, who supplied it on a routine need-to-know basis. Carter stated that to his knowledge, none of the AUSAs that had worked in the initial stages of the Title III were aware that Bulger and Flemmi were informants.

The Quincy Police Department also participated in the 1984 - 1985 DEA Title III. On August 5, 1997, former Quincy Police Department Captain David Rowell was interviewed regarding the 1984 - 1985 DEA Title III. Rowell advised that it was his understanding that the FBI became involved in the case because of the possibility of obtaining loan sharking and gambling evidence against their target, George Kaufran. He recalled that two agents were assigned who had just arrived in the Boston FBI

office. Rowell suspected that the assignment of two newly-arrived SAs reflected a lack of confidence and trust in the Boston FBI office concerning some of its agents. Rowell stated that although there were rumors, he never knew for a fact that Bulger or Flemmi were FBI sources.

On July 29, 1997, former Quincy Police Department Sergeant Richard Bergeron was interviewed. Bergeron also stated that it was his understanding that the FBI was brought into the case because there were concerns that gambling and loan sharking violations were likely to become part of the investigation. Bergeron understood that DEA SAC Stutman and FBI SAC Greenleaf had some kind of an agreement regarding the FBI's participation in the case. Bergeron recalled that both SAs Carter and Rossi were newly assigned to the Boston office and reported directly to the DEA Title III, so they were not in a position to know much of what the Boston office knew or did. Regarding the targets of the investigation, Bergeron advised that he had no recollection of discussing the alleged informant status of either Flemmi or Bulger. To the best of his knowledge, Bergeron advised that Bulger and Flemmi were not known to be informants, but there were many rumors regarding a possible relationship. Bergeron believed that the Title III was a legitimate attempt to investigate and prosecute Bulger and Flemmi.

Based upon the investigation completed to date, the weight of evidence indicates that personnel in the USAO and the DEA involved in the wire applications were never informed that Flemmi and Bulger were or had been FBI informants. Although there were many rumors regarding a relationship between the FBI and Bulger, none of the DEA or USAO personnel reported being advised of such a relationship.

The FBI Boston Office took special precautions to ensure that the Title III was not compromised. Ring assigned two newly-arrived agents and then "walled" them off from the rest of the Boston Office. Neither of these agents had any knowledge regarding the FBI's relationship with Bulger and Flemmi.

It is clear that Greenleaf knew of the relationship, but he denied ever informing Stutman or the USAO. AUSA Crossen advised that the Title III was a legitimate attempt to obtain evidence against Bulger and Flemmi and that no attempt was ever made to mislead the court in connection with the Title III.

One possible discrepancy was identified in the previously discussed October 17, 1989, memorandum prepared by Ring. The following language is set out in the fifth full paragraph on page two: "Information regarding the sensitivity of these two sources to current investigation has been provided to SAC Robert Stutman." Ring denies having ever discussed this matter with Stutman. Stutman also denies ever being informed

that Bulger and Flemmi were FBI informants. Ring advised that he had no recollection of what he meant by this language.

TITLE III at 34 GUILD STREET, MEDFORD, MASSACHUSETTS

(2) That the FBI and prosecutors knew the 34 Guild Street location in advance of obtaining a roving Title III and failed to inform the issuing judge.

On October 20, 1989, Acting Strike Force Chief Diane Kottmyer met with Boston SAC Ahearn and Ring. ASAC Dennis O'Callaghan may also have been present. The purpose of the meeting was to discuss LCN violence in the Boston area. During the previous summer, there had been a substantial increase in the level of violence by the LCN. Underboss Billy Grasso was found murdered in Connecticut, and in June of 1989 an attempt was made on the life of Francis Salemme, Sr., in the parking lot of a restaurant in Saugus, Massachusetts. Both Kottmyer and Ring were extremely concerned with the violence, and both described the LCN situation as a "tinderbox." Ring was convinced that a "shooting war" could break out at any time. Ring was particularly enraged by the attempt on the life of Salemme Sr., which was carried out in a parking lot of a restaurant. Ring believed the LCN's use of automatic weapons in a public area presented a substantial threat to public safety. We interviewed Kottmyer, Farmer and Boston SA Walter Steffens concerning their knowledge of the preparation of the application for the roving Title III.

