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.[1] 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.[2] 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

[1] 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.

[2] 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.[3,4]

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,[5] Cassesso, Salvati, French, Grieco and others, not including Limone.[6] 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.[7] The convictions of Limone and all the codefendants were affirmed by the Supreme Judicial Court. *Commonwealth* v. *French*,

[3] 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.*

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

[5] Barboza pled guilty to two indictments for conspiracy on the first day of jury selection. He was murdered in 1976.

[6] 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.

[7] 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).[8]

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 an at evidentiary hearing on this motion, should I determine an

[8] 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.[9] 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

[9] 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.[10] I summarize them below.

[10] 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.[11] It then states:

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[11] 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:[12]

> 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.

[12] 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

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 FLEMMA 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.[13]

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

[13] 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.[14] 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."[15]

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[14] 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.

[15] 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 an 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.[16]

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."[17] *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.

[16] I did not review the transcript of the lengthy jury empanelment.

[17] 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.[18] 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[19] 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.[20] Accordingly, I allow the motions for a new trial and I also allow the Commonwealth's motion to vacate the convictions.

---

[18] Barboza had been placed in protective custody by Federal officials before trial of this case. Transcript, Vol. 42, p. 5810.
[19] I make no finding, of course, as to the *accuracy* of the information set forth in the F.B.I. documents.
[20] 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.

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
Justice of the Superior Court

DATED: January 5, 2001

(17)

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT DEPARTMENT
NO. 32368

COMMONWEALTH

v.

JOSEPH SALVATI

NOLLE PROSEQUI

Now comes the Commonwealth in the above-captioned matter and respectfully states that it will not prosecute Indictment No. 32368 any further.

As grounds therefor, the Commonwealth respectfully states as follows:

(1) There exists newly discovered evidence – various FBI documents disclosed to the Commonwealth and the defendant for the first time on December 19, 2000 – which significantly undermines (a) the credibility of the Commonwealth's principal witness at the defendant's first trial, Joseph Barboza, and (b) the Commonwealth's theory of the defendant's role in the murder of Edward Deegan, as presented at the defendant's first trial.

(2) Joseph Barboza was shot and killed on February 11, 1976.

(3) The Commonwealth has conducted a comprehensive review of the facts and circumstances surrounding the arrest, trial, and conviction of the defendant for his alleged role in the murder of Edward Deegan, including the impact of the contents of the newly discovered FBI documents.

(4) In addition, the Commonwealth has carefully and thoroughly evaluated the nature, quality, and sufficiency of the alleged evidence against the defendant.

(5) As a result of that review and evaluation, the Commonwealth has concluded that it does not now have a good faith basis – legally or ethically – to proceed with any further prosecution of the defendant.

Respectfully Submitted
For the Commonwealth,

RALPH C. MARTIN, II
DISTRICT ATTORNEY

By: _____
MARK LEE
Assistant District Attorney
Homicide Unit

By: David E. Meier
DAVID E. MEIER
Chief of Homicide
One Bulfinch Place
Boston, MA 02114
(617) 619-4240

Dated: January 30, 2001

1 COMMONWEALTH OF MASSACHUSETTS

2 Suffolk, ss Superior Court

3 No. 32367 Criminal

4

5

6 COMMONWEALTH

7 V

8 PETER LIMONE

9

10 MOTION TO DISMISS

11

12 Before Hinkle, J.
13 Tuesday, January 30, 2001
Cambridge, Massachusetts
Pages 1 - 11

14

15

16 APPEARANCES:

17 Mark T. Lee, Assistant District Attorney
David E. Meier, Assistant District Attorney
On Behalf of the Commonwealth

18

19 William T. Koski, Esq.
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20 Boston, Massachusetts 02114
On Behalf of the Defendant

21

22

23 Virginia Karas
24 Official Court Reporter

EXHIBIT
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1 behalf of the Commonwealth as well.

2 THE COURT: Good afternoon, counsel. Good

3 afternoon, Mr. Limone.

4 We are here on a status conference, Mr. Lee?

5 MR. LEE: Your Honor, the Commonwealth today

6 is before this Court seeking the entry of a nol

7 pros in its case against Mr. Limone. In coming to

8 this decision, the Commonwealth has relied on its

9 comprehensive review and evaluation of the nature,

10 quality, and sufficiency of the preexisting

11 evidence against Mr. Limone, and, more importantly,

12 the impact of the information contained in the

13 newly discovered FBI documents on that preexisting

14 evidence. The nature and the contents of the FBI

15 documents has been the topic and subject of prior

16 discussions, and I don't think it bears repeating

17 what's in those documents here.

18 But, as a result of that review, comparison,

19 and evaluation, the Commonwealth has concluded that

20 it does not now have a good-faith basis, either

21 legally or ethically, to proceed with any further

22 prosecution of Mr. Limone. Therefore, the

23 Commonwealth here states that it will not prosecute

24 this indictment any further.

The Boston Globe
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Wednesday, January 31, 2001

Metro/Region

DA: NO NEW TRIALS AGAINST 2 IN '65 CASE

Ralph Ranalli, Globe Staff

Suffolk District Attorney Ralph C. Martin II agreed yesterday not to seek new trials against two men who both spent half their lives in prison for a 1965 gangland murder they insist they did not commit.

The filing of [redacted] prosequi (non-prosecution) motions by Martin's office effectively brings to a close the 33-year effort by North End resident Joseph Salvati and Peter [redacted] of Malden to prove their innocence.

"It's finally over," Salvati, 68, said yesterday in the lobby of Middlesex Superior Court, where the motions were filed. "It's a great day. A long time coming, but it's finally here."

The documents filed by Martin's office are, in essence, a pledge by his office not to seek a new trial against the two men in the murder of small-time hoodlum Edward "Teddy" Deegan in a Chelsea alleyway.

"After a careful and thorough review of the evidence, the Commonwealth has concluded that there are not reasonable grounds, legally, ethically or morally, to proceed any further with this prosecution," Assistant District Attorney David Meier, chief of Martin's Homicide Unit, said yesterday.

Yet one of [redacted] attorneys, William Koski, said he was disappointed that Martin's office had not taken the further step of asking that the indictments against his client and Salvati be dismissed.

Lawyers for both men say that recently uncovered FBI documents strongly suggest that not only were the two men innocent, but they were framed by the bureau and its key witness in the case, underworld assassin Joseph "The Animal" Barboza.

