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12/23/99 HRTECNT A1  
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(Publication page references are not available for this document.)

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The Hartford Courant  
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Thursday, December 23, 1999

MAIN (A)

FORMER FBI AGENT INDICTED  
EDMUND MAHONY; Courant Staff Writer  
A wire service report is included in this story.

One of the FBI's former top organized-crime investigators was arrested Wednesday on charges of conspiring to arrange payoffs from two notorious gangsters while protecting them from arrest and helping them extort real estate from a young South Boston couple.

In a lengthy racketeering indictment, retired FBI Special Agent John Connolly in effect was charged with going to work for James "Whitey" Bulger and Steven "The Rifleman" Flemmi -- two informants he was supposed to be handling for the FBI's Boston division.

Connolly, who was arrested in his Lynnfield, Mass., home, pleaded innocent in federal court to the five-count indictment and was set free on \$200,000 bail. Flemmi, currently jailed on related charges, and Bulger, a fugitive, were also charged in the indictment unsealed Wednesday afternoon.

Barry Mawn, special agent in charge of the FBI's Boston office, apologized for what he said was Connolly's violation of the public trust.

"I am certainly on the one hand saddened, but on the other I'm angered," Mawn said.

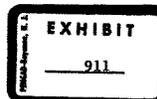
But Connolly's lawyer, Robert Hopedale, said the indictment was flimsy and an embarrassment to the FBI and the Justice Department. "I'm telling you, we'll take it apart," he said.

He said Connolly was being blamed because he participated in FBI-sanctioned dealing with mobsters that the agency now regrets.

"The government now seeks a scapegoat and have decided that John Connolly is the best person to play that role," he said.

Connolly retired in 1990 and now works as director of security for Boston Edison.

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For decades, Bulger and Flemmi have been legendary figures in New England crime, imposing their Winter Hill gang's stranglehold on the South Boston rackets. Since the late 1990s, though, the FBI has conceded under court order that the two were at the same time the Boston division's two most productive confidential informants, delivering the evidence the bureau needed to lock up top members of the Italian mafia.

But other law enforcement agencies have long complained that Bulger and Flemmi had an uncanny ability to learn in advance of any criminal investigations directed at them. Detectives with various New England state police agencies believed the two were using a small number of agents in the Boston FBI office to eliminate their competition for the area rackets and win protection from prosecution from other agencies.

Among the crimes Bulger and Flemmi have long been suspected of -- but repeatedly able to distance themselves from -- is the 1981 murder of former World Jai Alai owner Roger Wheeler. After Wheeler's murder on an exclusive Tulsa, Okla., golf course, two men believed to have had evidence about the crime were violently killed themselves.

The indictment unsealed Wednesday, based on work by a special federal investigative strike force, seems to support the longstanding view that Bulger and Flemmi had an unusually close relationship with the FBI. Connolly and the two, one-time informants are named in a five-count indictment accusing them of racketeering, racketeering conspiracy, obstruction of justice and conspiracy to obstruct justice. Flemmi is accused alone in the fifth count of obstruction for passing classified information from Connolly to Patriarca crime boss Francis "Cadillac Frank" Salemme.

The indictment of Connolly, a highly regarded, retired FBI agent, is an extraordinary event. It could not be immediately determined late Wednesday whether a retired FBI agent has ever been linked to criminal activity he was formerly assigned to investigate. Connolly has repeatedly insisted that he has done nothing wrong.

Connolly was an FBI agent from 1968 until January 1990. Midway through his career he returned from New York to his hometown of Boston where, as a youngster, he had grown up with and befriended Bulger. Once back home as an FBI agent, Connolly became a highly regarded member of the Boston division's organized crime squad. Monday's indictment puts him right in the middle of the people he was once assigned to investigate.

Specifically, the indictment unsealed Wednesday charges:

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During the 1980s, Connolly helped Bulger and Flemmi pay \$7,000 in cash in three payments, as well as two cases of expensive wine, to former Boston FBI supervisor John Morris. Morris was Connolly's boss on the organized crime squad.

Morris admitted taking the money and wine while testifying under a grant of immunity in 1998 as a witness in a related case in a Boston federal court.

Evidence was presented at that hearing that Bulger and Flemmi had an odd social relationship with a variety of federal agents, sometimes dining and exchanging gifts with them. Morris is no longer with the FBI.

Connolly and the two informants also are collectively accused of conspiracy and extortion in the illegal takeover of a South Boston liquor store. There was evidence at the related federal hearing that Bulger and Flemmi extorted Stippo's Liquor Mart from a young couple in 1984. In the Stippo's case, Connolly is also accused of conspiring to prevent other FBI agents from investigating the extortion.

Connolly also is accused of tipping Bulger and Flemmi to law enforcement investigations of which they were targets. In 1988, according to the indictment, Connolly told them an associate named Baharoian was the subject of an FBI wiretap in Roxbury. He is accused of telling the two in December 1994 that they and others were about to be indicted for racketeering. Flemmi is accused of immediately passing that information along to Salemme. The predicted indictment was in fact returned on Jan 10, 1995.

As a result of the tip, Bulger and Salemme became fugitives. Salemme was apprehended in Florida in August 1995. Bulger remains at large.

Flemmi was arrested before he could flee from the 1995 indictment. While sitting in jail for months awaiting trial, he decided to mount a defense claiming that he should be cleared off all charges because whatever he was accused of doing, he did while working for the FBI as an informant.

TABULAR OR GRAPHIC MATERIAL SET FORTH IN THIS DOCUMENT IS NOT DISPLAYABLE

PHOTO: 2 (b&w) mugs; Caption: Connolly; Bulger

---- INDEX REFERENCES ----

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

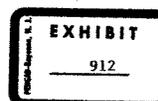
The Estate of John L. McIntyre	)	
	)	
Plaintiff	)	
	)	Civil Action No.: 01-10408-RCL
v.	)	
	)	
United States of America, et al.	)	
	)	
Defendants	)	

**PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION TO  
DEFENDANT UNITED STATES' MOTION TO DISMISS**

**I. INTRODUCTION**

On January 14, 2000, the remains of John L. McIntyre ("McIntyre") were discovered in a shallow makeshift grave in Dorchester, Massachusetts. McIntyre had been missing for over fifteen years during which time the United States government indicted him and told the courts, the public and his family that he was alive and a fugitive from justice, all the while engaging in a course of conduct to cover up the criminal activities of certain government agents as well as the wholesale violation of the Attorney General's Guidelines regulating and controlling the use of high echelon criminal informants. The government's motion to dismiss is all the more striking because in hearings before Judge Wolf, the government continued in its obstructionist conduct concerning McIntyre's disappearance causing the court to lament that the question concerning McIntyre's disappearance and death could not "be resolved on the present record, in part because of the delayed disclosure of documents by the government and in part because ... it evidently was not in either the interest of Flemmi or of the FBI to have this issue fully developed in this case." See United States v. Salem, 91 F.Supp.2d 141, 213 (D. Mass. 1999).

The government's shroud of secrecy first began to unravel when Stephen Flemmi



3121

**JOHN CAVICCHI**  
Attorney at Law  
25 Barnes Ave  
East Boston, MA 02128  
617-567-4697  
Email Jecavicchi@aol.com

January 21, 2000

RECEIVED  
00 FEB -3 PM 2:22  
U.S. ATTORNEY'S OFFICE  
NEW HAVEN, CONNECTICUT

AUSA John Durham  
157 Church St  
23 Floor  
New Haven, Conn. 06510

Re: Deegan Investigation

Dear Mr. Durham:

Here is my file on the above case, [REDACTED]. I will be here in  
Miami Beach until May 1, [REDACTED].

The only published opinion on the Bailey affidavit is Greco v. Workman, 481 F.Supp. 481, [REDACTED].

[REDACTED] I will send you my law review article which  
discusses the state court proceedings and the chronology of the gang wars when it is published. It  
is overdue.

If you need any more information, I shall be happy to cooperate any way I can.

Very truly yours,  
*John Cavicchi*  
John Cavicchi

[REDACTED]

*John Cavicchi*

EXHIBIT  
913

000347

Apr-23-2001 01:10pm From:

FROM: US ATTORNEY'S OFFICE

**Memorandum**



**Subject**  
Information provided by John Martorano

**Date**  
February 10, 2000

**To**  
Fred Wyszak  
Assistant United States Attorney

**From**  
*Daniel M. Doherty*  
Daniel M. Doherty  
Special Agent

On July 12, 1999, September 14, 1999 and January 28, 2000, S/A Daniel M. Doherty debriefed John Martorano regarding statements made to Martorano circa 1966, by Joseph "the Animal" BARBOZA. Martorano advised that he was a close associate to BARBOZA in the mid 1960's. Martorano stated that subsequent to the murder of Edward "Teddy" DEEGAN (03/12/1965), that BARBOZA admitted to Martorano that he, BARBOZA had killed DEEGAN. On a separate occasion, independent of the above conversation, James "the Bear" FLEMMI, told Martorano that he, FLEMMI, killed DEEGAN.

Martorano also stated, that either just prior to or immediately after the time period that BARBOZA began cooperating with law enforcement, that he, BARBOZA, told Martorano to mind his own business and not to intervene, because "They" (the LCN) screwed me and now I'm going to screw as many of them as possible. BARBOZA further stated, that he was not interested in guilt or innocence. BARBOZA again reiterated to Martorano that Martorano should just stay out of it. BARBOZA told Martorano that Martorano was a friend and that he, BARBOZA, would not bother Martorano.



TOTAL P. 01

001188

U.S. Department of Justice  
Drug Enforcement Administration

REPORT OF INVESTIGATION

Page 1 of 2

1. Program Code	2. Cross File <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	Related Files	3. File No. CC-95-0060	4. G-DEP Identifier GCCID
5. By: S/A DANIEL M. DOHERTY At: BOSTON, MA.			6. File Title FLEMMI, STEPHEN J. et. al.	
7. <input type="checkbox"/> Closed <input type="checkbox"/> Requested Action Completed <input type="checkbox"/> Action Requested By:			8. Date Prepared 2/10/00	
9. Other Officers: TF/A's STEPHEN P. JOHNSON, THOMAS J. FOLEY and THOMAS B. DUFFY				
10. Report For: Debriefing of CS-00-098739				

DETAILS

1. On July 12, 1999, September 14, 1999 and January 28, 2000, S/A Daniel M. Doherty debriefed CS-00-098739 regarding statements made to the CS circa 1966, by Joseph "the Animal" BARBOZA. The Confidential Source (CS) advised that it was a close associate to BARBOZA in the mid 1960's. The CS stated that subsequent to the murder of Edward "Teddy" DEEGAN (03/12/1965), that BARBOZA admitted to the CS that he, BARBOZA had killed DEEGAN. On a separate occasion, independent of the above conversation, James "the Bear" FLEMMI, told the CS that he, FLEMMI, killed DEEGAN.

2. The CS (Confidential Source) also stated, that either just prior to or immediately after the time period that BARBOZA began cooperating with law enforcement, that he, BARBOZA, told the CS to mind it's own business and not to intervene, because "They" (the LCN) screwed me and now I'm going to screw as many of them as possible. BARBOZA further stated, that he was not interested in guilt or innocence. BARBOZA again reiterated to the CS that the CS should just stay out of it. BARBOZA told the CS that the CS was a friend and that he, BARBOZA, would not bother the CS.

11. Distribution: Division	12. Signature (Agent) <i>[Signature]</i> S/A DANIEL M. DOHERTY	13. Date 2/10/00
District	14. Approved (Name and Title) MICHAEL V. TORRETTA GROUP SUPERVISOR	15. Date 2-11-2000
Other		

DEA Form - 6  
(Jul. 1996)

DEA SENSITIVE  
Drug Enforcement Administration

1 - Prosecutor

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Neither it nor its contents may be disseminated outside the  
Previous edition dated 8/94 may be used



001189

FROM: US ATTORNEY'S OFFICE

**Memorandum**



**Subject**  
Information provided by John Martorano

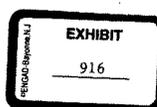
**Date**  
February 10, 2010

**To**  
Fred Wyszak  
Assistant United States Attorney

**From** *D. Doherty*  
Daniel M. Doherty  
Special Agent

On July 12, 1999, September 14, 1999 and January 28, 2000, S/A Daniel M. Doherty debriefed John Martorano regarding statements made to Martorano circa 1966, by Joseph "the Animal" BARBOZA. Martorano advised that he was a close associate to BARBOZA in the mid 1960's. Martorano stated that subsequent to the murder of Edward "Teddy" DEEGAN (03/12/1965), that BARBOZA admitted to Martorano that he, BARBOZA had killed DEEGAN. On a separate occasion, independent of the above conversation, James "the Bear" FLEMMI, told Martorano that he, FLEMMI, killed DEEGAN.