At the October 20, 1989 meeting attended by Ahearn, Ring, and Kottmyer, it was decided to place a priority on obtaining a roving Title III targeting LCN members. Ring had previously assigned Steffens to compile a "rolling affidavit" to target the most violent members of the LCN. During this time period, Squad C-3 was cleaning up cases against Joe Russo, Vinnie Ferrara, and other LCN members. These cases were not yet ready to be indicted. Ring felt obligated to identify other situations where electronic surveillance could be used to quicken the process of arresting and getting these individuals off the street.

Kottmyer was informed that a confidential source had provided information regarding an LCN induction ceremony which would be held at some point in the future. She was told at this meeting that the information regarding the induction ceremony was so singular in nature that it could not be included in any affidavit for a roving Title III. Therefore, while she felt comfortable stating in the application the Government's intention to intercept an LCN meeting, she did not characterize the meeting as an "induction ceremony." Kottmyer left the meeting with the rolling affidavit prepared by Steffens and a packet of surveillance FD-302s. Kottmyer worked over the weekend and analyzed whether the affidavit contained sufficient justification

for a roving Title III. She knew the content of progress reports from a [redacted] Title III ([redacted] application), which contained several references to LCN activities in the Boston area.

Kottmyer believed the evidence justifying a roving Title III was overwhelming. There was substantial information regarding the subjects frequently moving meetings and taking other precautions to avoid electronic surveillance. She noted that Joe Russo had been particularly successful in avoiding electronic surveillance. Several previous attempts targeting Russo had been unsuccessful. Kottmyer considered Russo to be an exceptional target as he was running things in the Boston area and was considered to be the brains of the operation.

On Monday, October 23, 1989, Steffens reported to Kottmyer's office and worked on the affidavit until approximately 11:00 p.m. Using the "rolling affidavit" prepared by Steffens, as well as results from Title IIIs in [redacted] and Springfield, an application, affidavit and proposed order were drafted. On Tuesday, October 24, 1989, Ring advised that he instructed Steffens to hand carry the Title III package to FBIHQ and DOJ for approval. Ring had previously contacted SSA Dennis Maduro, who agreed to hand carry the package through the approval process. Kottmyer advised that during this process, minor modifications were made in the language of the package. Kottmyer had also contacted DOJ and requested that the package be expedited.

On Thursday, October 26, 1989, or Friday, October 27, 1989, the FBI obtained a copy of Vincent Federico's furlough application. The FBI had obtained source information indicating that Federico would be one of the individuals "made" during the induction ceremony. The furlough application was apparently obtained by two separate individuals. Analyst George Hurley had been instructed by Ring to compile an informational package on Federico. As part of this process, Hurley became aware that Federico had regular furloughs from prison. Hurley advised that he obtained a copy of the furlough application on Thursday, October 26, 1989, and provided it to Ring.

A copy of the furlough application was also obtained by then-SA Vince Delamontaigne. Delamontaigne contacted Linda Washburn at the Massachusetts Department of Corrections on either Thursday or Friday morning. Delamontaigne obtained a copy of the application from Washburn on Friday morning. Washburn advised that she provided a copy of the furlough application to Delamontaigne a couple of days before the furlough was to occur. The application disclosed that Federico had listed the address, 34 Guild Street, as a location where he would be on Sunday morning, October 29, 1989. The justification for the visit was listed as "family."

Delamontaigne recalled discussing the furlough application with members of the squad when another Agent, Joe Hannigan, recognized Guild Street [redacted]

H Delamontaigne then [redacted] for the purpose of observing 34 Guild Street.