While the case may be over in criminal court, lawyers for the two men have suggested that they will file a civil suit seeking to compensate them for the decades they spent in prison.

71

FBI says documents clear it of wrongdoing in '65 case

By Shelley Murphy
GLOBE STAFF

Facing the threat of a lawsuit from two men who say the FBI sat on information while they were framed for a 1965 gangland murder, the bureau insisted yesterday that documents clear it of any wrongdoing.

Last month, a judge tossed out the murder convictions of Peter Limone and Joseph Salvati after reviewing newly discovered FBI reports that had never been turned over to defense lawyers. The reports revealed that informants implicated other men -- including an FBI informant -- in the slaying of Edward "Teddy" Deegan.

But Charles Prouty, the special agent-in-charge of the FBI's Boston office, pointed to a section of the FBI reports that show that the information was "disseminated" to Chelsea police within days of the murder.

The FBI could not say, however, if the information was also given to the Suffolk district attorney's office, which prosecuted the case, because FBI files on the murder no longer exist. The information was never presented at trial.

"The FBI was forthcoming. We didn't conceal the information. We didn't attempt to frame anyone," Prouty said.

But lawyers who are poised to sue the FBI on behalf of Salvati and Limone said the FBI played a pivotal role in the case and had a moral and legal obligation to alert the defendants that they had information that might help prove their innocence.

Attorney Victor Garo, who represents Salvati, said, "The FBI still is in complete denial. The FBI did not want the jurors to know the truth. The truth be damned. Convictions were more important."

Attorney William Koski, who plans to file a suit on Limone's behalf within a month, said, "I think it's fairly lame to say that they're off the hook just because of some memo that suggests the FBI may have passed information to the Chelsea police."

Koski said the Chelsea police and the Suffolk district attorney's office may also have been at fault in failing to turn over information.

Limone spent 33 years in prison before his release last month. Salvati spent 30 years in prison before Governor William Weld commuted his sentence in 1997.

Two other defendants, Louis Greco of Revere and high-ranking Mafioso Henry Tameleo, died in prison.

The documents show that informants told the FBI that notorious hit man turned government witness Joseph "The Animal" Barboza framed Salvati, Limone, Greco, and Tameleo for the murder, while protecting the real killers who were his friends.

Vincent "Jimmy the Bear" Flemmi, an FBI informant and brother of longtime FBI informant Stephen Flemmi, was allegedly one of the killers.

EXHIBIT
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The Boston Globe
THURSDAY, FEBRUARY 15, 2001

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

The Estate of John L. McIntyre by Emily McIntyre, in her capacity as co-administrator of the Estate of John L. McIntyre, Christopher McIntyre, in his co-capacity as co-administrator, Plaintiff v. United States of America H. Paul Rico, John Morris, John J. Connolly, Roderick Kennedy, Robert Fitzpatrick, James Ring, James Greenleaf, James Ahearn, Kevin Weeks, James Bulger, Stephen Flemmi, John Does, Nos. 1-50, Defendants	)	Civil Action No.:

COMPLAINT

I. INTRODUCTION

1. The Estate of John L. McIntyre files this complaint, pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671, et seq, Chapter 229 of the Massachusetts General Laws and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*,

403 U.S. 388 (1971), against the United States of America, eight former agents of the Boston Office of the FBI, and James Bulger, Stephen Flemmi and Kevin Weeks.

2. Plaintiff seeks redress for the kidnap, torture and murder of John L. McIntyre ("McIntyre"). As a proximate cause of the federal defendants' acts and/or omissions, McIntyre was wrongfully killed and his rights as guaranteed by the Fourth and Fifth Amendments to the United States Constitution and Massachusetts law were violated, as were the Estate's rights to redress its grievances in the courts of the United States as guaranteed by the First and Fifth Amendments to the United States Constitution.

3. Plaintiff alleges that beginning in or about 1969 and continuing up to July 6, 2000, the federal defendants conspired to protect and shield from prosecution defendants Bulger, Flemmi, Weeks and other members of the so-called "Winter Hill Organized Crime Group" in exchange for Bulger's and Flemmi's agreements to provide information to aid the FBI in its prosecution of La Costra Nostra ("LCN") – Bulger's and Flemmi's competitors in the Boston, Massachusetts Organized Crime market. It was the object of the conspiracy for the federal defendants to protect Bulger and Flemmi from arrest and prosecution in order to maintain their roles as high echelon informants, providing information to the FBI. Plaintiff alleges that the defendant United States and federal defendants knew or should have known that defendants Bulger and Flemmi were involved in violent criminal activity, including murder, extortion and assault, but despite this knowledge failed or refused to investigate Bulger and Flemmi's criminal activity for purposes of prosecution because, if prosecuted, the federal defendants would lose Bulger and Flemmi's services as informants.

4. The Complaint alleges that the defendant United States continued to utilize Bulger and Flemmi as top echelon informants, even though they had been involved in approximately 23 murders, including at least two persons who were directly cooperating with the FBI at the time of their execution. Furthermore, the complaint alleges that the federal defendants failed to control the criminal activities of Bulger and Flemmi; failed to enforce the Attorney General Guidelines concerning high echelon informants; violated the Attorney General's Regulations and Policies by failing to inform appropriate law enforcement authorities of the criminal activities of Bulger and Flemmi; failed to properly supervise federal agents, including Connolly and Morris in their handling of Bulger and Flemmi as top echelon informants; and failed to investigate for purposes of prosecution the circumstances of McIntyre's disappearance and death.

5. For 15 years, the family of John L. McIntyre was ignored by the FBI, except for a brief early visit, following his murder, when the FBI claimed that McIntyre was alive and a fugitive. On September 15, 1999, the United States District Court for the District of Massachusetts issued an opinion that disclosed, for the first time, the FBI's role and involvement in the murder of John L. McIntyre and others. Four months following the court's order, the bones of John L. McIntyre were uncovered in a shallow make-shift grave in Dorchester, Massachusetts.

6. This complaint closely follows the findings and rulings of the United States District Court for the District of Massachusetts. See *United States v. Salemme*, 91 F.Supp. 2d 141 (D. Mass. 1999). The Complaint incorporates by reference and includes herein the findings and rulings contained in that order, as well as the facts and circumstances set forth in *United States v. Kevin J. Weeks*, 00-10245-RGS, and *United*

States v. Kevin P. O'Neil, James J. Bulger and Stephen J. Flemmi, 99-10371-RGS, charging Weeks, Bulger and Flemmi with the murder of John L. McIntyre.