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REQUEST FOR ORAL ARGUMENT

4. Pursuant to LR 7.1(D), plaintiff respectfully requests oral argument in this matter.

WHEREFORE, plaintiff respectfully requests that this Honorable Court:

- A. Deny defendant United States' Motion to Dismiss;
- B. Schedule oral argument on the United States' Motion to Dismiss;
- C. Order limited discovery on jurisdictional issues, if necessary, for the reasons stated, *supra*, at ¶ 3; and
- D. Grant such further relief as this Court deems necessary and just.

Respectfully submitted,

The Estate of John L. McIntyre  
By Their Attorneys  
SHALEEN & GORDON, P.A.

Dated: November 15, 2001

By: William Christie (pro)  
William E. Christie #566896  
Two Capital Plaza, 4<sup>th</sup> Floor  
P.O. Box 2703  
Concord, NH 03302-2703  
(603) 225-7262

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon each party appearing pro se and the attorney of record for each other party by mail on November 15, 2001.

William Christie (pro)  
William E. Christie  
F. M. Deacon

PROAT & CLIENTS 2427N157E30W POSITION MOTION TO DISMISS, ETC

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

The Estate of John L. McIntyre	)	
	)	
Plaintiff	)	
	)	Civil Action No.: 01-10408-RCL
v.	)	
	)	
United States of America, et al.	)	
	)	
Defendants	)	

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**I. INTRODUCTION**

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The government's shroud of secrecy first began to unravel when Stephen Flemmi

affirmatively stating: “We have no proof that he is dead,” see Kevin Cullen, *IRA Man Tells a Tale of Betrayal*, *The Boston Globe*, January 29, 1995, attached as Exhibit E (emphasis added);

- After repeatedly attempting to persuade Judge Wolf in eight hearings conducted during two months in 1997 not to order the disclosure that Bulger was a confidential informant—a fact critical to plaintiff’s claim, see *United States v. Flemmi*, No. 94-10287-MLW at 15 (D. Mass. August 30, 2001);
- After the FBI’s Office of Professional Responsibility (“OPR”) cleared defendants John Morris and John Connolly of wrongdoing thereby leaving potential claimants to believe the FBI had not engaged in tortious conduct, see Ralph Ranalli, *Former FBI Agents Cleared in Mob Case*, *Boston Herald*, December 5, 1997 attached as Exhibit F;
- After repeatedly failing to comply with discovery orders issued by Judge Wolf in *United States v. Salomone* further concealing the FBI’s relationship with Bulger and Flemmi, see *Salomone*, 91 F.Supp.2d at 154 n.3;
- After “important FBI documents concerning John McIntyre were ... improperly withheld by agents of the Boston FBI until it was too late to question relevant witnesses concerning them,” see *United States v. Flemmi*, No. 94-10287-MLW (D. Mass. August 30, 2001) at 13-14; *Salomone*, 91 F.Supp.2d at 154 n.3, 213-14;
- After waiting until March 20, 2000, two months after McIntyre’s body was discovered, to dismiss the indictments against John McIntyre in *United States v. Murray et al.*, see February 11, 2000 correspondence to SAC Barry Mawn from ASUA Brian Kelly and March 20, 2000 Dismissal of Indictment and Arrest Warrants, attached as Exhibit G.
- After failing to bring the initial criminal charges for McIntyre’s murder until July 2000, two months after plaintiff filed its administrative claim, see Superceding Information *United States v. Kevin Weeks*, 99-10371-RGS;

the United States now asserts that the McIntyre family should have known that McIntyre was indeed deceased; that his death was causally connected to the government’s illicit relationship with Bulger and Flemmi; and that the Estate had a duty to investigate and uncover facts which only came to light after nearly two years of intensive evidentiary hearings before Judge Wolf over the repeated and strenuous objection of the United States.

Considering the extraordinary nature of the FBI’s relationship with Bulger and Flemmi

UNITED STATES DISTRICT COURT  
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The Estate of John L. McIntyre	)	
	)	
Plaintiff	)	
	)	Civil Action No.: 01-10408-RCL
v.	)	
	)	
United States of America, et al.	)	
	)	
Defendants	)	

**PLAINTIFF'S OPPOSITION TO DEFENDANT UNITED STATES' MOTION TO DISMISS**

NOW COMES the plaintiff, The Estate of John L. McIntyre, opposing Defendant United States' Motion to Dismiss and in support thereof states as follows:

1. Pursuant to Fed.R.Civ.P. 12(b)(1) defendant United States has moved for dismissal of all claims against it for lack of subject matter jurisdiction.
2. For the reasons stated in the attached Memorandum of Law in Support of Plaintiff's Opposition to Defendant United States' Motion to Dismiss with Exhibits, plaintiff hereby opposes the United States' Motion to Dismiss.
3. Plaintiff asserts the Motion to Dismiss should be denied based upon the record submitted by the parties before the Court. However, if the Court should determine that it cannot resolve the government's motion based upon the current record, or is inclined to allow the motion on "wrongful concealment" grounds and the current state of the record on that issue of fact, plaintiff requests that the Court order limited discovery on that issue prior to ruling on the Motion to Dismiss. See Dynamic Image Technologies, Inc. v. United States, 221 F.3d 34, 38-39 (1<sup>st</sup> Cir. 2000).



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Respectfully submitted,

The Estate of John L. McIntyre  
By Their Attorneys  
SHAWHEN & GORDON, P.A.

Dated: November 15, 2001

By: William Christie (signature)  
William E. Christie #566896  
Two Capital Plaza, 4<sup>th</sup> Floor  
P.O. Box 2703  
Concord, NH 03302-2703  
(603) 225-7262

CERTIFICATE OF SERVICE

I herby certify that a true copy of the above document was served upon each party appearing pro se and the attorney of record for each other party by mail on November 15, 2001.

William Christie (signature)  
William E. Christie  
F. Dean (signature)

PHOTOCLIENT\SACTV\TRF\#POSITION MOTION TO DISMISS.FAK

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

The Estate of John L. McIntyre	)	
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The government's shroud of secrecy first began to unravel when Stephen Flemmi

claimed in court pleadings that he was protected from criminal prosecution based upon direct promises made to him by government agents. At first, the government suggested that Flemmi's claim was preposterous, but due to incessant and insistent judicial prodding, Flemmi's "fiction" became fact – bodies were recovered from the frozen earth of Dorchester and on December 22, 1999 the lead government agent was indicted for a RICO violation, including the allegation of his involvement in two murders.

Following the discovery of McIntyre's body, the Estate was opened in May, 2000. On or about May 25, 2000, the Estate presented a duly authorized Notice of Tort Claim, pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.*, giving notice to the FBI of McIntyre's injuries and wrongful death caused by the negligent or wrongful acts or omissions of certain employees of the Boston Office of the Federal Bureau of Investigation. Though plaintiff presented its administrative claim less than six months after learning sufficient facts to verify both the government's wrongful conduct and McIntyre's fate, the United States has filed a motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(1) claiming the Estate failed to present its administrative claim within two years of its accrual as required by 28 U.S.C. § 2401(b).

The government's motion fails because it ignores that the essence of any wrongful death action is proof of death – evidence unavailable to plaintiff up until March 10, 2000 when the Suffolk County Medical Examiner certified McIntyre was "shot by another person(s)" and killed by "gunshot wounds to head and neck." See Certificate of Death attached as Exhibit A. Prior to this time, the McIntyre's possessed nothing more than a mother's intuition that her son was dead. Only the most cynical or paranoid could have believed that the government would enter into a cozy, mutually rewarding relationship with two of Boston's most brutal and vicious murderers. This imbalanced mental state would never have sanctioned the filing of a federal lawsuit. See

Fed.R.Civ.P. 11. Furthermore, the Estate did not know and could not reasonably have known the critical facts at the heart of the plaintiff's claim: that beginning in the late 1960s and continuing well into 2000, former agents of the FBI conspired to protect and shield from prosecution defendants James Bulger, Stephen Flemmi, Kevin Weeks and others in exchange for Bulger and Flemmi's agreements to provide information to aid the FBI in its prosecution of La Costra Nostra ("L.C.N."); that the Boston Office of the FBI never enforced or complied with the Attorney General's Guidelines relating to confidential informants; that the individual agents knew or should have known that Bulger and Flemmi had murdered informants cooperating with law enforcement; that despite this knowledge, the individual agents failed to prosecute and blocked investigations into Bulger and Flemmi's criminal activities; that despite this knowledge and understanding Bulger and Flemmi's propensities for violence when threatened, the government failed to protect McIntyre after he agreed to become an informant against Bulger and Flemmi; and that, as a direct and proximate cause of the agents' negligence, Bulger, Flemmi and defendant Kevin Weeks actually murdered John L. McIntyre.

This civil action arises out of the extraordinary hearings before Judge Wolf in United States v. Salemme et al., No. 94-10287-MJ.W, resulting in the September 15, 1999 opinion, 91 F.Supp.2d 141 (D. Mass 1999), that disclosed for the first time, in its factual findings, the astonishing relationship between the FBI and Bulger and Flemmi as well as the FBI's role in McIntyre's disappearance and, as was only later revealed, death. Prior to Judge Wolf's investigation into the FBI's policies and practices regarding Bulger and Flemmi's role as high echelon informants and the subsequent discovery of McIntyre's remains, the critical facts permitting the Estate to file its administrative claim were unknown and in the exercise of reasonable diligence could not have been known to plaintiff. See Heinrich v. Sweet, 44

F.Supp.2d 408, 415-419 (D.Mass. 1999) (claim based on death from early 1960s did not accrue until release of critical information in 1995 Presidential report).

The government's motion to dismiss is factually insipid, legal deficient, and flirts with Rule 11. How is it that Mrs. McIntyre living alone and caring for her disabled daughter – who was treated as an outcast by law enforcement and did not have the power or authority to investigate criminal wrongdoing, wiretap telephones, conceal electronic eavesdropping devices in private homes and garages, offer immunity to those destined to long prison sentences – could have gained facts sufficient to file a lawsuit when those very facts allegedly escaped or eluded the investigatory power and resources of the federal government, until the government was forced fed them by Judge Wolf. Equally disturbing and further condemning the government's motion are the undisputed facts that the government affirmatively represented to the McIntyres specifically, and the public at large, that McIntyre was at best a fugitive from justice, and, at worst, a victim of someone other than Bulger or Flemmi. Incredulously:

- After representations by government officials to the McIntyre family that John McIntyre was alive and a fugitive from justice, *see* Complaint at ¶ 299;
- After returning a federal Indictment in April 1986 against John McIntyre seventeen months after his disappearance, *see* Indictment, United States v. Murray et al., No. 86-CR-118, attached as Exhibit B.
- After defendant special agent in charge James Ahearn publicly denied in 1988 that any special relationship existed between the FBI and Bulger and Flemmi, *see* Law Enforcement Officials' Lament About and Elusive Foe: *Where Was Whitey?*, The Boston Globe, September 20, 1988 attached as Exhibit C.
- After Assistant United States Attorney Gary Crossen publicly speculated in 1992 that Joseph Murray (rather than Bulger and Flemmi as now known) was responsible for McIntyre's disappearance, *see* Kevin Cullen, *Valhalla Case Now a Little Murkier Quincy Man Seen as Fall Guy in Leak*, The Boston Globe, December 24, 1992, attached as Exhibit D;
- After Jerry Padalino, special agent in charge of United States Customs, publicly stated in 1995 that officially, U.S. customs officials considered McIntyre a fugitive,

affirmatively stating: “We have no proof that he is dead,” see Kevin Cullen, *IRA Man Tells a Tale of Betrayal*, The Boston Globe, January 29, 1995, attached as Exhibit E (emphases added);

- After repeatedly attempting to persuade Judge Wolf in eight hearings conducted during two months in 1997 not to order the disclosure that Bulger was a confidential informant—a fact critical to plaintiff’s claim, see United States v. Flemmi, No. 94-10287-MLW at 15 (D. Mass. August 30, 2001);
- After the FBI’s Office of Professional Responsibility (“OPR”) cleared defendants John Morris and John Connolly of wrongdoing thereby leaving potential claimants to believe the FBI had not engaged in tortious conduct, see Ralph Ranalli, *Former FBI Agents Cleared in Mob Case*, Boston Herald, December 5, 1997 attached as Exhibit F;
- After repeatedly failing to comply with discovery orders issued by Judge Wolf in United States v. Salemme further concealing the FBI’s relationship with Bulger and Flemmi, see Salemme, 91 F.Supp.2d at 154 n.3;
- After “important FBI documents concerning John McIntyre were ... improperly withheld by agents of the Boston FBI until it was too late to question relevant witnesses concerning them,” see United States v. Flemmi, No. 94-10287-MLW (D. Mass. August 30, 2001) at 13-14; Salemme, 91 F.Supp.2d at 154 n.3, 213-14;
- After waiting until March 20, 2000, two months after McIntyre’s body was discovered, to dismiss the indictments against John McIntyre in United States v. Murray et al., see February 11, 2000 correspondence to SAC Barry Mawn from ASUA Brian Kelly and March 20, 2000 Dismissal of Indictment and Arrest Warrants, attached as Exhibit G.
- After failing to bring the initial criminal charges for McIntyre’s murder until July 2000, two months after plaintiff filed its administrative claim, see Supercoding Information United States v. Kevin Weeks, 99-10371-RGS;

the United States now asserts that the McIntyre family should have known that McIntyre was indeed deceased; that his death was causally connected to the government’s illicit relationship with Bulger and Flemmi; and that the Estate had a duty to investigate and uncover facts which only came to light after nearly two years of intensive evidentiary hearings before Judge Wolf over the repeated and strenuous objection of the United States.