After obtaining a key to the Moody residence, Delamontaigne and Hannigan proceeded to Guild Street. While they were in the Moody residence, a vehicle containing four individuals arrived at 34 Guild Street. Hannigan and Delamontaigne recognized these individuals as Joseph Russo, Vincent Ferrara, and Angelo "Sonny" Mercurio. At approximately 1:00 p.m., Delamontaigne contacted the Boston office and advised Ring that the three individuals had been observed at the 34 Guild Street address. Ring at some point informed Kottmyer and Steffens of this development.

By midday on Friday, October 27, 1989, Kottmyer and Ring became concerned because the Title III package had not yet received final approval at the FBI or DOJ. Kottmyer informed Ring that the FBI's approval had not yet been provided to DOJ's Office of Enforcement Operations (OEO). Ring advised that SAC Ahearn then called Section Chief Jim Moody in the Organized Crime Section at FBIHQ, at which time Moody advised that he did not
G want to approve the application because of the use of [redacted] Title III information. Moody was concerned that any arrests conducted in the Boston case would disclose the [redacted] Title III.

Ring advised that a discussion was then held between Section Chief Moody, Ahearn, Ring, and SSA Bob Hargraves regarding the affidavit. Moody agreed to approve the package conditioned on the Boston Division's agreement not to conduct immediate arrests. At approximately 6:11 p.m., Kottmyer received approval from DOJ via facsimile. Earlier in the day, Kottmyer learned that Delamontaigne had obtained a copy of Federico's furlough application. Subsequent to this, she learned from Ring that surveillance placed Ferrara, Russo, and Mercurio at 34 Guild
H Street. [redacted]

Kottmyer proceeded to Judge Nelson's chamber. Kottmyer had previously provided Judge Nelson with a draft of the roving Title III after she had been advised on late Thursday, October 26, 1989, or early Friday, October 27, 1989, that approval for the Title III would be forthcoming. Kottmyer noted that Judge Nelson had been calling to determine the status of the Title III package. Judge Nelson advised Kottmyer that he would be unavailable on Saturday afternoon. Kottmyer obtained Judge

Nelson's telephone number in case the need developed to contact him over the weekend. Kottmyer told Judge Nelson that there could be an entry as early as over the weekend. She also informed Judge Nelson that in the event of an arrest, the Title III would be immediately terminated to avoid invasion of the defense camp. Judge Nelson asked no questions regarding the location at this time. Kottmyer noted that Judge Nelson had handled the Angiulo case and was very familiar with the organization of the LCN and did not need to be educated in this context.

Kottmyer advised that at the time Judge Nelson signed the order, she knew that there was going to be a "making" ceremony, that Federico had listed 34 Guild Street on his furlough application, that a source had advised that the ceremony would be held in the vicinity of Wellington Circle, Medford, Massachusetts, and that Ferrara, Russo, and Mercurio were observed during a surveillance at 34 Guild Street.

The decision to make the installation at 34 Guild Street was made at approximately 3:00 p.m. on Saturday, October 28, 1989. Kottmyer could not recall specifically, but she thinks she may have known that the Destefanos, the Federico relatives who resided at 34 Guild Street, had left the residence at about this time. She may also have known that food had been ordered for the ceremony. Kottmyer believes that she may have placed significance on the fact that the Destefanos had left the residence because of earlier source information to that effect.

After obtaining Judge Nelson's signature and before the decision to make the installation, Kottmyer may have heard that an informant confirmed that they had been checking out 34 Guild Street and that it was acceptable. The source information regarding the 34 Guild Street location was obtained by Ring. Ring could not specifically recollect when he advised Kottmyer of this information; however, he was certain that it was after Judge Nelson had already signed the order.

Ring advised that he spoke with Kottmyer at approximately 3:00 p.m. or 4:00 p.m. on Saturday afternoon. Ring and Kottmyer both advised that they were still uncertain as to whether 34 Guild Street was the correct location. Both Ring and Kottmyer had previous experience wherein the LCN changed meeting locations at the very last moment. Both also had fears that the induction ceremony could be a ruse by the LCN to identify informants. The information regarding Guild Street would only be known by a very limited number of LCN members. Both Ring and Kottmyer discussed the possibility that the FBI would be caught by the Medford Police making the installation. After her discussion with Ring, Kottmyer advised that she felt completely justified in going forward with the installation.