II. PARTIES

7. Emily McIntyre and Christopher McIntyre in their capacities as co-administrators of the Estate of John L. McIntyre bring this action on behalf of the Estate. The Estate is being probated in Norfolk County Probate Court, Commonwealth of Massachusetts. The co-administrators duly are qualified and duly authorized to maintain this action.

8. The United States of America ("United States") is a defendant in this action pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq. arising from the acts and/or omissions of employees and agents of the Federal Bureau of Investigation ("FBI"), an agency of defendant, and a party defendant for claims arising from Chapter 229 of the Massachusetts General Laws in which individual agents of the FBI are named as defendants for negligent or wrongful acts or omissions while acting within the scope of their office or employment by the FBI, a federal agency pursuant to 28 U.S.C. § 2671 et seq.

9. Defendant H. Paul Rico ("Rico") is a resident of Florida. During all times alleged in this complaint, Rico was acting within the scope of his office or employment as a Special Agent of the FBI. Rico is sued individually and in his official capacity.

10. Defendant John Morris ("Morris") resides in a location presently unknown. During all times alleged in this complaint, Morris was acting within the scope of his office or employment as a Special Agent of the FBI. Morris is sued individually and in his official capacity. From 1970 until in or about December 1995, Morris was an

FBI Special Agent. From approximately March 1972 until approximately November 1991, Morris was assigned to the FBI's Boston field office. For much of that time, Morris was a supervisory special agent, and, between December 1977 and January 1983 was the direct supervisor of John J. Connolly, Jr. on the FBI's organized crime squad.

11. Defendant, John J. Connolly, Jr. ("Connolly") is a resident of Lynnfield, Massachusetts. During all times alleged in this complaint, Connolly was acting in the scope of his office or employment as a Special Agent of the FBI. Connolly is sued individually and in his official capacity. From November 1968 to December 1990, Connolly was a Special Agent of the FBI. From February 1973 until his retirement in December 1990, Connolly was assigned to the Boston Office of the FBI.

12. Defendant Roderick Kennedy ("Kennedy") is a resident of Quincy, Massachusetts. During all times alleged in this complaint, Kennedy was acting within the scope of his office or employment as a Special Agent of the FBI. Kennedy is sued individually and in his official capacity.

13. Defendant Robert Fitzpatrick ("Fitzpatrick") resides in a location presently unknown. During all times alleged in this complaint, Fitzpatrick was acting within the scope of his office or employment as a Special Agent of the FBI. Fitzpatrick is sued individually and in his official capacity.

14. Defendant James Ring ("Ring") is a resident of Boston, Massachusetts. During all times alleged in this complaint, Ring was acting within the scope of his office or employment as a special agent of the FBI. Ring is sued individually and in his official capacity. In or about January 1983, Ring became the supervisory Special Agent of the

Organized Crime Squad for the Boston Office of the FBI. Ring retired from the FBI in or about 1990. During the time of his tenure, John L. McIntyre was murdered.

15. Defendant James Greenleaf ("Greenleaf") is a resident of Scarborough, Maine. During all times alleged in this Complaint, Greenleaf was acting within the scope of his office or employment as a Special Agent of the FBI. Greenleaf is sued individually and in his official capacity. During pertinent times alleged in the Complaint, Greenleaf was the FBI Special Agent in charge of the Boston Office commencing in November 1982 and served in that capacity until December 1986. During the time of his tenure John L. McIntyre was murdered.

16. Defendant James Ahearn ("Ahearn") resides in a location presently unknown. During all times alleged in this complaint, Ahearn was acting within the scope of his office or employment as a Special Agent of the FBI. Ahearn is sued individually and in his official capacity. During pertinent times alleged in the Complaint, Ahearn was Special Agent in charge of the Boston FBI Office.

17. Defendant James Bulger ("Bulger" a/k/a "Whitey") is a resident of South Boston, Massachusetts, and for the periods alleged in the complaint was a member of the Winter Hill Gang, a criminal organization that engaged in multiple crimes, including murder, bribery, extortion, loan sharking, and illegal gambling in the greater Boston, Massachusetts area ("Winter Hill Gang" or "Bulger Group"). Bulger was officially opened as a confidential informant for the FBI in 1975 and became a top echelon informant for the FBI in February 1976. Bulger is now a fugitive from justice. Bulger has been indicted for aiding and abetting in the murder of John L. McIntyre. *United States v. O'Neil*, 99-CR-10371-RGS, Superseding Indictment.

18. Kevin Weeks ("Weeks") is a resident of Quincy, Massachusetts and was a member of the Winter Hill Gang. On or about July 6, 2000, Weeks entered into a written plea agreement with the United States acknowledging his role in the murder of John McIntyre. On or about July 12, 2000, a superseding information was filed in this Court in *United States v. Kevin J. Weeks*, 00-10245-RGS, alleging in part, that Weeks aided and abetted in the murder of McIntyre.

19. Defendant Stephen Flemmi ("Flemmi") is a resident of Boston, Massachusetts and also was a member of the Winter Hill Gang. In or about September 1980, Connolly officially registered Flemmi as a confidential informant for the FBI. Flemmi has been indicted for aiding and abetting in the murder of John L. McIntyre in *United States v. O'Neil*, 99-CR-10371-RGS, Superseding Indictment.

20. John Does Nos. 1 through 50 are persons presently unknown to the plaintiff who, violated the plaintiff's rights as guaranteed by the United States Constitution and Massachusetts law and/or conspired with others to do so. The John Does may be private individuals, state officials or agents of the United States Government who acted in concert with the federal officials named in this Complaint to deny plaintiff its rights guaranteed by the United States Constitution and Massachusetts law. Based on information and belief, the John Does and other persons, both known and unknown, actively participated in, ratified, or otherwise implemented the conspiracy alleged herein. Plaintiff believes that the conduct and statements of these individuals in furtherance of the conspiracy alleged herein are admissible against the named defendants, but further states that it may request leave to amend the Complaint as appropriate.