Considering the extraordinary nature of the FBI’s relationship with Bulger and Flemmi

and the government's efforts to conceal that relationship from the eyes of the public and Judge Wolf, the government's contention that plaintiff's claim accrued more than two years prior to its presentation to the FBI in May 2000 is outrageous. At defendant Stephen Flemmi's sentencing hearing in August 2001 Judge Wolf commented that as a result of his hearings "fifteen years after [John McIntyre] disappeared, [Emily McIntyre] at least knows that her son is no longer alive." See Flemmi, 94-10287-MLW at 15. Chillingly, Judge Wolf also expressly found: "If Flemmi has committed any of the crimes with which he remains charged, he was able to do so largely because of the protection of the Federal Bureau of Investigation." See Id. 7. One of the crimes for which Flemmi remains charged is the murder of John L. McIntyre. See Superceding Indictment, United States v. O'Neil, 99-CR-10371-RGS. Just as Flemmi was able to escape arrest and prosecution for twenty five years as a result of his relationship with the FBI, the United States was able to escape scrutiny from potential claimants such as the McIntyres because the critical facts necessary to the presentation of the Estate's claim pursuant to the FTCA were unknown and, by government design, unknowable to all but the participants of the conspiracy alleged in the plaintiff's complaint. See Barrett v. United States, 660 F.Supp. 1291, 1308-09 (S.D.N.Y. 1987) (claim did not accrue for 25 years because critical facts in possession of army and drug supplier unknown to plaintiff).

Considering the facts available to the family prior to January 2000 no responsible attorney would have submitted a administrative claim in anticipation of signing a wrongful death complaint alleging that John McIntyre was dead or that his death was caused by wrongful conduct of federal agents acting to protect two notorious gangsters. Considering the government's aggressive and adamant statements to the public, to the family and to the federal court that McIntyre was alive and a fugitive from justice, as well as the OPR's 1997 "clearance"

of Agents Connolly and Morris, the United States surely would have responded to such a complaint with a motion to dismiss and a motion for sanctions pursuant to Rule 11 of the Federal Rules of Civil Procedure.

The United States' motion to dismiss must be denied because presentation of the Estate's administrative claim was filed well within two years of the accrual of the cause of action. Accordingly, this court has jurisdiction over claims alleging the United States is liable for the negligence and/or wrongful acts of its employees acting within the scope of their employment. See 28 U.S.C. § 2672. In the unlikely event that this Court believes that the issue of government concealment needs to be more fully developed, then plaintiff would request that this Court order limited discovery on this issue. In saying this, plaintiff strenuously believes that no further evidence is required. See Attallah v. United States, 955 F.2d 776, 780 (1<sup>st</sup> Cir. 1992).

## II. STANDARD OF REVIEW

In adjudicating a motion to dismiss for lack of subject matter jurisdiction pursuant to Fed.R.Civ.P. 12(b)(1) "the district court must construe the complaint liberally, treating all well-pleaded facts as true and indulging all reasonable inferences in favor of the plaintiff." See Aversa v. United States, 99 F.3d 1200, 1209-10 (1<sup>st</sup> Cir. 1996); Heinrich, 44 F.Supp.2d at 415. The court has broad discretion in determining the manner in which it will consider the issue of jurisdiction and, accordingly, may 1) consider evidence submitted by the parties, such as depositions and exhibits; 2) entertain arguments not raised by the parties' memoranda; and 3) resolve factual disputes if necessary. See Heinrich, 44 F.Supp.2d at 415.

## III. A CLAIM DOES NOT ACCRUE UNDER THE FTCA UNTIL PLAINTIFF KNOWS, OR WITH REASONABLE DILIGENCE, SHOULD KNOW, THE CRITICAL FACTS AS TO BOTH THE INJURY AND ITS CAUSE

Pursuant to the FTCA, a plaintiff has two years from the date a claim against the United

States accrues to present a written claim with the appropriate agency in order to preserve the right to file a civil action in federal court against the United States.<sup>1</sup> See 28 U.S.C. § 2401(b); Attallah v. United States, 955 F.2d 776, 779 (1<sup>st</sup> Cir. 1992). “The filing of a timely administrative claim is a jurisdictional requirement that cannot be waived.” See Attallah, 955 F.2d at 779. If a plaintiff fails to comply with the jurisdictional requirement of § 2401(b), the claim is “forever barred.” See Id.

Accrual of a cause of action under the FTCA occurs when the plaintiff has knowledge of the existence of the injury and its cause. See United States v. Kubrick, 444 U.S. 111, 118-125 (1979). In garden-variety tort cases the cause of action typically accrues at the time of injury because “what” and “who” caused the injury are readily apparent. However, courts recognize that in many instances, such as wrongful death cases, plaintiffs are unaware of the “critical facts” of their claim “because the facts establishing a causal link between the injury and its cause are undiscoverable.” See Heinrich, 44 F.Supp.2d at 415 (D. Mass. 1999).

This “discovery rule” is an objective test meaning that the claim accrues “when the injured party knew or, in the exercise of reasonable diligence, should have known the factual basis for the cause of action.” See Attallah, 955 F.2d at 780. In order for the discovery rule to be implicated “the factual basis for the cause of action must have been ‘inherently unknowable’ at the time of the injury.” See Id.

In the present matter both the injury complained of, the wrongful death of John McIntyre, and its cause, the negligent acts or omissions of the named federal defendants, were “inherently unknowable” until Judge Wolf issued his opinion on September 15, 1999 and John McIntyre’s remains were subsequently discovered in January 2000. See Heinrich, 44 F.Supp.2d at 418.

<sup>1</sup> Only upon final denial of the administrative claim or failure of the agency to make final disposition of the claim within six months of its filing, may the plaintiff file a civil action in the appropriate district court. See 28 U.S.C. § 2675.

A. The Estate Did Not Know Nor Should Have Known of Its Injury Until John McIntyre's Body Was Discovered in January 2000

The United States has moved to dismiss, claiming the plaintiff failed to present its May 2000 administrative claim within two years of its accrual as required by 28 U.S.C. § 2401(b) asserting plaintiff's claim accrued prior to May 31, 1998 because: 1) in 1985, an attorney for the McIntyre family allegedly wrote a letter to then Attorney General Edwin Meese requesting an investigation into the circumstances of McIntyre's disappearance and possible death; 2) in 1989, Emily McIntyre and the family's attorney co-authored Valthalla's Wake, a book, that among other things, speculated into McIntyre's disappearance and apparent death suggesting that he was murdered by British intelligence agents; and 3) media stories from 1992 through 1998 speculating into the cause of McIntyre's disappearance and potential death. See United States' Brief in Support of Its Motion for Dismissal at 3-7 ("Brief"). The government's position is factually flawed and wrong as a matter of law.

When an injury is "not immediately apparent," the cause of action accrues "at the time the injury is discovered or when a claimant in the exercise of reasonable diligence could have discovered it." See Attallah, 955 F.2d at 780 (emphasis added); see also Kubrick, 444 U.S. at 121-25. Furthermore, a cause of action does not accrue "when a person has a mere hunch, hint, suspicion, or rumor of a claim" though such suspicions "give rise to a duty to inquire" into the possible claim "in the exercise of reasonable diligence." See Kronisch v. United States, 150 F.3d 112, 121 (2<sup>nd</sup> Cir. 1998).

The plain and simple fact of this case is that Emily and Chris McIntyre did not discover the injury, i.e. the wrongful death of John McIntyre, until after his body was exhumed in Dorchester, Massachusetts on January 14, 2000 and the remains were identified a month later. Thus, plaintiff legally became aware of its injury for the purposes of filing a claim at that time.

See Attallah, 955 F.2d at 780 (knowledge of injury imputed only upon indictment of customs agents); Heinrich, 44 F.Supp.2d at 415-419 (knowledge of 1960s wrongful death imputed only upon 1995 Presidential report).

Nor could Emily and Chris McIntyre in the exercise of reasonable diligence have discovered the injury prior to January 2000. Although his family may have their suspicions, it was "not immediately apparent" that McIntyre had been murdered until his body was discovered.<sup>2</sup> Moreover, the government's misconduct in concealing the evidence of its wrongful collaboration with Bulger and Flemmi including a 1997 OPR investigation clearing Connolly of wrongdoing blocked any reasonable efforts of the family to discover the critical facts of their claim. See Attallah, 955 F.2d at 780 (discovery rule warranted delayed accrual when plaintiff could not have known of tortious conduct until indictment of customs agents).

The government argues that plaintiff's cause of action may have accrued in 1985 when a family attorney wrote to Attorney General Edwin Meese "demanding an investigation and asserting that '[i]t is murder . . . when the government knowingly exposes an informant.'" See Brief at 11. The government responded to this request by returning an April 1986 indictment against John McIntyre. See Exhibit B. Moreover, as late as January 1995, the special agent in charge of United States Customs in the Boston area made a public pronouncement there was "no proof" that McIntyre was dead. See Exhibit E (emphasis added). As of September 6, 1995 and April 20, 1999, the docket entries at this Court pronounced that McIntyre remained a fugitive. See Pacer Docket Entry United States v. Murray, et al., 86-CR-118, attached as Exhibit H. Not until February 11, 2000, one month after the discovery of McIntyre's remains, did the United States conclude that John McIntyre was dead. See Exhibit G. It is no coincidence that the United States waited until March 20, 2000, two months after the discovery of McIntyre's bones,

<sup>2</sup> Indeed, the death certificate lists January 14, 2000 as the "Date of Death." See Exhibit A.

to finally dismiss the indictments against McIntyre. See Id.

Prior to the discovery of his remains, the United States, armed with the full investigatory resources of the Department of Justice and the Federal Bureau of Investigation maintained that McIntyre was alive. It is unreasonable, even unfathomable, to expect that Emily and Chris McIntyre could have, in the exercise of reasonable diligence, reached any different conclusion based upon the facts and resources available to them. The family, exercising its "duty to inquire," turned to its government requesting an investigation. In response, they were affirmatively told that McIntyre was alive and a fugitive and that government agents Connolly and Morris were in full compliance with the law. The available documentary record was consistent with that position. Indeed, Judge Wolf, in September 1999 after months of extensive evidentiary hearings agreed that the question concerning McIntyre's disappearance and death could not "be resolved on the present record." See Saleme, 91 F.Supp.2d at 213. Accordingly, the earliest date on which plaintiff could be deemed, for "accrual" purposes, to know or have sufficient reason to know of its injury was when the remains were identified in February 2000. See Attallah, 955 F.2d at 780; See Heinrich, 44 F.Supp.2d at 415-419 (FTCA plaintiffs' wrongful death claims arising from early 1960s did not accrue until 1995 Presidential report revealing government involvement in radiation experiments on decedents despite previous articles and 1986 congressional report); see also Barrett v. United States, 660 F.Supp. 1291, 1309 (S.D.N.Y. 1987) ("while the law requires that plaintiff have been reasonably diligent in pursuing its claim, it does not require that plaintiff have gone chasing after shadows"). Because plaintiff presented its administrative claim shortly thereafter in May 2000, the government's motion to dismiss must be denied.<sup>3</sup>

<sup>3</sup> The government's reliance on Kronisch v. United States, 150 F.3d 112 (2<sup>nd</sup> Cir, 1998) to support its argument that plaintiff slept on its rights is misplaced. First, contrary to the government's representation that "[p]laintiff knew

A. The Estate Did Not Know Nor Should Have Known of Critical Facts Linking the Injury to Its Cause Two Years Prior to Filing Its Administrative Claim

The FTCA's discovery rule tolls the accrual of a claim when "the facts establishing a causal link between the injury and its cause" could not have been discovered in the exercise of reasonable diligence. *See Kubrick*, 444 U.S. at 122; *Attallah*, 955 F.2d at 780.

The government claims plaintiff was aware of the cause of its injury because "[t]he allegations contained in the 1985 letter, and those in the 1989 book, constitute essentially the same claim that plaintiff is making in the instant action: federal agents disclosed John McIntyre's status as a government informant and, as a result, he was murdered." *See* Brief at 11. The government glosses over the facts available to plaintiff prior to January 2000, obscures the content of *Valhalla's Wake* and sidesteps the controlling law.

The 1989 book *Valhalla's Wake* speculates that a United States Customs official shared intelligence with the British government that McIntyre was providing information regarding the shipment of illegal arms to the Irish Republican Army as well as shipment of drugs into the Boston area. *See Valhalla's Wake* at 174 attached as Exhibit I. The book goes on to speculate that British intelligence murdered McIntyre as part of a disinformation campaign to protect a British spy within the IRA. *See id.* at 196. According to *Valhalla's Wake*, John McIntyre's father believed "his son had been murdered—not by Joe Murray, the Mob, or the IRA" but by the British government. *See id.* at 196.