At approximately 4:45 p.m. on Saturday, October 28, 1989, Kottmyer called Judge Nelson's residence and spoke with his mother. Judge Nelson's mother took down the information and advised Kottmyer that she would have the judge contact Kottmyer as soon as he came back. Kottmyer never received a call back from Judge Nelson and advised that she was "really on the fence" about whether she should call back. At about 9:00 a.m., the following morning, October 29, 1989, Kottmyer called Judge Nelson at his chambers. The judge made no mention of her earlier message. He also asked no questions regarding the location of the interception. Judge Nelson was informed of the installation and the address, and that an interception was possible later that day. Kottmyer advised that there was no attempt to mislead Judge Nelson.

On May 28, 1997, Mercurio was interviewed by SA Michael J. Buckley of the Boston FBI regarding the induction ceremony. Mercurio recalled, that the induction occurred on a Sunday. Mercurio confirmed that he had learned earlier in the week that the ceremony would be held in the vicinity of Wellington Circle, Medford, Massachusetts. He recalled that a few days before the ceremony, Mercurio drove to the house on Guild Street where the ceremony would be held with Russo and Ferrara. This occurred in the early afternoon. Mercurio met the owner of the house but did not go into the residence. Mercurio spent the remainder of the afternoon, until about dinner time, with Russo and Ferrara.

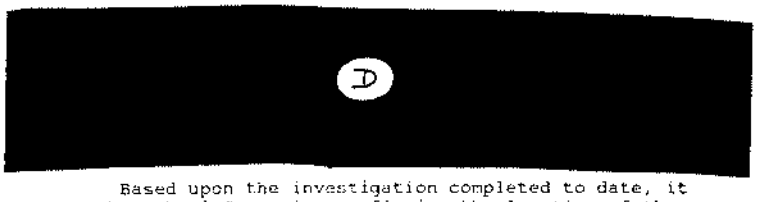
Later that same day, Mercurio called SA John Connolly to inform him about the location of the ceremony. Connolly told Mercurio that he (Connolly) would arrange for Mercurio to meet with Ring. Later that evening, Mercurio provided Ring with the information. Mercurio recalled that Ring remarked that Mercurio, Russo, and Ferrara had been observed at the residence by FBI agents.

Mercurio was confident that the day he was observed at 34 Guild Street with Russo and Ferrara was the same day he advised Ring of the location. The observation of Mercurio, Russo, and Ferrara on Guild Street was recorded on an FD-302 by SA Delamontaigne as October 27, 1989. This date is also confirmed by the FD-209 and insert prepared by Ring in connection with his receipt of the information on the 34 Guild Street location. (The FD-209 is dated November 28, 1989.) The interview of Mercurio was memorialized in an affidavit by SA Buckley filed in United States v. Salemme.

The owner of 34 Guild Street, Stephan Distefano, now alleges that Mercurio was at his residence on Wednesday evening, October 25, 1989. Distefano alleges that he was contacted by Vincent Ferrara on Wednesday, October 25, 1989 and asked to come to the North End of Boston to make arrangements for the use of

Distefano's house on the following Sunday. Distefano states that he drove to Ferrara's club on Salem Street in Boston to discuss the use of the residence and to show Ferrara how to get there and how to get in. Distefano alleges that he met with Ferrara and Robert Donati. It was decided that Distefano would drive Ferrara, Russo and Mercurio to the Distefano residence because the directions were confusing. After this trip, Distefano returned to Boston with Ferrara, Russo and Mercurio and met with Donati to again discuss the proper route and the location of the hidden key.