Amendment to the United States Constitution and/or its right not to be deprived of property without due process of law as secured by the Fifth Amendment to the United States Constitution in that the Estate was deprived its right to seek a civil remedy from 1984 to the date of this Complaint for the kidnapping, torture and murder of John L. McIntyre resulting in lost damages.

475. The actions of the defendants Morris, Connolly, Kennedy, Fitzpatrick, Ring, Greenleaf and Ahearn, alleged above, were an extreme deviation from reasonable standards of conduct, undertaken intentionally with actual malice, and/or with a reckless disregard for their likely consequences. As a result, the plaintiff is entitled to an award of punitive damages.

Count XIII – Reasonable Attorney's Fees and Cost of Suit – Defendants United States, Rico, Morris, Connolly, Kennedy, Fitzpatrick, Ring, Greenleaf and Ahearn

476. The plaintiff incorporates the facts alleged in paragraphs 1-475 of this Complaint and repeats and recites all previous allegations as if fully set forth herein.

477. The plaintiff has been required to retain the services of counsel to prosecute the present lawsuit.

478. The actions of the Defendants alleged above were in no instance substantially justified under the circumstances. The Estate is therefore entitled to an award of reasonable attorneys' fees and costs of suit in prosecuting the present action, under the provisions of the Equal Access to Justice Act, 28 U.S.C. § 2412; F.R.Civ.P. 54; and pursuant to other provisions of law.

WHEREFORE, the plaintiff demands judgment against defendants as follows:

A. Damages in the amount of $50,000,000.00;

B. Plaintiff's costs and reasonable attorneys' fees in this action; and

C. Such other and further relief as the Court deems just and proper.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

Respectfully submitted,
The Estate of John L. McIntyre
By Their Attorneys
SHAHEEN & GORDON, P.A.

Dated: March 2, 2001

By:_____

William E. Christie #566896
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(603) 225-7262

and

LANE, ALTMAN & OWENS

Dated: March 2, 2001

By:_____

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Saturday, March 24, 2001

Salemme claim of FBI frame-up draws criticism from prosecutors

BOSTON (AP) - Francis P. "Cadillac Frank" **Salemme's** claim that he was framed for a 1968 car bombing is not sitting well with federal prosecutors.

In 1999, **Salemme,** 67, pleaded guilty to racketeering in connection with a conspiracy to murder attorney John Fitzgerald. In return, he agreed to testify against former Federal Bureau of Investigation agent John Connolly and Winter Hill Gang leaders Stephen "The Rifleman" Flemmi and James J. "Whitey" Bulger.

Now, **Salemme** claims the FBI pressured a witness to lie in order to protect Flemmi, an informant, and make sure he went to prison. He filed a habeas corpus petition making the claim on March 12.

"Tellingly, **Salemme** never claims that he is actually innocent of participating in the conspiracy to murder Fitzgerald," U.S. Attorney Donald K. Stern's office said in a motion filed Friday.

Prosecutors also said **Salemme** "was aware of the various issues surrounding Robert Daddieco at the time **Salemme** pleaded guilty." They said **Salemme's** petition should be rejected because his allegations, even if accepted as true, do not entitle him to any relief.

Both **Salemme** and Flemmi were indicted for the crime, based on information provided by witness Robert Daddieco. **Salemme** was convicted in 1973 and served 15 years in prison for the 1968 bombing, which tore off one of Fitzgerald's legs. But Flemmi fled - tipped off, says **Salemme's** attorney, Anthony Cardinale, by FBI agent H. Paul Rico.

In 1999, U.S. District Court judge Mark Wolf ruled that Rico aided the unlawful flight of a fugitive by warning Flemmi of the impending indictments.

In 1998, Flemmi testified that he returned after Rico told him Daddieco had recanted his testimony and the charges were bring dropped.

---- INDEX REFERENCES ----

KEY WORDS: AP STATE WIRES: MASSACHUSETTS

NEWS SUBJECT: English language content; Crime and Courts; Political and General News; Crime (ENGL GCRIM GCAT CRM)

3/13/01 Boston Herald 017
2001 WL 3795658

Boston Herald
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Tuesday, March 13, 2001

NEWS

Salemme claims FBI fudged evidence against him
J.M. LAWRENCE

The head of the New England Mob wants a federal judge to spring him from prison based on claims that the government framed him for a 1968 car bombing that left an attorney crippled.

In a motion filed Friday in federal court, attorneys for Francis P. "Cadillac Frank" **Salemme** want the chance to prove that former FBI agents manipulated the key witness in the case to nail the crime boss for the explosion.

"The government literally suborned perjury in order to frame him in the state case," said **Salemme** attorney Anthony P. Cardinale in an interview last week.

Salemme spent 17 years in prison for the bombing that critically wounded attorney John **Fitzgerald** on Jan. 30, 1968. **Salemme** is now serving 11 years on racketeering charges.

"We're asking the judge for whatever relief he finds appropriate," Cardinale said.

According to federal documents obtained by the Herald, **Salemme** has already agreed to help a U.S. corruption task force probe alleged wrongdoing by former FBI agents and their gangster informants James "Whitey" Bulger and Steven "The Rifleman" Flemmi.

The gangsters were his cohorts in bookmaking and extortion for years while secretly working as informants. One of their handlers - retired agent John Connolly - has been indicted for allegedly covering up Bulger gang crimes. Connolly denies the charges.

The government also has turned to **Salemme** for help in probing the career of legendary agent H. Paul Rico, who served as Flemmi's handler in the late 1960s.

The special task force is uncovering evidence that the FBI manipulated the bombing case to convict **Salemme** while protecting Flemmi, according to **Salemme's** motion.

Flemmi was originally indicted in the bombing but never stood trial.

The key witness in the bombing case, Robert Daddieco, "was induced to commit perjury on several occasions by the FBI in order to shield Flemmi and to ensure the defendant's wrongful conviction," Cardinale said in his motion.

"The FBI in the mid-1980s continued its misconduct with regard to Daddieco, by ensuring that any information regarding the prior subornation of perjury remained secret," the motion says.

The FBI and the U.S. Attorney's Office has declined comment on matters related to the task force.

Judge Mark L. Wolf has ordered U.S. attorneys to respond to **Salemme's** petition by March 23.

Reacting to news of **Salemme's** agreement to help federal investigators, legal sources yesterday said the Mob boss will walk a tightrope if he ever takes the stand as the government's witness.