The Wolf hearings established that this speculation about the circumstances surrounding McIntyre's disappearance was wrong in every single significant detail. To be sure, there was the

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McIntyre was dead," the McIntyre's, in accord with the United States Customs Official's 1995 pronouncement, had "no proof" that McIntyre was dead. Indeed, the Estate of John L. McIntyre was not formed until May 2000. Second, the *Kronisch* court determined plaintiff's injuries from CIA funded experiments in the 1950s did not accrue until Senate hearings in 1978, but that the plaintiff's claim was untimely because it was filed in 1981, or three years after the Senate hearings provided notice of the claim. *See* 150 F.3d at 121-22. Here, the Estate had no proof of injury until several months before filing its administrative claim.

hunch that McIntyre's status as an informant had been revealed, but the unsupported belief was the disclosure had been made to a sovereign state, not to local thugs; nor was there ever any contention that the leaking of McIntyre's informant status to known local murderers was not an isolated incident, but rather an integral part of a 30 year conspiracy; a core act that was part of an overall pattern and practice that was in clear violation of mandatory standing policies and procedures of the Attorney General of the United States. Moreover, the Government's motion overlooks the simple and critical fact that it was the Government's partners —Bulger and Flemmi —that apparently committed McIntyre's murder, and that prior to their execution of McIntyre they had exterminated other individuals whose cooperation had been leaked to them by the Government. Plaintiff's claim and complaint presents a case radically different than the one suggested in *Valhalla's Wake*. See *Attallah*, 955 F.2d at 778-780.

The "facts" set forth in the book could never sustain a FTCA claim because it was allegedly the British Government that had McIntyre killed—using a "two-man hit team from the secret intelligence service dispatched from Bermuda." Exhibit I at 196. Moreover, the government conveniently overlooks the book's contention that "the Feds had not yet realized that British intelligence had assassinated, on American soil, a confidential source of the U.S. Government." *Id.* Accordingly, at best, the book suggests wrongdoing against the British Government, but presents no factual evidence to support a claim against the United States under the FTCA.

It is not surprising that a mother whose son was missing would seek to find answers, as well as make exaggerated accusations from her abyss of grief. Wildly and wrongly lashing out against the American and British governments does not manifest the requisite degree of knowledge required for a claim to accrue under the FTCA, and appropriately, plaintiff waited

until the real facts became developed prior to filing its claim. Unfortunately, the real facts as developed are far more sordid than those suggested in the book.

Among other things, plaintiff's administrative claim and complaint alleges that former agents of the FBI conspired to protect and shield from prosecution Bulger and Flemmi in exchange for Bulger and Flemmi's agreements to provide information to aid the FBI in its prosecution of LCN; that the Boston Office of the FBI ignored the Attorney General's Guidelines; that the individual agents knew or should have known that Bulger and Flemmi were committing violent crimes including the murder of informants cooperating with law enforcement; that despite this knowledge the agents failed to prosecute and blocked investigations into Bulger and Flemmi; and that as a direct and proximate cause of the negligence of these agents Bulger, Flemmi and Weeks actually murdered McIntyre after he agreed to become a FBI informant in 1984.

None of these "critical facts" are contained in the 1985 letter to Attorney General Meese or in the 1989 book Valhalla's Wake. Indeed, prior to Judge Wolf's landmark hearings none of these facts were available to anyone beyond Bulger, Flemmi and their co-conspirators within the Boston Office of the FBI. Accordingly, even if knowledge of injury could be attributed to the Estate in 1989, the critical facts establishing a causal link between the injury and governmental responsibility for that injury were "inherently unknowable" and could not have been established in the exercise of reasonable diligence. See Attallah, 955 F.2d at 780; Liuzzo, 485 F.Supp. 1274, 1281-82 (E.D. Mich. 1980).

Attallah v. United States, 955 F.2d 776 (1<sup>st</sup> Cir. 1992) is controlling First Circuit precedent regarding the FTCA discovery rule. In Attallah, on or about September 10, 1982 a courier transported currency and other assets belonging to plaintiffs to Puerto Rico with the

intention of depositing the assets at a bank in San Juan. Upon arrival, the courier "declared and surrendered the assets for verification" to United States Customs agents. When the plaintiffs did not hear from the courier, they contacted Customs "and were told, by a person who identified himself as a Customs agent, that [the courier] had been processed by customs and had left the premises." Customs confirmed this information the following day. See Id. at 778.

Approximately ten days later, the courier's body was found. The police informed Mr. Attallah "they had no leads as to who was responsible for the criminal acts committed." See Id.

Nearly five years later, in May 1987, a federal grand jury indicted two former Customs agents for the assault, robbery and murder of the courier. In June 1987 Mr. Attallah learned of the indictment when approached to testify at the agents' criminal trial. On January 12, 1988 the Attallahs presented their administrative claim to the Customs Service pursuant to the FTCA. See Id.

The First Circuit held: "the principles established by the discovery rule warrant a delayed accrual ... since appellants did not know, nor in the exercise of reasonable diligence could have known of the Customs agents' criminal acts until the time of their indictment in May of 1987." Prior to the indictments, the plaintiffs could not "have known the factual basis for their claim - the robbery and subsequent assassination of their courier by two Customs agents." See Id. (emphasis added).

Liuzzo v. United States, 485 F.Supp. 1274 (E.D. Mich. 1980) provides additional guidance regarding the causation element of plaintiff's claim. In Liuzzo, four members of the Ku Klux Klan murdered civil rights worker Viola Liuzzo in March 1965. See Id. at 1275-76. The following day President Johnson appeared on television announcing the arrest of the Klansmen and praising the FBI for its prompt and successful investigation. See Id. at 1276. One

of those arrested, Gary Rowe, was an undercover FBI informant. Because Rowe was not charged rumors "began to circulate" that he was an informant. This belief was confirmed when Rowe testified against the other Klansmen at trial admitting he was "approached by an FBI agent ... and was asked to infiltrate the Klan." At trial, Rowe testified, despite cross examination attacking his story, that he did not partake in Liuzzo's murder and when he embarked with the other Klansmen on the day of the murder "he did not know ... that the trip would end in a slaying." See id. at 1276-77.

In 1975 and 1976 the Senate Select Committee on Governmental Operations conducted an investigation, in part, of the activities of the FBI and Gary Rowe when infiltrating the civil rights movement. During the course of the hearings, Rowe "for the first time" disclosed his participation in acts of violence, including Liuzzo's murder, and that this participation was "known and approved by his contact agent." See id. at 1279.

The district court held that despite knowing in 1965 that their mother had been murdered by the KKK and that one of the passengers in the car was a FBI informant, the claim had not accrued prior to 1975 because "the plaintiffs lacked knowledge of the identity of the persons they now allege" to be culpable and "the fact that the alleged tortfeasors may have been culpably involved in the killing, as well as their status as government employees." See id. at 1283 (emphasis added).

Similarly, in the present matter, plaintiff was not aware that Bulger and Flemmi were FBI informants, was not aware that the Boston Office of the FBI acted to protect and shield Bulger and Flemmi from prosecution and was not aware, that as a result of the negligence of the eight former agents named as defendants that McIntyre has been wrongfully killed. Accordingly, plaintiff's cause of action could not have accrued until it had knowledge both that McIntyre was

dead and that his death was caused in part by the wrongful conduct of the FBI. See also Heinrich, 44 F.Supp.2d at 416 (where injury has two causes and only one is government, claim accrues under FTCA upon knowledge of governmental causation); Barrett, 660 F.Supp. at 1308-09 (FTCA claims against United States did not accrue until 1975 when army's involvement in 1953 death from experimental drug injections was revealed despite estate's 1955 settlement agreement with drug company); Berigman v. United States, 551 F.Supp. 407 (W.D. Mich. 1982) (same holding as Liuazzo based on similar fact pattern).

In contrast, the government's reliance on Gonzalez-Bernal v. United States, 907 F.2d 246 (1<sup>st</sup> Cir. 1990), for the proposition that "it is not necessary for a plaintiff to know the identities of those who murdered their decedent for the cause of action to accrue" is misplaced. The government's Brief assiduously avoids mention that when the First Circuit revisited the same fact pattern two years later in Attallah, discussed supra, it expressly stated Gonzalez-Bernal was limited to the narrow holding that § 2401(b) bars a civil action not filed within six months of denial of an administrative claim. See Attallah, 955 F.2d at 780 n. 6. Accordingly, Gonzalez-Bernal is inapposite to the issues of plaintiff's knowledge of the identity of those responsible for McIntyre's death, when plaintiff's claim accrued and whether plaintiff presented its claim in a timely fashion.

Precedent is clear that when, in the exercise of reasonable diligence, plaintiff does not possess and could not have known critical facts that a government employee had caused its injury, a cause of action against the United States has not accrued pursuant to the FTCA.

C. Media Reports Did Not Give Plaintiff Knowledge of Injury or its Cause

Finally, the government's contention that news reports from the 1990s established the causal link between plaintiff's injury and its claim is unfounded. Taken together the sundry

articles amount to nothing more recounting of rumor and speculation that McIntyre may be dead and that the IRA or Joseph Murray or Bulger and Flemmi or some underworld faction may have killed him. None of the media reports provide a factual basis establishing that injury had occurred. Rather, the only directly attributable information contained therein are speculation by a government official that McIntyre was a victim of someone other than Bulger and Flemmi and the 1995 recitation of the United States official view there was "no proof" McIntyre was dead.<sup>4</sup> See Exhibits D and E.

IV. THE LIMITATIONS PERIOD WAS TOLLED BECAUSE THE UNITED STATES CONCEALED ITS TORTIOUS CONDUCT FROM THE ESTATE FROM 1984 TO THE FILING OF AN INFORMATION AGAINST DEFENDANT KEVIN WEEKS IN JULY 2000

The statute of limitations is tolled under the FTCA when "the United States itself played a wrongful role in concealing the culprit's identity." See Diminnie v. United States, 728 F.2d 301, 305 (6<sup>th</sup> Cir. 1984). In determining whether the government has deliberately concealed facts or evidence the court distinguishes "mere silence" which, in certain circumstances, may not rise to concealment, from affirmative acts, omissions or representations which, in fact, do prevent discovery of the plaintiff's claim. See Barrett, 660 F.Supp. at 1308-09.

The government relies upon Diminnie v. United States for the proposition that the Wolf hearings did not postpone accrual of plaintiff's claim. See Brief at 14-16. However, the Sixth Circuit's holding is limited to the principal that § 2401(b) is tolled by the doctrine of fraudulent concealment only when such conduct be imputed to the United States.<sup>5</sup> See Diminnie, 728 F.2d at 306. Here a federal judge has made specific findings that the United States acted to conceal

<sup>4</sup> Additionally, the 1997 Boston Globe article most heavily relied upon by the government contains statements attributed to government authorities that "absence of a body and the weakness of the evidence" made it "impossible" to bring charges for McIntyre's murder. See Brief at Exhibit 6.

<sup>5</sup> Likewise the government's reliance on Rutledge v. Boston Woven Hose and Rubber Co., 576 F.2d 248 (9<sup>th</sup> Cir. 1978) for the proposition "plaintiff cannot complain that it would have been futile to ask FBI whether it was responsible for decedent's death," see Brief at 15 n. 11., flies in the face not only of Judge Wolf's findings, but also the holdings in Attallah, Heinrich, Barrett, Luzzo and Bergman while ignoring that Rutledge is not a FTCA case.

evidence so that the fate of John McIntyre would remain hidden.

As discussed, supra, the public record relating to this matter is littered with affirmative falsehoods and misrepresentations from government officials concealing “critical facts” essential to plaintiff’s claim. From the time of his disappearance in 1984 to the discovery of his remains in January 2000, the FBI failed to conduct a good faith investigation into the circumstances of his disappearance because they did not want to disrupt their relationship with Bulger and Flemmi and the benefits that the FBI, the United States and the individual agents were receiving as a result of that relationship. See Complaint at ¶ 302-303. During this period, agents of the FBI denied any special relationship with Bulger and OPR publicly cleared defendants Morris and Connolly of wrongdoing. See Exhibit C and F. Even after Judge Wolf ordered the public disclosure of Bulger and Flemmi’s status as informants, the United States failed to comply with the court’s discovery orders. See Salemme, 91 F.Supp.2d at 154 n.3. More tellingly for the issue at hand, Judge Wolf made specific findings that “important FBI documents concerning John McIntyre were ... improperly withheld by agents of the Boston FBI until it was too late to question relevant witnesses concerning them,” see Flemmi, No. 94-10287-MJW at 13-14, and the question of McIntyre’s disappearance and death could not “be resolved on the present record, in part because of the delayed disclosure of documents by the government and in part because ... it evidently was not in either the interest of Flemmi or of the FBI to have this issue fully developed in this case.” See Salemme, 91 F.Supp.2d at 213. In August 2001 Judge Wolf determined that the FBI’s efforts to conceal its behavior is endemic of a “culture” that “is enduring and exists today.” See Flemmi at 12.