This interview was recorded in the affidavit of attorney Barry Collins dated April 16, 1997. The defendants point to this interview as further proof that the FBI and prosecutors knew of the Guild Street address before obtaining authorization for a roving Title III. Distefano, who is Federico's brother-in-law and a life-long friend of Ferrara, was interviewed with his wife on March 27, 1990. During that interview, both Distefano and his wife claimed that they knew nothing about the meeting that took place at their residence. Distefano advised that Federico wanted to use the house for the weekend. Federico, who would be out on furlough, wanted to spend the weekend with his girlfriend. Distefano advised that he left a key for Federico. Distefano advised that he and his wife went away for the weekend and did not know what took place.



Based upon the investigation completed to date, it appears that the information confirming the location of the induction ceremony was not obtained until after the authorization for the roving Title III was obtained. Even after Mercurio reported on Friday night that 34 Guild Street would be the location, there was still a high degree of uncertainty that was not resolved until Saturday afternoon, when the decision to make an entry was made.

Kottmyer still was not convinced of the 34 Guild Street location because of concerns regarding a possible ruse by the LCN to identify informants. She also was convinced that Federico would not list the location of an LCN meeting on a furlough application. Ring also shared Kottmyer's concerns regarding this location.

(3) That the 34 Guild Street roving Title III was used as a subterfuge to protect sources.

This allegation arises from language in the October 25, 1989 airtel that was prepared to transmit the Title III application to FBIHQ. The following language appears on page two of the airtel: "Such authorization will also help to protect the identity of any confidential sources, who otherwise might be revealed if singular information (in this case, the location of sensitive LCN meeting) provided by the source was incorporated into the affidavit of a traditional Title III application." This communication was prepared by SA Robert H. Walther, who also authorized its dissemination in his capacity as relief supervisor.

Walther recalled that he was tasked to prepare the airtel after the Title III application had already been transmitted to FBIHQ by SA Walt Steffens. Walther had very little recollection of the document. He surmised that he prepared the airtel with information prepared by other squad members and possibly other documents that may have contained pertinent information.

Walther had no specific recollection of the language at issue. He believes that the language was included to demonstrate another benefit of the roving Title III technique. Walther stated the language was intended to be generic and not a description of the present case. Walther advised that on the date the airtel was prepared, he had absolutely no information regarding the location of the induction ceremony. The first time that Walther was on Guild Street was Sunday, October 29, 1989.

Ring was also asked to review the October 25, 1989 airtel. Ring had no recollection of the communication. He noted that the initials in the lower left hand corner of the first page indicated that it was prepared by SA Walther. Ring said he would not have used the language because it did not apply to the 34 Guild Street situation. Ring stated that the location of the induction ceremony was not known on October 25, 1989, as the airtel seems to imply.

Judge Wolf raised the issue that the testimony provided by Kottmyer in the 1991 Franks Hearings is inconsistent with the language in the Walther airtel. Kottmyer would not have been privy to the airtel, which is an internal FBI document. Kottmyer has testified that as of the time she met with Judge Nelson, she was still not certain of the 34 Guild Street location. No other evidence has been developed to suggest that Kottmyer intended to use the roving Title III as a subterfuge to protect sources.

(4) That the FBI facilitated Federico's prison furlough.

Linda Washburn of the Massachusetts Department of Corrections was interviewed regarding the alleged role of the FBI in facilitating Federico's furlough. Washburn advised that Federico was entitled to a furlough as he was in a positive furlough status. Federico had already received furloughs on several occasions. Washburn confirmed that she provided a copy of the application to SA Delamontaigne a couple of days before the furlough. Washburn denied that the FBI played any role in the furlough process. Washburn advised that any request from the FBI to facilitate a furlough would have to be approved at several levels. She was unaware of any such request by the FBI during her tenure with the Department of Corrections.

(5) That prosecutors misled the issuing judge by failing to disclose that an informant would be present at the induction ceremony.