Defense attorneys could question him about Mob activities as they seek to undermine his credibility, one defense attorney said.

"He can't take the Fifth," the attorney said. "He'd have to give up the whole damn Mafia."

Salemme's attorney argues that the new information about the FBI's alleged role in the 1968 case would have changed **Salemme's** 1999 plea bargain. He pleaded guilty to racketeering acts, including two involving the bombing.

"Had we known about this information in a timely manner, we would have succeeded in having the entire case thrown out because of the blatant misconduct on the part of the government," Cardinale said.

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

Caption: **SALEMME:** Says he was framed in 1968 bombing case.

---- INDEX REFERENCES ----

NAMED PERSON: CARDINALE, ANTHONY

ORGANIZATION: FEDERAL BUREAU OF INVESTIGATION

NEWS SUBJECT: English language content (ENGL)

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2001 WL 3923873

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Tuesday, March 13, 2001

Metro/Region

SALEMME REPORTEDLY TO TESTIFY AGAINST BULGER

Ralph Ranalli, Globe Staff

Former New England Mafia boss Francis P. "Cadillac Frank" **Salemme** has agreed to be a witness for the government against two fellow underworld figures and two FBI agents, and is also making a bid to attack the conviction on which he is imprisoned, according to sources and court documents.

Sources yesterday confirmed a published report in the Boston Herald that **Salemme,** 67, has agreed to testify against former FBI Special Agents John Connolly and H. Paul Rico and their informants, South Boston crime boss James "Whitey" Bulger and his longtime partner-in-crime, Stephen "The Rifleman" Flemmi.

Connolly, Bulger, and Flemmi have been indicted on racketeering charges in connection with their work for the FBI's Top Echelon Informant Program, which authorized FBI agents to recruit high-ranking members of mob groups as sources of information.

Connolly has been accused of breaking the law by leaking the names of other informants to Bulger and Flemmi and warning them of impending indictments.

Salemme testified before a grand jury last year that Connolly gave him a similar warning of an impending 1995 indictment.

The sealed document containing information about **Salemme's** offer to repeat his grand jury testimony in court was apparently inadvertently left open for public inspection last week.

Meanwhile, **Salemme** has filed a federal petition that claims the FBI, in an effort to protect Flemmi, pressured Robert Daddieco to commit perjury several times in the court case related to the 1968 attempted murder of Everett defense lawyer John E. **Fitzgerald,** who was maimed in a car bombing.

Salemme was convicted of attempted murder in the **Fitzgerald** case and served 15 years in prison.

In a December 1999 plea agreement, **Salemme** pleaded guilty to racketeering, loansharking, and extortion. In return, prosecutors

agreed to drop murder charges against him. He is currently serving an 11-year sentence in that case.

The racketeering charges were based, in part, on the **Fitzgerald** bombing allegations. By challenging them, **Salemme** could reopen his case and negotiate a lesser sentence. In his filing, **Salemme** asks the court to grant him "whatever relief it deems appropriate" because of what he calls FBI misconduct.

Daddieco was recruited by Rico, who signed on Flemmi as an informant in the 1960s. Rico is being investigated in connection with the 1981 mob murder of Roger Wheeler, a millionaire from Tulsa, Okla.

Material from the Associated Press was used in this report.

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

Caption: WITNESS FOR THE PROSECUTION /Francis P. "Cadillac Frank" **Salemme,** shown in a 1995 booking photo, has reportedly agreed to testify against reputed mobsters James "Whitey" Bulger and Stephen "The Rifleman" Flemmi. B2

---- INDEX REFERENCES ----

NAMED PERSON: CONNOLLY, JOHN; RICO, H PAUL; BULGER, JAMES J; **FITZGERALD,** JOHN

ORGANIZATION: FEDERAL BUREAU OF INVESTIGATION

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

COPY

PATRICIA DONAHUE, Individually, and in her Capacity as Administratrix of the Estate of MICHAEL J. DONAHUE, MICHAEL T. DONAHUE, SHAWN DONAHUE, and THOMAS DONAHUE, Plaintiffs,	)	01 CV 10433 MLW
v.	)	CASE NO.:
FEDERAL BUREAU OF INVESTIGATION, JOHN J. CONNOLLY, JR., JOHN M. MORRIS, LAWRENCE SARHATT, and ROBERT FITZPATRICK,[1] Defendants.	)	

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COMPLAINT AND DEMAND FOR JURY TRIAL

INTRODUCTION

This Complaint arises out of the murder of Michael J. Donahue, which occurred on May 11, 1982. The plaintiffs are the wife and children of Mr. Donahue, and Mr. Donahue's estate. It is alleged that the named defendants, former supervisors and agents of the Boston Field Office of the Federal Bureau of Investigation ("FBI-Boston"), along with the Federal Bureau of Investigation ("FBI") caused Mr. Donahue's murder, which was physically committed by James J. Bulger.

[1] The plaintiffs intend at to amend their Complaint at a later date, as discussed *infra*, to add the United States of America as a party-defendant.

EXHIBIT
938

By this action, the plaintiffs seek redress for the defendants' unlawful and inappropriate actions which resulted in Michael J. Donahue's murder, including, *inter alia*, violations of the plaintiffs' Constitutional rights under Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), violations of the federal Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C., § 1961 et seq. ("RICO"), conspiracy violations, and violations of state law. As predicate acts of RICO, the plaintiffs detail twenty-six (26) distinct racketeering acts committed by the defendants, among which the plaintiffs charge that Connolly and Morris are indictable under Massachusetts Law for the murder of Michael J. Donahue, pursuant to G.L. c. 265 § 1 and G.L. c. 274 § 2 as accessories before the fact of Mr. Donahue's murder, and are additionally indictable as accessories after the fact of Mr. Donahue's murder, pursuant to G. L. c. 274, § 4.

Furthermore, concurrently with the filing of this Complaint, plaintiffs served a Presentment of Claims letter upon the Federal Bureau of Investigation ("FBI"), the Boston Field Office of the FBI, and the United States Department of Justice ("DOJ") under the Federal Tort Claims Act, 28 U.S.C. § 1346 and §§ 2671 et seq, pursuant to 29 U.S.C. § 2675. Should this claim be denied or upon the expiration of six months, the plaintiffs intend to amend their Complaint to include appropriate claims under the FTCA against the FBI, DOJ and the United States Government. FTCA claims are expressly and intentionally omitted from the instant Complaint.