The motion to dismiss overlooks that government liability arises from the relationship between the government and McIntyre’s murderers. Plaintiff’s complaint alleges that for a 30

year period the government committed a wholesale violation of controlling and mandatory guidelines regulating the activities of high echelon informants; negligently failing to supervise the work performance of government agents responsible for the safety and protection of the public at large, and McIntyre in particular. The complaint also alleges that the government conspired to protect its relationship with Bulger and Flemmi by intentionally engaging in obstructionist conduct and disinformation that prevented courts, litigants, and the public from learning the truth of this illicit relationship and the harm caused to plaintiff.

Accordingly, the United States itself played a wrongful role in concealment of the identity of facts critical to accrual of plaintiff's claim and the government's motion to dismiss should be denied. See Heinrich, 44 F.Supp.2d at 415-419; Barrett, 660 F.Supp. at 1308-09.

V. THE PLAINTIFF EXPRESSLY RESERVES THE RIGHT TO MOVE FOR DISCOVERY

The Government's Motion to Dismiss should be denied based upon the record presently before the Court. However, if this Court should determine that it cannot resolve the government's motion based upon the current record or, is inclined to allow the motion on "wrongful concealment" grounds and the current state of the record on that issue of fact, plaintiff specifically requests the Court order limited discovery on jurisdictional issues. See Dynamic Image Technologies, Inc. v. United States, 221 F.3d 34, 38-39 (1<sup>st</sup> Cir. 2000).

VI. CONCLUSION

For the reasons stated above plaintiff respectfully submits that United States' Motion to Dismiss must be denied.

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Respectfully submitted,

The Estate of John L. McIntyre

By Their Attorneys  
SHAHEEN & GORDON, P.A.

Dated: November 15, 2001

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon each party appearing pro se and the attorney of record for each other party by mail on November 15, 2001.

William E. Christie  
William E. Christie  
Jeffrey Denner

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Respectfully submitted,

The Estate of John L. McIntyre

By Their Attorneys  
SHAHEEN & GORDON, P.A.

Dated: November 15, 2001

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon each party appearing pro se and the attorney of record for each other party by mail on November 15, 2001.

William B. Christie  
William B. Christie  
JERRY D. DENNER

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## COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

Superior Court  
Cr. Nos. 32367, 69-70

Commonwealth

v.

Motion for New Trial

Peter Limone

Now comes the defendant in the above-entitled case and, pursuant to Rule 30(b) of the Rules of Criminal Procedure, the Fifth, Sixth and Fourteenth Amendments to the United States Constitution, and the Declaration of Rights of the Constitution of Massachusetts, requests this Court grant a new trial. Defendant also requests an evidentiary hearing.

Defendant states that he was convicted as an accessory before the fact of the March 12, 1965 murder of Edward "Teddy" Deegan, and sentenced to death, on July 31, 1968, solely on the uncorroborated accomplice testimony of Joseph "The Animal" Barboza. He was also charged with the other defendants in a conspiracy to murder Deegan, and in another indictment with conspiracy, to murder one Stathopolous.

Since the time of his conviction and subsequent appeals, new law has evolved, and new facts have been made public which require, in order that justice be served, that a new trial be ordered.



In support hereof, Peter Limone avers the following:

1. There was no instruction in the judge's charge to the jury regarding the high level of certainty required in order for the prosecution to prove guilt beyond a reasonable doubt, *Comm. v. Pinckney*, 419 Mass. 341, (1995).
2. The term "moral certainty" was used "in isolation, without further explanation." There was no language linking the judge's reference to "moral certainty" with any explanatory language, or content lending language. *Comm. v. Pinckney*, *supra* at 344, that satisfied the judges reference to "moral certainty."
3. The Supreme Judicial Court, in *Comm. v. Bonds*, 424 Mass. 698, 703 (1997) reversed where language equated proof beyond a reasonable doubt a reference to "moral certainty" and compared it to the type of certainty required in making important personal decisions. Defendant's case is more egregious, because the judge gave the personal decision making analogy in explaining reasonable doubt and then

referred to "moral certainty or other kinds of certainty" without linking it to any explanatory language. [Tr. 7475-8].

4. In reviewing the entire charge to the jury, and in the circumstances of the entire case, the defendant further directs the Court's attention to the defective, burden shifting alibi charge, which is "Clear Error" [Tr. 7471-2],

and the judge's failure to give a "great care and caution" charge regarding the accomplice Barboza. [Tr. 7474]

5. Subsequent to the denial of his previous motion for a new trial, it was revealed in US District Court, for the District of Massachusetts, that one Stephen Flemmi, in "the early 1960s, began exchanging information with the FBI," and became a "Top Echelon Informant," in 1967. He was developed by FBI Special Agent H. Paul Rico. In 1965, "Flemmi was involved in a major gang war," and led one of the warring factions, *United States v. Salemme, et al.*, 91 F.Supp.2d 141, 176-178 (1999).

6. According to previously filed police reports, two of which were made shortly after the Deegan murder was committed, and which were never made available to the defense, Flemmi's brother, Vincent, a/k/a "Jimmy" was one of the murderers of "Teddy" Deegan. He was never prosecuted, nor were Nicky Femia, Frank Imbruglia, or Freddie Chiampa [sic]. Exhibit "A."

7. Subsequently, in 1966 and 1967, Rico and his partner, Dennis Condon "were actively attempting to persuade Barboza to become a government witness...in the investigation they were conducting, with state officials, of the 1965 murder of Teddy Deegan." *Id.* at 180.

8. Although the Commonwealth has stated that there were no promises, rewards, or inducements made to Barboza in

exchange for his testimony, this statement has been proven false. According to Federal Judge Wolf's decision, "Flemmi...through his unwitting brother, Jimmy Flemmi, also provided a valuable means for Rico to communicate information to Barboza that he hoped would cause Barboza to be receptive to Rico's effort to recruit him." *Id.*

9. Defendant submits that "Jimmy" Flemmi was anything but "unwitting" and was part of a conspiracy to frame defendant and others for murder, and allow "Jimmy" Flemmi, Barboza, and their associates to get away with murder. Defendant also submits that this was one of the inducements made to Barboza that was not revealed to the defense.

10. According to an affidavit previously filed by Attorney F. Lee Bailey, there was a conspiracy between Barboza, Bailey's former client, and federal authorities. One of those authorities, former FBI agent H. Paul Rico, is presently the subject of a Federal Grand Jury Investigation, and has also been found to have engaged in "criminal conduct, including perjury." *Id.* at 182, citing *Lerner v. Moran*, 542 A2d 1089 (R.I. 1988). In that case the Supreme Court of Rhode Island found, among other things, "that Rico had urged one of his informants to lie under oath, in part to mask another of Rico's informant's role in a murder." According to the Bailey affidavit:

"He [Barboza] stated of the people against whom he had testified, Roy French and Ronnie Cassesso were in fact involved, French directly and Cassesso indirectly. He told me that Henry Tameleo and Peter Limone were not involved, but that he implicated them because he was led to understand by various authorities that in order to escape punishment on charges pending against him, he would have to implicate someone of 'importance.'... and that he had in that story implicated Louie Greco because of a personal grudge..." The entire Bailey affidavit is hereby incorporated by reference as if expressly repeated herein.

11. The Commonwealth has refused all discovery, to wit, Grand Jury testimony, police reports, and reports and memoranda of the development of this case by prosecuting authorities, including, but not limited to H. Paul Rico.

12. Defendant alleges that the conspiracy between Barboza and prosecution authorities extended to, and was part of a conspiracy with "Jimmy" and Stephen Flemmi, which facilitated and encouraged Stephen Flemmi to become an informant, which included, but was not limited to substituting Louis Greco, who was prosecuted and convicted in the Deegan Murder, for "Jimmy" Flemmi. In addition, the above-named Flemmi associates, although they were known the night of the murder, were never prosecuted for the murder of Deegan.

13. Subsequent to the denial of his previous motion for new trial, it was learned that the "lead counsel" at trial, Joseph Balliro, represented both Barboza and "Jimmy" Flemmi. Attorney Balliro made statements to the news media regarding this representation, and when questioned regarding information obtained ostensibly from Barboza and Flemmi,

cited the "lawyer-client privilege." A copy of the relevant portion of the news article is attached. Exhibit "B."

14. Further, subsequent to the conviction of the defendant, former Boston Traveler reporter, James Southwood, was given a copy of the Grand Jury testimony by Barboza, who told him that it would prove that he, Barboza, had lied at the trial. Subsequently, Barboza told him to return the Grand Jury testimony to Attorney Balliro, which he, in fact, did. Exhibit "C."

15. Defendant states that he did not assent to, nor was he advised of this multiple representation by Mr. Balliro, which was an actual conflict of interest and deprived him of effective assistance of counsel. *Comm. v. Geraway*, 364 Mass. 168, 301 N.E.2d 814 (1973).

16. Although Mr. Balliro's citing the attorney-client privilege has demonstrated an actual conflict of interest, thereby requiring no prejudice need be shown, defendant requests the Court take notice of the following:

- On June 22, 1994, in certifying defendant's case for review by the SJC, Justice Greaney stated, regarding the police reports, "The information... identifies an entirely different set of killers. If disclosed and properly developed, the information could have had considerable relevance to the credibility of Baron's testimony which was at the core of the Commonwealth's case, and it would have supported the defendants' alibi and other defenses. Quite simply, the jury might have concluded that a reasonable doubt existed as to Baron's identification of

the killers and their activities, which doubt necessarily would have included Limone [and Grieco]." *Limone et al. v. Commonwealth*, Nos. 94-223-24, slip op. at 3.

- In its original decision sustaining defendant's conviction, *Comm. v. French*, 357 Mass. 356 (372) n. 13, (1970), the SJC stated, "It does not appear that any defendant in fact cross-examined any other defendant who took the stand..."
  - At trial, Attorney Balliro represented co-defendant Henry Tameleo. His office also represented co-defendant Salvati. During pre-trial proceedings Mr. Balliro also represented defendant Limone. Furthermore, prior to the arraignment of co-defendant Greco, Attorney Balliro advised Greco to waive his rendition hearing in Florida, and return to Massachusetts. According to an affidavit filed by co-defendant Greco (deceased), Mr. Balliro did not advise him of his representation of Barboza or Flemmi. Exhibit "D." Had Greco remained in Florida, this trial would never have taken place, because the investigation surrounding Greco's Florida alibi proved he was "totally innocent" of Deegan's murder, and would have required the prosecution to produce all police reports, memoranda and sworn testimony of Barboza, and would have required Barboza to submit to a polygraph examination, as did Greco. See affidavit of Richard Barest, sworn statement of Barbara Dones Brown, and the Miami Police Polygraph examination of Greco, previously filed in this Court. This information was in possession of prosecuting authorities prior to trial. But, as we now know, not only was this a conspiracy to frame individuals reputed to be members of *La Cosa Nostra*, it was also part of a sordid and diabolical plot to develop Stephen Flemmi as an informant, while, at the same time, allowing his brother "Jimmy" and their associates, among them Barboza, to get away with murder.
  - The Commonwealth has continuously represented that the defendants presented a "team defense". This statement, per se, is an admission of an actual conflict of interest.
17. Defendant states that were it not for the conflict of interests that existed, the information in the police

reports would have been properly developed, he would have cross-examined other defense witnesses, and called the actual murderers of Deegan as hostile witnesses. Exhibit "E."

WHEREFORE, defendant requests that the Court grant a new trial.

By his attorney,

*John Cavicchi*  
John Cavicchi BBO# 079360  
25 Barnes Ave.  
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617-567-4697

June 20, 2000

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NOs. 32367, 32369, 32370

COMMONWEALTH

vs.

PETER J. LIMONE

**MEMORANDUM OF DECISION AND ORDER ON  
DEFENDANT'S MOTION FOR A NEW TRIAL AND  
COMMONWEALTH'S MOTION TO VACATE DEFENDANT'S CONVICTIONS,  
GRANT A NEW TRIAL AND ADMIT DEFENDANT TO BAIL**

Defendant Peter J. Limone was convicted in 1968 for being an accessory before the fact in the murder of Edward Deegan, for conspiracy to murder Deegan and for conspiracy to murder Anthony J. Stathopoulos. The matter is now before me on defendant's motion for a new trial, under Mass. R. Crim. P. 30(b) and the Massachusetts and Federal Constitutions, on numerous grounds, and the Commonwealth's motion to vacate defendant's convictions, grant a new trial and admit the defendant to bail. Based upon certain developments, more fully described below, which occurred while discovery was proceeding, it became apparent that certain of Limone's new evidence-based claims were likely to prove dispositive of this motion favorably to Limone. For this reason, the scope of an evidentiary hearing was confined to address Limone's claims

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regarding certain newly discovered exculpatory evidence.<sup>1</sup> This evidentiary hearing was conducted on January 5, 2001; the court received into evidence 26 pages of documents produced by the Justice Task Force to the parties on December 19, 2000. For reasons more fully discussed below, after review of the trial transcript, I ALLOW Limone's motion for a new trial and I ALLOW the Commonwealth's motion to vacate defendant's convictions, grant a new trial and admit defendant to bail.