This allegation arises from the disclosure that Mercurio attended the induction ceremony. Mercurio was subsequently convicted of a Travel Act violation in connection with his attendance. In his Memorandum and Order, dated May 22, 1997, Judge Wolf stated, "Moreover, if true, the failure of the application to disclose or adequately describe, Mercurio and/or Donati as informants is relevant to whether the Government made the 'full and complete statement' concerning necessity required by Section 2518(1)(c)." Judge Wolf stated further that if the issuing judge had been informed that an informant would be present at the induction ceremony, "at a minimum he or she would have been likely to ask if the informants were willing to wear a recording device or testify, either voluntarily or pursuant to a compulsion and immunity order."

Mercurio was a source utilized in the Guild Street affidavit. In Section C, Paragraph 12, the issuing judge was informed that Mercurio would not testify against any of the subjects named in the affidavit for fear of reprisals. The nature of the source information also makes it clear that Mercurio, designated as CS-1, was an active participant in the described meetings. All of the information was described as being obtained personally or by overhears of other conversations.

Ring had no recollection of ever asking Mercurio to wear a body recorder to the induction ceremony. In addition to the serious safety problem presented by such a plan, Ring advised that Mercurio had refused to testify against his associates since their initial contacts. Ring periodically invited Mercurio to cooperate and testify; however, all of these invitations were declined. There was also a concern that Raymond Patriarca, Jr. had a radio frequency detector, which could be used to locate a transmitter.

During the May 28, 1997, interview of Mercurio by SA Buckley, Mercurio again stated that he was unwilling to cooperate and testify at any public trials or hearings. Mercurio cited his fear of physical harm to his family and close friends. On July 12, 1997, Buckley recalled that Ring had asked Mercurio if he would wear a body recorder and that Mercurio had declined.

Based upon the above, it does not appear that any serious consideration was given to having Mercurio consensually monitor the ceremony. The affiant, SA Steffens, did not know that Mercurio was a source. Kottmyer knew of Mercurio's status, but did not consider this to be an issue. Steffens noted that Judge Nelson never asked any questions regarding the sources used in the affidavit. Based on investigation completed to date, it does not appear that there was an intent purposely to withhold this information or mislead the issuing judge. However, the application does not disclose that the informant would be in attendance at the meeting. We do not purport to resolve whether inclusion of this information was required under applicable law.

(6) That Mercurio provided the FBI and prosecutors with defense strategy and plans.

In its June 19, 1997, Order at page II, the Court raised the question whether the FBI and prosecutors enjoyed access to joint defense information through Mercurio. A review of the informant file disclosed that no information was provided by the informant after the date of his indictment. The informant files do not report defense strategies and plans during any of Mercurio's contacts with the FBI. We have developed no evidence that any Government agent was in contact with Mercurio after he fled, sometime after November 13, 1989.

By teletype dated November 17, 1989, the Boston Division advised FBIHQ that it was closing communication with Mercurio effective November 13, 1989. The teletype also advised that Mercurio had been instructed not to contact the FBI unless it was to provide information regarding possible acts of violence or corruption of the judicial process. A warrant was issued for Mercurio's arrest on November 14, 1989.

On May 8, 1989, Ring prepared a three-page memorandum to memorialize discussions between Ring, Kottmyer, and FBI Principal Legal Advisor Michael Callahan relative to the Government's obligations in preserving the soon-to-be indicted defendants' Sixth Amendment rights. The memorandum concluded that the only way to prevent disclosure of Mercurio's informant status and, at the same time, prevent the burden of proof being shifted to the Government in connection with its possible receipt of defense information, was to close the informant prior to indictment. However, to fulfill the FBI's obligation to prevent crimes of violence, the informant was to be instructed to make

contact for the limited purpose of reporting potential crimes of violence or planned corruption of judicial proceedings.