Many of the factual allegations herein are intentionally duplicated and/or paraphrased from the factual findings of the Honorable Judge Mark L. Wolf, United States District Court for the District of Massachusetts, found in the Court's Order of

September 15, 1999 at *United States v. Salemme et al.*, 94-CR-10287, 91 F.Supp.2d 141 (D. Mass. 1999) ("*Judge Wolf's Findings*").[2,3] As to the RICO allegations contained herein, and many of the facts underlying the entirety of the plaintiffs' allegations, this Complaint is also intentionally patterned after, and at times duplicated verbatim from, the United States Government's superceding indictment which was returned by the Grand Jury and filed on October 11, 2000 in *United States v. John J. Connolly, Jr. et al*, U.S. District Court for the District of Massachusetts, Docket No. 99-CR-10428-JLT (Paper #158) (the "*Connolly Indictment*").[4]

THE PARTIES

1. The plaintiff Patricia Donahue is a natural person and a citizen of the United States of America, and maintains legal residence at Randolph, Norfolk County, in the Commonwealth of Massachusetts.

2. Patricia Donahue is the duly appointed administratrix of the estate of Michael J. Donahue. Michael J. Donahue, at all times during his natural life, was a natural person and a citizen of the United States of America.

3. Patricia and Michael J. Donahue were legally married at the time of Michael J. Donahue's death.

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[2] Citations to Judge Wolf's findings utilize page number references from the Federal Supplement. The Court's internal citations to Exhibits and Transcripts, which are included within Judge Wolf's findings, are omitted throughout this Complaint.

[3] The plaintiffs allege and argue that the Government (along with its agents and agencies) is bound by these findings of fact as it was a party to this previous criminal litigation, and that CONNOLLY, MORRIS, SARHATT, and FITZPATRICK are bound by their testimony in this proceeding.

[4] Upon information and belief, this indictment and others were based on information gathered and verified during investigations, some of which remain ongoing, into corruption at the Boston Office of the FBI, accomplished by the Office of the United States Attorney. The plaintiffs therefore have requested herein as a prayer for relief that the Government, and Connolly if he is found guilty in said criminal proceeding, be estopped and precluded by law from denying the essential truth of these allegations. See and compare 18 U.S.C. § 1964(d).

4. The plaintiff Michael T. Donahue is a natural person and a citizen of the United States of America, and resides in Boston, Suffolk County, in the Commonwealth of Massachusetts. Michael T. Donahue is the biological son of Patricia and Michael J. Donahue, and was a minor at the time of Michael J. Donahue's death.

5. The plaintiff Shawn Donahue is a natural person and a citizen of the United States of America, and resides in Holbrook, Norfolk County, in the Commonwealth of Massachusetts. Shawn Donahue is the biological son of Patricia and Michael J. Donahue, and was a minor at the time of Michael J. Donahue's death.

6. The plaintiff Thomas Donahue is a natural person and a citizen of the United States of America, and resides in Randolph, Norfolk County, in the Commonwealth of Massachusetts. Thomas Donahue is the biological son of Patricia and Michael J. Donahue, and was a minor at the time of Michael J. Donahue's death.

7. The defendant John J. Connolly, Jr. ("CONNOLLY") is a natural person and resides, upon information and belief, at 400 Main Street, in Lynnfield, Essex County, Massachusetts.

8. The defendant John M. Morris ("MORRIS") is a natural person and resides at an unknown location within the United States.

9. The defendant Lawrence Sarhatt ("SARHATT") is a natural person and resides at an unknown location within the United States.

10. The defendant Robert Fitzpatrick ("FITZPATRICK") is a natural person and resides at an unknown location within the United States.

11. The Federal Bureau of Investigation is an agency of the Executive Branch of the United States Government. The Federal Bureau of Investigation ("FBI") is the

principal investigative arm of the United States Department of Justice ("DOJ") created pursuant to Title 28, United States Code (U.S. Code), Section 533, by the United States Attorney General.

JURISDICTION AND VENUE

12. As the instant action is brought pursuant to, *inter alia*, the Constitution and laws of the United States of America, including the Racketeering Influenced and Corrupt Organizations Act,18 U.S.C. § 1961 et seq., this Court has jurisdiction over the Counts stated in this Complaint pursuant to 18 U.S.C. § 1964 and 28 U.S.C. §§ 1331, 1343 and 1367.

13. Venue is properly within the District of this Court pursuant to 18 U.S.C. § 1965(a) and 28 U.S.C. 1391 et seq.

14-15. **Reserved.**

GENERAL ALLEGATIONS

A. Participants and the Relationship between FBI – Boston and Organized Crime

16. The defendant CONNOLLY became a Special Agent of the Federal Bureau of Investigation ("FBI") in November 1968. From February 1973 until his retirement in December 1990, CONNOLLY was assigned to the Boston Field Office of the FBI. See *Connolly Indictment*, at 1.[5]

[6] *United States v. John J. Connolly, Jr. et al*, U.S. District Court for the District of Massachusetts, Docket No. 99-CR-10428-JLT, Paper # 158, Superceding Indictment, returned and filed October 11, 2000. The plaintiffs expressly incorporate the entirety of this superceding indictment herein.

17. From 1970 until in or about December 1995, the defendant MORRIS was an FBI Special Agent. From approximately March 1972 until approximately November 1991, MORRIS was assigned to the FBI's Boston Field Office ("FBI-Boston"). At all relevant times, MORRIS was a Supervisory Special Agent and the direct supervisor of CONNOLLY as head of FBI-Boston's Organized Crime Squad.

18. The defendant SARHATT was, at all relevant times beginning in 1979, the Special Agent in Charge ("SAC") of FBI-Boston, and therefore the supervisor of CONNOLLY and MORRIS. In this role, SARHATT was first in command of FBI-Boston.

19. The defendant FITZPATRICK was, at all relevant times beginning in January 1981, the Assistant Special Agent in Charge ("ASAC") of FBI-Boston, and therefore the supervisor of CONNOLLY and MORRIS. In this role, FITZPATRICK was second in command of FBI-Boston.