#### BACKGROUND

##### **I. Background of the Case Before This Motion**

The facts of this case are set forth in the opinion of the Supreme Judicial Court affirming the convictions of Limone and his five codefendants. See *Commonwealth v. French*, 357 Mass. 356, 361-370 (1970), judgments vacated as to death penalty *sub nom. Limone v. Massachusetts*, 408 U.S. 936 (1972). Between May 27, 1968 and July 31, 1968 Limone was tried jointly with five codefendants.<sup>2</sup> Briefly stated, the evidence presented at trial through the key prosecution witness, one Joseph Barboza (also known as Joseph Baron), was that Limone offered Barboza a contract to kill Deegan for \$7,500. Barboza testified that Limone later offered an additional \$2,500 if Stathopoulos were also killed. During a break-in at a financial institution, Deegan was killed in an alley in Chelsea on March 12, 1965, but Stathopoulos drove away from the crime

<sup>1</sup> I intend this decision to address only those claims which I discuss. I have not considered any of Limone's claims or arguments not discussed in this decision. I save all of Limone's rights as to those other claims and arguments, should that be necessary.

<sup>2</sup> Limone's codefendants at trial were Wilfred Roy French, Lewis Grieco, Henry Tameleo, Joseph L. Salvati and Ronald Anthony Cassesso. On January 4, 2001, the Commonwealth moved to vacate Salvati's conviction and for a new trial in that case. Those motions are pending.

scene.<sup>3,4</sup>

More specifically, Barboza testified at trial that about January 20, 1965, Limone saw Barboza and offered him a "contract" to kill Deegan for \$7,500, and told Barboza that this had been approved by the "office." Barboza spoke with Tameleo a few days later to confirm that the "office" approved of the murder. Tameleo agreed to it. Some weeks later, after securing the assistance of others, some of whom would become Limone's codefendants at trial, Barboza reported to Limone that the murder would occur soon but that Stathopoulos would be involved. According to Barboza, Limone agreed to add \$2,500 if Stathopoulos were also killed. Barboza confirmed with Tameleo that it was okay to kill Stathopoulos as well. According to the evidence presented at trial, the murder of Deegan was carried out by Barboza,<sup>5</sup> Cassesso, Salvati, French, Grieco and others, not including Limone.<sup>6</sup> Stathopoulos escaped. Some time later, Barboza testified, he met with Limone, who paid him for the Deegan murder.

A jury convicted Limone on the two counts of conspiracy to commit murder and of being an accessory before the fact. Limone was sentenced to death.<sup>7</sup> The convictions of Limone and all the codefendants were affirmed by the Supreme Judicial Court. *Commonwealth v. French*,

<sup>3</sup> Limone testified at trial that he had been friendly with Deegan; had no alibi for March 12-13, 1965; first met Barboza in February 1965; had seen Stathopoulos with Deegan at a veterans' club and had known Grieco only from late 1965. Limone said he had met French in the Charles Street jail and had known Cassesso, Salvati and Tameleo for some years. *French*, 357 Mass. at 370 n.10; Trial Transcript, Vol. 45, pp. 6183 *et seq.*

<sup>4</sup> Stathopoulos subsequently cooperated with the District Attorney's office in prosecuting this case. Although he testified at trial, his testimony did not implicate Limone.

<sup>5</sup> Barboza pled guilty to two indictments for conspiracy on the first day of jury selection. He was murdered in 1976.

<sup>6</sup> Barboza mentions Vincent James Flemmi as a participant in the scheme. Flemmi, who is now deceased, was never indicted. The newly disclosed evidence reveals that Flemmi was an F.B.I. informant around the time Deegan was murdered and for a period thereafter.

<sup>7</sup> French, who the trial evidence showed shot Deegan, was found guilty of murder in the first degree with a recommendation that death not be imposed. Salvati was convicted of being an accessory, also with a recommendation against death. Grieco, who the evidence also showed shot Deegan, was found guilty of murder in the first degree, and Cassesso and Tameleo were found guilty as accessories. Grieco, Cassesso and Tameleo were convicted on two conspiracy indictments; each was sentenced to death.

357 Mass. 356 (1970). Limone's death sentence was vacated by the United States Supreme Court following its decision in *Furman v. Georgia*, 408 U.S. 238 (1972). See *Limone v. Massachusetts*, 408 U.S. 936 (1972).<sup>8</sup>

Limone's first motion for a new trial was denied in 1970, and this denial was affirmed on appeal. *Commonwealth v. Cassesso*, 360 Mass. 570 (1971). A petition for habeas corpus filed in the United States District Court for the District of Massachusetts was dismissed, and this dismissal was affirmed by the First Circuit Court of Appeals. *Grieco v. Meachum*, 533 F.2d 713 (1st Cir. 1976), *cert. denied sub nom. Cassesso v. Meachum*, 429 U.S. 858 (1976). Limone's second motion for a new trial was denied in 1990, and this denial was affirmed on appeal. *Commonwealth v. Limone*, 410 Mass. 364 (1991). Other motions for a new trial were filed in 1993 and were denied, which was also affirmed. *Commonwealth v. Salvati*, 420 Mass. 499 (1995).

## II. Developments Since This Motion Was Filed

Defendant's motion for a new trial was filed on June 19, 2000. The case was assigned to me on August 2, 2000 because the trial judge (Forte, J.) had retired from the Superior Court. After a number of hearings, it became apparent that the Commonwealth had in its possession documents that the Commonwealth agreed should be made available to Limone. A discovery deadline was set, and the matter proceeded largely in compliance with that deadline. I issued an order setting forth the parties' responsibilities in compiling an itemized list of non-live evidence that would be introduced at an evidentiary hearing on this motion, should I determine an

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<sup>8</sup> Limone was resentenced to life imprisonment.

evidentiary hearing to be appropriate.

Meanwhile, counsel for Limone had moved to intervene in *United States v. Stephen J. Flemmi et al.*, Crim. No. 94-10287-MLW (D. Mass.), pending before United States District Court Judge Mark L. Wolf. Judge Wolf denied intervention but indicated that certain documents might be discoverable in this proceeding. I thereafter gave notice to the United States Attorney's office of Limone's request for discovery of matters relating to the pending motion. The local United States Attorney's office agreed to review its files. This led to the parties each receiving a telephone call from John H. Durham, a Special Attorney with the United States Attorney's office. This telephone contact was followed by a letter to the parties from AUSA Durham dated December 19, 2000 enclosing 26 pages of F.B.I. documents.<sup>9</sup> In that letter, AUSA Durham states that in response to Limone's November 2000 request for information, F.B.I. employees assigned to the Justice Task Force began reviewing Boston F.B.I. informant, intelligence and investigative files. According to AUSA Durham, that review showed that Vincent James Flemmi was an F.B.I. informant around the time of the Deegan murder. F.B.I. focus on Flemmi as a potential source began on March 9, 1965, and the first reported contact with Flemmi as an informant was by F.B.I. Special Agent H. Paul Rico on April 5, 1965. In his letter, AUSA Durham also states that F.B.I. files show that Flemmi was contacted five times as an informant by Special Agent Rico, and that Flemmi's file was closed on September 15, 1965 after Flemmi was charged with a crime "unrelated to the Deegan murder."

AUSA Durham further states in his letter that Vincent Flemmi's F.B.I. file contains two

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<sup>9</sup> Durham's letter and the attached F.B.I. records were admitted into evidence at the hearing on this motion.

documents relating to the Deegan murder. One is a summary of information known by the Boston F.B.I. about Flemmi's criminal activities at the time Flemmi became an F.B.I. informant. The Justice Task Force attempted to locate other investigative files that relate to the Deegan murder. Five such documents had been located as of December 19, 2000. I refer to these documents collectively as the "F.B.I. documents." These are:

- (1) Memorandum dated March 15, 1965 from Special Agent Rico to the "SAC, Boston" reporting a contact with a source on March 10, 1965.
- (2) Memorandum dated March 15, 1965 from Special Agent Rico to the SAC, Boston, reporting a contact with the same source on March 13, 1965.
- (3) March 19, 1965 "Airtel" from SAC, Boston, to "Director, F.B.I." titled, "Criminal Intelligence Program, Boston Division" which summarizes that week's developments.
- (4) Memorandum dated April 22, 1965 from a Boston "Correlator" to SAC, Boston titled "Vincent James Flemmi, Aka." which summarizes information in F.B.I. files known about Flemmi at the time he was opened as an informant.
- (5) June 9, 1965 Airtel from SAC, Boston to Director, F.B.I. titled "BS 919-PC" which reports on the status of efforts to develop Vincent James Flemmi as an F.B.I. informant.

These documents are heavily redacted, and portions are of marginal legibility.<sup>10</sup> I summarize them below.

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<sup>10</sup> On December 20, 2000, the District Attorney's office filed the documents received from the Justice Task Force as a pleading in this case.

AUSA Durham's letter states that there were "[s]everal impediments" to the Justice Task Force's search for records, including routine destruction of files. The result of this is that, for example, the April 22, 1965 summary memorandum "represents the only surviving record of its information. Simply stated, the raw source data that was originally reported appears to no longer exist." However, "a case file containing information from Joseph Baron (Barboza) was located on this date, and a review of that file will begin shortly." In addition, AUSA Durham states that "it can not be stated with certainty at this time that the attached documents represent the only relevant materials in FBI files." AUSA Durham invites counsel for Limone to provide "greater specificity" as to what materials are relevant, but states that in any event the Justice Task Force will advise the parties of additional relevant documents that are discovered.

AUSA Durham included with his letter five documents, whose pages were numbered sequentially 00001 through 000026:

Document 1 is a memorandum from Special Agent Rico to the SAC, dated March 15, 1965. As noted, it states that the date of contact was March 10, 1965 and under "Titles and File [illegible] on which contacted" states "Edward [illegible] Deegan." The memorandum states:

Informant advised that he had just heard from "JIMMY FLEMMI" that FLEMMI told the informant that RAYMOND PATRIARCA has put out the word that EDWARD "TEDDY" DEEGAN is to be "hit" and that a dry run has already been made and that a close associate of DEEGAN's has agreed to set him up.

FLEMMI told the informant that the informant, for the next few evenings, should have a provable alibi in case he is suspected of killing DEEGAN. FLEMMI indicated to the informant that PATRIARCA put the word out on DEEGAN because DEEGAN evidently pulled a gun and threatened some people in the Ebb Tide restaurant, Revere, Mass.

Document 2 is a memorandum from Special Agent Rico to the SAC dated March 15,

1965. It lists March 13, 1965 as the date of contact and "Edward F. Deegan" as the title/file on which the informant was contacted. This document states:

Informant advised that "JIMMY" FLEMMI contacted him and told him that the previous evening DEEGAN was lured to a finance company in Chelsea and that the door of the finance company had been left open by an employee of the company and that when they got to the door ROY FRENCH, who was setting DEEGAN up, shot DEEGAN, and JOSEPH ROMEO MARTIN and RONNIE CASESSA came out of the door and one of them fired into DEEGAN's body. While DEEGAN was approaching the doorway, he (FLEMMI) and JOE BARBOZA walked over towards a car driven by TONY "STATS" and they were going to kill "STATS" but "STATS" saw them coming and drove off before any shots were fired.

FLEMMI told informant that RONNIE CASESSA and ROMEO MARTIN wanted to prove to RAYMOND PATRIARCA they were capable individuals, and that is why they wanted to "hit" DEEGAN. FLEMMI indicated that they did an "awful sloppy job."

This information has been disseminated by SA DONALD V. SHANNON to Capt. ROBERT RENFREW (NA) of the Chelsea, Mass. PD.

Document 3 is from SAC, Boston to Director, F.B.I. (then J. Edgar Hoover). It begins by summarizing much of the information contained in the March 1965 Memoranda.<sup>11</sup> It then states:

<sup>11</sup> The document states:

The following are the developments during the current week:

On 3/12/65, EDWARD "TEDDY" DEEGAN was found killed in an alleyway in Chelsea, Mass. in gangland fashion.

Informants report that RONALD CASESSA, ROMEO MARTIN, VINCENT JAMES FLEMMI, and JOSEPH BARBOZA, prominent local hoodlums, were responsible for the killing. They accomplished this by having ROY FRENCH, another Boston hoodlum, set DEEGAN up in a proposed "breaking & entering" in Chelsea, Mass. FRENCH apparently walked in behind DEEGAN when they were gaining entrance to the building and fired the first shot hitting DEEGAN in the back of the head. CASESSA and MARTIN immediately thereafter shot DEEGAN from the front.

ANTHONY STATHOPOULOS was also in on the burglary but had remained outside in the car.