Ring advised that he prepared the May 8, 1989 memorandum because he knew the source's access to defense plans and strategies would become an issue at some point in the future. Ring advised that he was trying to address the problem at that time because he was afraid that as an indictment approached, things would begin moving too quickly. He wanted to develop a strategy to address the eventuality that Mercurio may provide information which could impact Sixth Amendment rights or reveal Mercurio as a source. Ring noted that in his May 8, 1989 memorandum, he described a meeting between Connolly, Mercurio, and himself in which they discussed segments of the Attorney General's Guidelines and the areas of law relating to Sixth Amendment rights, as well as those of his associates.

1991 HILTON HOTEL TITLE III

(7) The FBI knew with specificity the location of the meeting in connection with the 1991 Hilton roving wire, but failed to inform the court.

The defendants in the Salerno case allege that one of the interceptees of the 1991 Hilton Title III was an undisclosed FBI informant. They further allege that this informant would have known the location of the meeting in advance.

On approximately December 10, 1991, the FBI Boston Office was informed by the FBI Las Vegas Office that it had obtained Title III information indicating that Natale Richichi would be traveling to Boston in the near future to meet with Ken Guarino and Frank Salemme, Sr. The Las Vegas office communicated that this meeting might occur at the Ritz Carlton Hotel, but they did not necessarily believe it would. The Las Vegas Organized Crime Strike Force and the FBI Las Vegas Office requested that Boston pursue Title III authorization to monitor this meeting electronically. SA Vincent Delamontaigne, who was a Relief Supervisor, took the initial telephone call from Las Vegas. Preparations were immediately initiated to obtain a Title III to cover the expected meeting.

SA Walter Steffens was instructed to report to the Boston Organized Crime Strike Force Office to assist in the preparation of an affidavit, application, and order. AUSA Todd Newhouse, who already had a pending case on Salemme, was assigned the responsibility of preparing the Title III package. Strike Force Chief James Farner also participated in the preparations. Probable cause for the Title III was provided, in large part, by the FBI Las Vegas Office. The Boston FBI Office provided source information addressing the hierarchy of the LCN in New England, as well as recent investigative information regarding the

targets. Neither Farmer nor Newhouse knew the identities of the sources utilized for preparation of the Title III package.

On the afternoon of December 10, through the evening, and into the next morning, December 11, 1991, Farmer, Newhouse and Steffens worked on the affidavit, application and order. A final draft was prepared around noontime, and someone from the FBI flew the drafts to Washington, D.C., to be reviewed by FBIHQ and DOJ. By late afternoon on December 11, 1991, approval was obtained from DOJ.

Prior to receiving final authorization, AUSA Newhouse had provided a draft of the Title III package to Judge Young for his review. Judge Young advised Newhouse that he would not approve an application for a roving Title III. Newhouse stated that at this time, the 34 Guild Street roving Title III issue was being addressed by Judge Mark Wolf in the Ferrara litigation. Newhouse explained to Judge Young that although there was a good chance that the meeting site would be the Ritz Carlton Hotel, the LCN frequently changed meeting sites at the last minute.

Farmer recalled that Judge Young had concerns regarding the constitutionality of the roving Title III provisions. Farmer further recalled that briefs submitted in connection with the 34 Guild Street matter were provided to Judge Young for his review. Judge Young subsequently contacted Newhouse again and advised that he wanted to review the draft Title III package again.

According to Newhouse, somewhere between 8:00 and 9:30 p.m. on December 11, 1991, SA Bob Walther drove Steffens and Newhouse to see Judge Young for his authorization. Judge Young was at a function at the Union Club in Boston. The Title III package was brought to the Union Club for Judge Young's review and authorization. Steffens recalled that Richichi had already landed before Judge Young's authorization and that the order he was signing could have been too late. Farmer also believed that the judge was told that Richichi had landed. Both Farmer and Steffens remember that Judge Young said "good luck."

Surveillance of Richichi was initiated at Logan International Airport. Richichi was followed to the Hilton Hotel by Delamontaigne and other Boston agents. Delamontaigne advised that he was in the line behind Richichi and Guarino at the reception desk, where he was able to overhear their room number. Delamontaigne then rented a room on the same floor; however, the room did not adjoin Richichi and Guarino's room. Delamontaigne walked past Richichi's room and confirmed that two males were conversing within. Delamontaigne then returned to the reception desk and requested that his room be changed. Delamontaigne advised the desk personnel that his current room was on the flight path to the airport and that the noise was bothering him.