20. At all times material to this Complaint, James J. Bulger ("Bulger") and Stephen Flemmi ("Flemmi") were leaders of the Winter Hill Gang, "a clandestine criminal organization that engaged in multiple crimes, including murder, bribery, extortion, loan sharking, and illegal gambling in the greater Boston, Massachusetts area." *Connolly Indictment*, at 1-2.

21. At all times material to this Complaint, Bulger and Flemmi were confidential informants for the FBI, and in this role, CONNOLLY acted as their FBI informant "handler." MORRIS, as CONNOLLY's supervisor on the Organized Crime Squad, was responsible for directly supervising this relationship, and supervising CONNOLLY. SARHATT and FITZPATRICK, as heads of FBI - Boston, were

responsible for supervising both MORRIS and CONNOLLY, and these agents' relationship with Bulger and Flemmi.

22. Over the same period of time, however, CONNOLLY and MORRIS were receiving and accepting bribes from Bulger and Flemmi, intended to induce and influence CONNOLLY and MORRIS to provide confidential law enforcement information to Bulger and Flemmi in order to protect their criminal activities. See *Connolly Indictment*, at 4-5. Furthermore, over the same period of time, MORRIS was accepting bribes from and through CONNOLLY, intended to additionally protect CONNOLLY's own criminal activities. *Id.*

23. In exchange for these bribes, CONNOLLY and MORRIS, in knowing and willful violation of their responsibilities as FBI agents, were unlawfully providing Bulger and Flemmi with confidential information regarding ongoing law enforcement initiatives and confidential law enforcement informants, were unlawfully omitting material information from official FBI documents regarding Bulger and Flemmi, and were failing to report information relating to Bulger and Flemmi related to their criminal activity, and relating to ongoing investigation of criminal activity in the Boston area, in order to protect their criminal activities, and continue the relationship involving bribes. See *Connolly Indictment*, at 4-5. CONNOLLY and MORRIS also facilitated and encouraged the prosecution of innocent persons for the crimes of Bulger, Flemmi, and their associates, again in order to protect the illegal activity of Bulger and Flemmi and continue the relationship involving bribes.

24. By providing confidential law enforcement information to known organized crime figures, knowing that the information would be used to commit further

crimes, CONNOLLY and MORRIS intentionally and recklessly disregarded, and in fact violated, the Constitutional civil rights of private citizens. This activity was an extreme deviation from reasonable standards of conduct, and includes the affirmative actions of CONNOLLY and MORRIS in providing information to Bulger and Flemmi which directly lead to the murders of Michael J. Donahue and Edward Brian Halloran.

25. Over the same period of time, SARHATT, FITZPATRICK and MORRIS, each a supervisory official of the FBI, and the FBI itself, each demonstrated a knowing and/or reckless indifference to the extended pattern of unlawful and inappropriate conduct perpetrated by CONNOLLY and others, and in doing so, recklessly disregarded, and in fact violated, the Constitutional civil rights of private citizens. Additionally, SARHATT and FITZPATRICK, each the supervisor of MORRIS, and the FBI itself, each also demonstrated a knowing and/or indifference to the extended pattern of unlawful and inappropriate conduct perpetrated by MORRIS and others, and in doing so, recklessly disregarded, and in fact violated the Constitutional civil rights of private citizens. This activity, and/or inactivity was an extreme deviation from reasonable standards of conduct, and includes the pattern and practice of allowing and aiding the ongoing criminal activity of Bulger and Flemmi, allowing and encouraging the unlawful and inappropriate actions of CONNOLLY, MORRIS and others, encouraging, promoting and maintaining the unlawful and inappropriate relationship between CONNOLLY, MORRIS, Bulger, and Flemmi, intentionally, knowingly and/or recklessly failing to train, monitor, supervise, control, and sanction CONNOLLY, MORRIS and others, failing to establish adequate policies and procedures pertaining to the informant/handler relationship and intentionally failing to implement and enforce the policies and

procedures which were in place, and generally fostering an environment at FBI – Boston in which agents were allowed and encouraged to engage in unlawful and inappropriate activities which were likely to, and did, result in the violation of private citizens Constitutional civil rights. This includes the knowing and/or reckless disregard of the affirmative actions of CONNOLLY, MORRIS and others, in providing information to Bulger and Flemmi which directly lead to the murders of Michael J. Donahue and Edward Brian Halloran.

B. Mr. Donahue's Murder

26. At all relevant times, Edward Brian Halloran ("Halloran" or "Brian Halloran") was a criminal associated with Bulger and Flemmi. *United States v. Salemme*, 91 F.Supp.2d 141, at 185, 208-209.[6]

27. "In or about January 1982, Brian Halloran approached the FBI in Boston and offered to cooperate in the investigation of the Roger Wheeler homicide." *Connolly Indictment*, at 11.

28. Immediately prior to his death, Roger Wheeler was a businessman who owned World Jai Alai, a legal sport and gambling enterprise doing business in Florida and Connecticut. *United States v. Salemme*, 91 F.Supp.2d 141, at 208. Wheeler suspected that John Callahan, the President of World Jai Alai and an associate of Halloran, Bulger and Flemmi, "was skimming money from World Jai Alai for himself and [these] members of the Winter Hill Gang...." *United States v. Salemme*, 91

[6] United States District Court for the District of Massachusetts, Docket No. 94-CR-10287. As noted, hearings conducted by Judge Wolf in this case culminated in the decision of the Court found at *United States v. Salemme*, 91 F.Supp.2d 141 (D. Mass. 1999). The plaintiffs expressly incorporate the entirety of Judge Wolf's Findings herein.

F.Supp.2d 141, at 208-209. After ordering an audit and firing Callahan, "Wheeler was shot and killed as he left his golf club in Tulsa [, Oklahoma]." *United States v. Salemme*, 91 F.Supp.2d 141, at 208, 209; *Connolly Indictment*, at 10.

29. "Based on descriptions provided by witnesses, Bulger, Flemmi, and John Martorano, [a member of the Winter Hill Gang and] a fugitive, became prime suspects." *United States v. Salemme*, 91 F.Supp.2d 141, at 209.

30. "Among other things, Halloran told [the FBI] that he had met Bulger and Flemmi at Callahan's apartment and was asked if he was willing to murder Wheeler," *United States v. Salemme*, 91 F.Supp.2d 141, at 209.

31. Halloran also "told FBI agents ... that Bulger and Flemmi, along with John Callahan and John Martorano ... had [in fact] caused Roger Wheeler to be murdered." *Connolly Indictment*, at 11.