When FLEMMI and BARBOZA walked over to STATHOPOULOS's car, STATHOPOULOS thought it was the law and took off. FLEMMI and BARBOZA were going to kill STATHOPOULOS also.

Immediately thereafter, STATHOPOULOS proceeded to Atty. AL FARESE. FARESE called the Chelsea, Mass. PD before Chelsea knew of the killing and FARESE wanted to bail out ROY FRENCH and "TEDDY" DEEGAN. Shortly thereafter the Chelsea PD found the body of DEEGAN and immediately called Atty. FARESE's office, and Atty. JOHN FITZGERALD, FARESE's law partner, came to the Chelsea PD.

Efforts are now being made by the Chelsea PD to force STATHOPOULOS to furnish them the

It should be noted that this information was furnished to the Chelsea PD and it has been established by the Chelsea Police that ROY FRENCH, BARBOZA, FLEMMI, CASESSA, and MARTIN were all together at the Ebb Tide night club in Revere, Mass. and they all left at approximately 9 o'clock and returned 45 minutes later.

It should be noted that the killing took place at approximately 9:30 p.m., Friday, 3/12/65.

[What appears to be two paragraphs of text is redacted here].

Informant also advises that [redacted] had given the "OK" to JOE BARBOZA and "JIMMY" FLEMMI to kill [redacted] who was killed approximately one month ago.

Following this is an additional page which states that it "is being deleted in its entirety for codes: F, B."

Document 4 is from "correlator" to SAC, Boston, regarding Vincent James Flemmi. It is a lengthy, heavily redacted document and need not be quoted in its entirety. Relevant portions state:<sup>12</sup>

Boston airtel to Director, FBI dated 10/23/64 captioned [redacted] [Redacted] advised that Peter Limone had mentioned to Raymond Patriarca that Jimmy FLEMMI is the type of individual who is difficult to control and when FLEMMI visited his club, the West End Veterans Club recently Limone asked FLEMMI to leave because of the heat that was on FLEMMI at that time. FLEMMI denied that any heat was on him and at that time FLEMMI inquired about Edward Deegan, close associate of [redacted]. Limone told FLEMMI that Deegan does not visit the club and immediately after FLEMMI departed Limone telephonically contacted Deegan and told him that FLEMMI was looking for him allegedly for a \$300 loan which FLEMMI claimed DEEGAN owed to him. Deegan denied that he owed such a loan and Limone and Deegan were of the opinion that FLEMMI was out to kill DEEGAN.

Boston airtel to Director, FBI dated 10/19/64 captioned [redacted]. [Redacted] advised that he received a telephone call from JAMES FLEMMI, on 10/18/64, who told him that he had been with Edward "Teddy" Deegan and Tony (LNU) at the West End Social Club during the early morning hours of 10/17/64. Informant stated the name of [redacted] was mentioned in a conversation but FLEMMI Stated he could not recall what was said. FLEMMI stated that he definitely knows that Deegan, after leaving the West End Social Club, murdered [redacted] and he was concerned about

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necessary information to prosecute the persons responsible.

<sup>12</sup> The document contains what appears to be a form of document code numbers, which I omit.

leaving his fingerprints in the car in which [redacted] was murdered.

....  
 FLEMMI told informant that he wants to kill Deegan. Information relating to Deegan's participating in the killing of [redacted] was furnished to the Everett, Mass., Police Department on 10/18/64. [Redacted] mentioned as [redacted].

....  
 Memo. of H. Paul Rico to SAC, Boston 10/8/64 and captioned: [redacted]  
 Informant advised 10/5/64, that he is friendly with the FLEMMI's, but VINCENT FLEMMI is an extremely dangerous individual....Informant also advised that he suspects that FLEMMI had committed several murders....Informant advised that [several lines redacted] and "JIMMY" FLEMMI wanted to be considered the "best hit man" in the area.

....  
 Boston airtel to Director, FBI & SACS Las Vegas, Phoenix 1/7/65 captioned: [redacted]  
 A review of information furnished by [redacted] on 1/4/65 reflected that Ronald Cassessa, JAMES FLEMMI, [redacted] contacted Patriarca. Cassessa told Patriarca that "that thing was straightened out." (Informant did not know what it pertained to.)

....  
 [Document identifying data redacted].  
 Gennaro J. Angiulo and Peter Limone contacted Patriarca. Angiulo stated that Larry Baione, Boston hoodlum, had contacted him when he (Baione) was released from prison concerning the loan shark business of [redacted].

Patriarca advised that [redacted] and JAMES FLEMMI, both of Boston, contacted him. This contact was arranged by Ronnie Cassessa, and Angiulo had knowledge of same.

Patriarca stated that the word was that "we" (meaning Patriarca and his group) wanted FLEMMI and [redacted] for something and consequently they both arranged the meet. [Paragraph redacted]

....  
 According to Angiulo, [redacted] told Peter Limone that JIMMY FLEMMI had told [redacted], "Don't worry about [redacted]," (indicating that he knew [redacted] was going to get hit.).

Boston Airtel to Director, 3/10/65 entitled: [redacted]  
 [Redacted] advised on 3/3/65 that [redacted] contacted Patriarca and stated he had brought down VINCENT FLEMMI and another individual (who was later identified as Joe Barboza from East Boston, Mass.) It appeared that [redacted], Boston hoodlum, was giving orders to FLEMMI to "hit this guy and that guy".

....  
 According to Patriarca, another reason that FLEMMI came to Providence to contact him

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was to get the "OK" to kill Eddie Deegan of Boston who was "with [redacted.] It was not clear to the informant whether he received permission to kill Deegan; however, the story that FLEMMI had concerning the activities of Deegan in connection with his, Deegan's, killing of [redacted] was not the same as Jerry Angiulo's.

Boston's Airtel to Director and SACS Albany, Buffalo, Miami 3/12/65 captioned: [redacted].

[Redacted] advised on 3/9/65 that JAMES FLEMMI and Joseph Barboza contacted Patriarca, and they explained that they are having a problem with Teddy Deegan and desired to get the "OK" to kill him.

They told Patriarca that Deegan is looking for an excuse to "whack" [redacted] who is friendly with [redacted].

FLEMMI stated that Deegan is an arrogant, nasty sneak and should be killed.

Patriarca instructed them to obtain more information relative to Deegan and then to contact Jerry Angiulo at Boston who would furnish them a decision.

..... Memo. of [redacted] 4/6/65 captioned: [redacted]

..... PCI stated that JIMMY FLEMMMA had gone to Providence just before Teddy Deegan was slain in Chelsea.

Document 5 is from SAC, Boston to Director, F.B.I. and reports on the status of efforts to develop Vincent James Flemmi as an informant for the F.B.I. Much of this document is illegible, but it provides in relevant part:

Concerning the informant's emotional stability, the Agent handling the informant believes, from information obtained from other informants and sources, that BS 919-PC has murdered [redacted], [redacted], [redacted], [redacted], EDWARD "TEDDY" DEEGAN, and [redacted], as well as a fellow inmate at the Massachusetts Correctional Institution, Walpole, Mass., and, from all indications, he is going to continue to commit murder.

Some of the information provided by the informant has been corroborated by other sources and informants of this office. Although the informant will be difficult to contact once he is released from the hospital because he feels that [redacted] will try to kill him, the informant's potential outweighs the risk involved.

**DISCUSSION**

Massachusetts Rule of Criminal Procedure 30(b) provides that a motion for a new trial may be granted “at any time if it appears that justice may not have been done.” Grounds for a new trial include newly discovered evidence and failure to disclose exculpatory evidence. Among the grounds Limone now asserts in support of his motion for a new trial is newly discovered exculpatory evidence.<sup>13</sup>

Limone’s claim that the government improperly failed to disclose exculpatory evidence fits into a number of analytical boxes, with differing standards. On the one hand, it can be analyzed as a typical claim for a new trial based on newly discovered evidence. *Commonwealth v. Tucceri*, 412 Mass. 401, 408-09 (1992). Such a motion based on newly discovered evidence may be made without regard to whether that evidence was improperly withheld by the government. *Id.*; *Commonwealth v. Grace*, 397 Mass. 303, 305 (1986). Limone’s claim can also be analyzed as a claim that there was a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), because a *Brady* claim may be made in the context of a claim regarding newly discovered evidence. *Tucceri*, 412 Mass. 408-09. A *Brady* claim may also, however, be made even if the undisclosed evidence is not “newly” discovered. *Id.* at 409. In ruling on the pending motion, I address Limone’s claim only on the newly discovered evidence ground and do not address his claim in the context of *Brady*.

**I. Newly Discovered Evidence**

A defendant seeking a new trial on grounds of newly discovered evidence must establish

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<sup>13</sup> Limone has presented numerous other grounds. I decide his motion based only on the newly discovered exculpatory evidence. I do not reach the other grounds Limone asserts.

both that the evidence is newly discovered and that it casts "real doubt" on the justice of the conviction. *Commonwealth v. LeFave*, 430 Mass. 169, 176 (1999). Limone has satisfied both parts of that standard. Evidence is newly discovered when it was unavailable at the time of trial and could not have been, with reasonable diligence, discovered at trial or at the time of a prior motion for a new trial. *Id.*; *Commonwealth v. Moore*, 408 Mass. 117, 126 (1990); *Grace*, 397 Mass. at 306. The Commonwealth concedes that these documents are "newly" discovered.<sup>14</sup> The evidence "not only must be material and credible...but also must carry a measure of strength in support of the defendant's position." *Commonwealth v. Scanlon*, 412 Mass. 664, 680 (1992), quoting *Grace*, 397 Mass. at 305-06. Thus, if the newly discovered evidence is cumulative of evidence admitted at trial, it tends to carry less weight than evidence that is different in kind. *Scanlon*, 397 Mass. at 680. "Moreover, the judge must find there is a substantial risk that the jury would have reached a different conclusion had the evidence been admitted at trial."<sup>15</sup>

<sup>14</sup> There is no credible evidence before me that the Suffolk District Attorney's office had actual possession of the F.B.I. documents or of the information contained therein before those documents were produced by the Justice Task Force on December 19, 2000.

<sup>15</sup> The Commonwealth argues that the proper standard in this regard for the trial court is whether there is a "substantial likelihood of a miscarriage of justice." That argument is based on *Commonwealth v. Simmons*, 417 Mass. 60, 73 (1994). In *Simmons*, the procedural posture of the case was such that the Court decided the defendant's (1) direct appeal from his conviction for murder in the first degree, (2) appeal from the denial of his motion for a new trial filed in and decided by the Superior Court and (3) appeal from the denial of his second motion for a new trial filed with and decided by a single justice of the Supreme Judicial Court. *Simmons*, 417 Mass. at 61. There, the Court held that "[w]here the prosecution denies the defendant exculpatory evidence but the defendant has not requested it or has made only a general request, this court will order a new trial or reduction of the verdict whenever the court concludes that there has been a substantial likelihood of a miscarriage of justice." *Id.* at 73 (emphasis added). The Court's decision was based on G.L. c. 278, § 33E. *Commonwealth v. Tucceri*, 412 Mass. 401, 412-13 (1992), which articulated the standard to govern motions for a new trial where the prosecution improperly failed to deliver exculpatory evidence to a defendant, involved a defendant who was not convicted of first degree murder. That case was before the Court on an appeal from the allowance of the defendant's motion for a new trial by the Superior Court; that appears to have been the defendant's first motion for a new trial and first appeal, although it was filed years after his conviction. *Id.* In *Tucceri*, the Court held that when the defendant has made no request or only a general request for exculpatory evidence, the standard for the trial court is "whether there is a substantial risk that the jury would have reached a different conclusion." *Tucceri*, 412 Mass. at 413. *Tucceri* cited *Grace*, 397 Mass. at 306, which also used the language *Tucceri* used. *Grace* involved the motion for a new

*Grace*, 397 Mass. at 306. Where, as here, I was not the trial judge, I must carefully scrutinize the trial record to determine fairly whether newly discovered evidence demonstrates that justice may not have been done. *Commonwealth v. Hill*, 432 Mass. 704, 710 (2000); *Commonwealth v. Leaster*, 395 Mass. 96, 101 (1985). I have conducted that review by reading the entire trial transcript and held several hearings.<sup>16</sup>

Here, the jury would likely have reached a different conclusion by this previously undisclosed evidence for two principal reasons. First, the new evidence casts serious doubt on Barboza's credibility in his account of Limone's role. Second, the new evidence reveals that Vincent James Flemmi, a participant of some sort in the Deegan murder, was an F.B.I. informant around the time of the murder.