He requested that they consider moving him to one of three other rooms. Two of the rooms were occupied, however, the third room, which was adjacent to Richichi and Guarino, was available. Delamontaigne never identified himself as an agent to the desk personnel because he felt there was a possibility that they would not be cooperative.

Delamontaigne then went to the new room and contacted SSA Quinn to request that a team of technical agents be dispatched to the hotel for the installation of the electronic surveillance equipment. Delamontaigne advised that this was the first time that the FBI knew where the meeting would be held. Delamontaigne further advised that he had no knowledge that either Richichi or Guarino were cooperating with the FBI in any capacity. He was also unaware of any attempt by the prosecuting attorneys to withhold any information from the judge or make any other type of misrepresentation.

SA Joseph Hannigan participated in the surveillance of Richichi. Hannigan confirmed that Richichi and other individuals were followed to the Hilton Hotel location. This was the first time that Hannigan ever knew that Richichi would be at the Hilton Hotel. Hannigan also confirmed that during the surveillance in the Hilton Hotel parking lot, he received a radio call that advised him that Delamontaigne had been able to learn the subject's room number. SA Brian Rossi was also assigned to the surveillance team. Rossi was located in the parking lot behind the Hilton Hotel when he was instructed by SSA Quinn to go into the hotel and to meet with Delamontaigne. Rossi then proceeded into the hotel where he met with Delamontaigne. Rossi acted as a monitor on the interception of the conversations of Richichi and others. Rossi stated that to his knowledge, there was no previous source information that provided the name of the hotel or the target's room number.

Rossi advised that he was surprised at the quality and quantity of information discussed between Richichi and Guarino, especially since Richichi was a "made guy" and Guarino was only an associate. Rossi advised that he would have expected Guarino to show more deference to Richichi. The excellent quality and quantity of information that the Title III was obtaining prompted SA Rossi to comment facetiously about making up a list of questions and sliding them under the door. SA Rossi stated that he had no knowledge of any relationship between the FBI and any of the targets of the electronic surveillance. Hannigan was also unaware of any relationship between the targets and the FBI or any other law enforcement agency.

After obtaining the court's authorization, Farmer, Newhouse, and Steffens proceeded to their residences. It was not until the next day that they learned of the Hilton location and that the interception had been successful. None of these

individuals had any previous knowledge of the location of the meeting.

Based upon the investigation completed to date, there is no indication that the FBI or the prosecutors knew the exact location of the meeting prior to the authorization of the roving Title III. The exact location was determined through surveillance of Richichi from Logan Airport to the Hilton Hotel. There is also no indication that the FBI had any contact with the management of the Hilton at any time before or after the authorization. The only other information regarding a location that was known to the FBI and prosecutors prior to the authorization was the reference to the Ritz Carlton that was picked up on the Las Vegas Title III. This information was brought to the issuing judge's attention as part of the Title III application and order.

None of the FBI or USAO personnel assigned to this matter had any knowledge of any relationship between the FBI and the targets of the Hilton Title III.

(8) That Rossi was overheard saying "Saint" during the interception of the 1991 Hilton Hotel meeting.

The defense maintains that SA Brian Rossi, who was a monitor on the Hilton Title III wire, can be overheard saying "saint" on the tape of the meeting. Rossi denied that he said the word "saint" while he was monitoring the wire. Rossi explained that the electronic monitoring of the meeting resulted in some of the comments of the monitoring Agents being overheard on the tape. Rossi stated that the quantity and quality of the information obtained from the conversation between Richichi and Guarino caused him to comment facetiously about sliding a list of questions under the door. Rossi subsequently listened to a copy of the tape on which he allegedly made the comment. Based upon his review of the tape, Rossi believes that he said "say."