Turning first to the Barboza issue, Barboza was a "vital, principal prosecution witness at trial." *Commonwealth v. Cassesso*, 360 Mass. 570, 572 (1971). In effect, "the principal issue before the jury was one of [Barboza's] credibility."<sup>17</sup> *Commonwealth v. French*, 357 Mass. 356, 397 (1970). Barboza, as noted, was the only government witness implicating Limone. If

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trial of a defendant convicted of murder in the first degree. *Grace*, 397 Mass. at 304. That motion, which did not involve exculpatory evidence allegedly withheld by the government, was filed in the Superior Court years after the defendant's conviction was affirmed by the Supreme Judicial Court. The upshot of this discussion is that it appears that it is the *Tucceri* "substantial risk" standard that governs Limone's present motion for a new trial, rather than the *Simmons* "substantial likelihood of a miscarriage of justice" standard. This is so because this case is in a procedural position similar to *Grace*, and is not part of an appeal to the Supreme Judicial Court under G.L. c. 278, § 33E, as was *Simmons*. See *Commonwealth v. Wright*, 411 Mass. 678, 681 (1992) (standard of review by Supreme Judicial Court of unpreserved claim of error in context of claim of ineffective assistance of counsel is "substantial likelihood of a miscarriage of justice"). This was the standard used in *Commonwealth v. Salvati*, 420 Mass. 499, 506 (1995). That said, however, which of these standards applies is not determinative of the issues I now consider. As I note below, see *infra* note 20, I conclude that the newly discovered evidence creates a substantial likelihood of a miscarriage of justice as well as a substantial risk that the jury would have reached a different conclusion vis-à-vis Limone.

<sup>16</sup> I did not review the transcript of the lengthy jury empanelment.

<sup>17</sup> Barboza was a "highly vulnerable" witness in another case. See *Patriarca v. United States*, 402 F.2d 314 (1st Cir. 1968) (where Barboza testified against defendants Patriarca as well as Cassesso and Tameleo).

Limone had had information that Patriarca set up the murder and not Limone, and that Flemmi was an F.B.I. informant, it is highly likely that the defense theory that the F.B.I. was manipulating Barboza's testimony could have been buttressed. Moreover, the newly disclosed evidence about Vincent James Flemmi would have provided Limone considerable opportunity to challenge Barboza's testimony as to Flemmi. Barboza calls Flemmi his "partner" during March of 1965, the time of the Deegan murder. Trial Transcript (hereafter the "Transcript") Vol. 34, pp. 4160-61. Barboza testified that Flemmi was at the Ebb Tide on the night of the murder. Transcript Vol. 34, p. 4167; *id.* at Vol. 35, p. 4431. But Barboza denies that Flemmi left the Ebb Tide with Barboza and the others on the night of the murder. Transcript Vol. 34, p. 4172.

In addition, the newly discovered evidence is consistent with other evidence Limone has previously submitted to the court in his prior new trial motions. For example, in an affidavit submitted in 1970, Barboza stated that he is "free from duress or coercion" and wishes "to recant certain portions of...[his] testimony...[concerning] the involvement of Henry Tameleo, Peter J. Limone, Joseph L. Salvati and Lewis Grieco in the killing of Teddy Deegan." *Cassesso*, 360 Mass. at 573. He further stated that the testimony he was offering "to give concerning the killing of...Deegan and those individuals responsible for his death will be the whole truth known to" him. *Id.* See also *id.* at 574-75 (detailing affidavit of counsel for Limone). The Supreme Judicial Court observed that this affidavit was deficient in a number of respects, but left it open to Limone and his codefendants to renew their new trial motion if they could expand on Barboza's affidavit. *Id.* at 573, 579. In an affidavit dated April 9, 1976 and submitted in 1990, Gerald Alch, Esq. states that he and Barboza had several conversations in July and August 1970

at the Massachusetts Correctional Institute in Walpole to discuss Barboza's trial testimony. Alch states that Barboza told him that "any testimony [Barboza] had given in the trial of the Deegan case which in any way implicated Peter Limone was false; that Mr. Limone was neither present at the time of the commission of said crime, nor had any knowledge thereof and was in no way involved under any circumstances which could classify him as an accessory before or after the fact." Barboza states that he was motivated at trial by his belief that implicating Limone in the murder would help him (Barboza) obtain a new identity, relocation and financial assistance from law enforcement officials.<sup>18</sup> He also claimed that the prosecution promised him post-trial protection. Because the promises made to him had not been kept, Barboza "felt no longer obligated to adhere to his false implication of Limone." Mem. of Decision of Dolan, J., dated Feb 13, 1990, at 9.

For these reasons, I find and rule that the F.B.I. documents are newly discovered evidence which, as both the Commonwealth and Limone state, cast "real doubt" on the justice of Limone's convictions. They are material<sup>19</sup> and carry a measure of strength in support of Limone's position. Thus, I find and rule that there is a substantial likelihood that the jury would have reached a different conclusion had this evidence been available at trial.<sup>20</sup> Accordingly, I allow the motions for a new trial and I also allow the Commonwealth's motion to vacate the convictions.

<sup>18</sup> Barboza had been placed in protective custody by Federal officials before trial of this case. Transcript, Vol. 42, p. 5810.

<sup>19</sup> I make no finding, of course, as to the *accuracy* of the information set forth in the F.B.I. documents.

<sup>20</sup> I also find that the newly discovered evidence satisfies the higher standard of *Simmons*, 417 Mass. 60. The newly discovered F.B.I. documents create a substantial likelihood of a miscarriage of justice.

**II. BAIL**

Also before me are motions of the defendant and the Commonwealth to admit Limone to bail. After a bail hearing and consultation with the Department of Probation, I allowed the defendant's request (which the Commonwealth did not oppose) that Limone be released on personal recognizance subject to strict conditions detailed on the record. I did so having considered the factors enumerated in G.L. c. 276, § 58 on the basis of the information before me. That information showed, among other factors, the following:

Limone is now about 65 years old. His wife, Olympia Limone, still resides in the same house in Malden, Mass. where she and Limone lived before Limone was incarcerated; she and their children have maintained contact with Limone throughout his incarceration and Limone will reside with them now. Limone has also maintained contact with his immediate and extended family during his incarceration.

I also note that the materials provided me at today's bail hearing include a commendation letter from the Superintendent of M.C.I. Norfolk to Limone. This letter expresses appreciation to Limone for his participation in resolving a hostage situation at M.C.I. Norfolk on March 6, 1975, where two correctional officers were taken hostage and later shot. The letter also states that Limone helped to resolve the situation by negotiating personally with the hostage takers. Among the other factors I take into consideration is that Limone successfully completed approximately 170 furloughs before that program was eliminated. I also take into consideration that the Commonwealth states it is not now in a position to decide whether it will prosecute Limone again on the pending indictments.

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ORDER

For the foregoing reasons, the motion for a new trial of Peter J. Limone is ALLOWED; the Commonwealth's motion to vacate defendant's convictions, grant a new trial and admit Limone to bail is also ALLOWED.

*Margaret R. Hinkle*  
Margaret R. Hinkle  
Justice of the Superior Court

DATED: January 5, 2001

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U.S. Department of Justice

United States Attorney  
District of Massachusetts

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December 19, 2000

John Cavicchi, Esquire  
Attorney at Law  
25 Barnes Avenue  
East Boston, MA 02128

RE: Disclosure of FBI Documents Relating to the  
March 12, 1965 Murder of Edward "Teddy" Deegan

Dear Mr. Cavicchi:

This letter and its enclosures are being sent in response to your letter to me dated 11/16/2000, in which you asked that I provide "any information" that would assist you in responding to a Court Order in the matter of the Commonwealth of Massachusetts v. Peter Limone, Superior Court Crim. No. 32367, 69-70, which is pending before the Honorable Margaret R. Hinkle. As you explain, this Order requires you to file a Non-Live Witness Statement listing police reports, affidavits, transcripts and any other documents that you intend to rely upon in support of your motion for a new trial filed on behalf of your client, Peter Limone. I understand the matter being heard relates to your client's conviction for the 1965 murder of Edward "Teddy" Deegan and involves your motion for a new trial in that case.

In response to your request, FBI employees assigned to the Justice Task Force (JTF) initiated a review of Boston FBI informant, intelligence and investigative files that contain information that dates back to the 1950s and 1960s. JTF's search first determined that around the time Deegan was murdered, Vincent James Flemmi was an FBI informant. According to the file maintained in support of efforts to develop Flemmi as an informant, focus on Flemmi's potential as a source began on about 3/9/1965. The first reported contact with Flemmi was by FBI Boston Special Agent (SA) H. Paul Rico on 4/5/1965. The informant file was officially opened and assigned to SA Rico on 4/15/1965 and reflects that Flemmi was contacted a total of five times as an informant, each time by SA Rico. The dates of contact were 4/5/1965, 5/10/1965, 6/4/1965, 7/22/1965 and 7/27/1965. Flemmi's file was closed on 9/15/1965 after Flemmi was charged with a crime, unrelated to the Deegan murder.

Vincent James Flemmi's informant file was found to contain two documents that relate to the Deegan murder, one of which is a summary of information known by the Boston FBI about Flemmi's criminal activities at the time he was opened as an informant. This summary includes information previously reported to the FBI by other sources. The JTF attempted to review these other source files and any other intelligence files where their information may have been filed. Efforts have also been made to locate any investigative files that relate to the Deegan murder.

Thus far, a total of five documents have been located that appear to be responsive to your request. These are: 1) 3/15/1965 Memorandum from Boston SA H. Paul Rico to the SAC, Boston, reporting a contact with a source on 3/10/1965. 2) 3/15/1965 Memorandum from Boston SA H. Paul Rico to the SAC, Boston, reporting a contact with the same source on 3/13/1965. 3) 3/19/1965 Airtel from SAC, Boston to Director, FBI, entitled "Criminal Intelligence Program, Boston Division" summarizing developments during that week. 4) 4/22/1965 Memorandum from a Boston "Correlator" to the SAC, Boston, entitled "Vincent James Flemmi, Aka (sic)" which summarizes information in FBI files known about Flemmi at the time he was opened as an informant. 5) 6/9/1965 Airtel from SAC, Boston, to Director, FBI, entitled "BS-9190-PC" which reports on the status of efforts to develop Vincent James Flemmi as an FBI informant. (These documents have been sequentially numbered 0000 1 thru 000026.)

Several impediments to the JTF's search for records were encountered. Since the Deegan murder occurred over 30 years ago, many files that could logically contain relevant information were routinely destroyed years ago. For example, the enclosed 4/22/1965 summary memorandum references many other source reports that contain the original record of this information. Efforts to locate these original records have been unsuccessful. As a result, this summary memorandum represents the only surviving record of its information. Simply stated, the raw source data that was originally reported appears to no longer exist. Efforts continue to locate copies of this data that may have been filed in intelligence files.

Only two informants have been found to have reported information relating to the Deegan murder after the murder occurred. Enclosures 1 and 2 report information from the same source and Enclosure 3 appears to report information from this source to FBI Headquarters. Each of the files for the informants whose information is contained in the enclosures appears to have been the subject of routine destruction. In this regard, however, I would note that a case file containing information from Joseph Baron (Barboza) was located on this date, and a review of that file will begin shortly.

You will note that the attachments have been subjected to a routine redaction process which removes information that is not relevant to your request or has otherwise been lawfully excluded. It should be noted that the JTF is not completely familiar with the issues before Judge Hinkle. In addition, the JTF has not completed its review of the many FBI files from the Deegan murder time frame. Therefore, it can not be stated with certainty at this time that the attached documents represent the only relevant material in FBI files. If either party to the Limone matter wishes to provide greater specificity as to the materials that would be relevant to that proceeding, the JTF will consider this information in its record search. Regardless of whether such a request is received, the JTF will promptly advise you if any additional relevant documents are discovered.

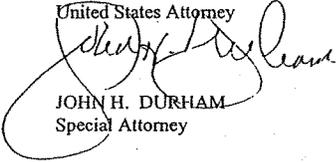
As you know, the JTF has also been in contact with Attorney Victor Garo who represents Joseph Salvati. Mr. Garo previously has brought issues regarding Salvati's conviction for the

Deegan murder before the Superior Court and is continuing his efforts to exonerate Salvati for this murder. These documents also appear to be relevant to concerns previously expressed to the JTF by Attorney Victor Garo on behalf of his client, Joseph Salvati, and, therefore, copies are being provided to him.

Let me conclude by stating that the JTF, the United States Attorney's Office, the Boston FBI Office and FBI Headquarters understand the potential significance of the enclosures to Mr. Limone and Mr. Salvati. These documents are being made available to you with the concurrence and encouragement of the Boston FBI and FBI Headquarters. Collectively, efforts will continue to locate other documents that may be responsive to your concerns. If you have questions concerning the enclosures, please do not hesitate to contact me at telephone number (617) 854-1500 (Justice Task Force, 18 Tremont Street, Suite 300, Boston, MA 021308), or (203) 821-3700 (United States Attorney's Office, 157 Church Street, 23<sup>rd</sup> Floor, New Haven, CT 06510).

Very truly yours,

DONALD K. STERN  
United States Attorney



JOHN H. DURHAM  
Special Attorney

cc: Assistant District Attorney Mark Lee w/ Enclosures  
William Koski, Esquire w/ Enclosures  
Victor Garo, Esquire w/ Enclosures

Donald K. Stern  
United States Attorney

Charles Prouty  
SAC FBI Boston