32. "[One of the FBI agents who interviewed Halloran] consulted MORRIS, as the supervisor of the Organized Crime squad, to get his assessment of Halloran's reliability as a potential witness. [The Agent] told MORRIS about Halloran's allegations concerning Bulger and Flemmi." *United States v. Salemme*, 91 F.Supp.2d 141, at 209.

33. "MORRIS realized that Halloran's allegations threatened their [Bulger and Flemmi's] futures as FBI informants...." *United States v. Salemme*, 91 F.Supp.2d 141, at 209. Halloran's allegations, therefore, threatened the relationship between CONNOLLY, MORRIS, Bulger, and Flemmi.

34. "MORRIS and CONNOLLY did not want to lose their prize sources, who were important to their investigations, and to their own status and future careers in the FBI." *United States v. Salemme*, 91 F.Supp.2d 141, at 209. Furthermore, MORRIS and

CONNOLLY were receiving bribes from Bulger and Flemmi, and any investigation might disclose past bribes and/or preclude future bribes.

35. "MORRIS [therefore] told [the Agent interviewing Halloran] that Halloran was untrustworthy and unstable, and would not be a believable witness." *United States v. Salemme*, 91 F.Supp.2d 141, at 209. And while the FBI in Oklahoma City had expressed interest in Halloran, *United States v. Salemme*, 91 F.Supp.2d 141, at 209, upon information and belief, no Oklahoma agents were ever informed of Halloran's discussions with the FBI in Boston.[7]

36. "MORRIS, however, told CONNOLLY that Halloran was speaking with [the FBI], and of the information he was providing about Bulger and Flemmi." *United States v. Salemme*, 91 F.Supp.2d 141, at 209. Specifically, MORRIS "told CONNOLLY that Halloran had implicated Bulger and Flemmi in the Roger Wheeler homicide." *Connolly Indictment*, at 11.

37. "MORRIS expected [and anticipated] that CONNOLLY would tell Bulger and Flemmi about Halloran's charges," knowing "that doing so would endanger Halloran." *United States v. Salemme*, 91 F.Supp.2d 141, at 209. Specifically, MORRIS knew that Bulger would retaliate against Mr. Halloran, to prevent Mr. Halloran from fully informing on Bulger and later testifying in Court regarding the Wheeler murder.

38. "CONNOLLY [in turn and as expected] told Bulger and Flemmi about Halloran's cooperation and claims." *United States v. Salemme*, 91 F.Supp.2d 141, at 209. CONNOLLY also knew that Bulger would retaliate against Mr. Halloran, to prevent Mr.

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[7] Judge Wolf's Findings indicate that "no evidence was introduced [at hearing] indicating that any of [the Oklahoma FBI Field Office's] agents were informed of Halloran's discussions with the FBI in Boston." *U.S. v. Salemme*, 91 F.Supp.2d 141, at 209.

Halloran from fully informing on Bulger and later testifying in Court regarding the Wheeler murder.

39. "In early May 1982, the FBI denied Halloran's request to be placed in the Witness Protection Program and told him that his relationship with the FBI was terminated." *United States v. Salemme*, 91 F.Supp.2d 141, at 209.

40. The FBI and its supervisory officials, however, knew of the danger to Halloran and those around him, and recklessly and intentionally disregarded this danger. In the hearing preceding Judge Wolf's Findings, Former United States Attorney William Weld testified that: "[J]ust a few days before Mr. Halloran [and Mr. Donahue were] killed, I was having a conversation with Mr. Fitzpatrick, who was the Assistant Special Agent in Charge of the FBI. And [Mr. Fitzpatrick] said to me: 'You know they always say there's a danger for this; they may get killed for cooperating. I'm telling you, this guy [Halloran], I would not want to be standing next to this guy [Halloran].' And then a few days later, [Halloran] was killed." *United States v. Salemme*, 94-CR-10287, Testimony of William Weld, May 27, 1998.

41. Specifically, because of MORRIS and CONNOLLY's unlawful and inappropriate relay of confidential information, Bulger and others[9] gunned down Halloran outside the Topside Café[10] in South Boston, on May 11, 1982. Halloran's murder occurred a month after he had provided information about Bulger to the FBI, and within ten days of the FBI's denial of his witness protection program admission. Michael

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[8] Judge Wolf's Findings indicate that the time gap between Connolly providing information to Bulger and Flemmi and the murder of Halloran and Mr. Donahue was "several weeks." *U.S. v. Salemme*, 91 F.Supp.2d 141, at 208.

[9] Upon information and belief, Kevin Weeks, a known close associate of Bulger and Flemmi, acted as look-out to these killings. In fact, upon information and belief, it is Weeks that identifies Bulger as one of the triggermen in Mr. Donahue and Halloran's murder. Furthermore, there is some evidence that CONNOLLY witnessed these killings and/or was in the area.

[10] At some point thereafter, the Topside Café became known as the Pier Restaurant.

J. Donahue, a neighbor of Halloran who on an errand had offered Halloran a ride home,[11] was killed as he sat next to Halloran.

42. "MORRIS received his first payment of $1000 from Bulger and Flemmi in June of 1982, shortly after causing CONNOLLY to tell them of Halloran's allegations." *United States v. Salemme*, 91 F.Supp.2d 141, at 227. CONNOLLY facilitated this payment, which was, upon information and belief, in appreciation for the Halloran information. *Id.*

C. The Ongoing Pattern and Practice of Unlawful and Inappropriate Activity within FBI – Boston

43. The Donahue and Halloran murders resulted from a larger pattern of unlawful and inappropriate conduct accomplished at and by FBI – Boston over the span of more than three decades, whereby Agent CONNOLLY and Supervisory Agent MORRIS, and their predecessors[12], utilized their positions as special agents of the FBI, in

[11] Mr. Donahue's presence at the murder scene was occasioned by a stop to make a phone call during an errand. On the day of his death, Mr. Donahue had taken the car of his father, a Boston Police officer, to purchase bait for an overnight family fishing trip, which was planned to celebrate his son Thomas' receiving of First Communion the weekend before, and Mother's Day. During this errand, Mr. Donahue stopped at the Topside Café and called his wife Patricia Donahue, and told her that he would be home soon for supper. Upon information and belief, it was at the Topside that Mr. Donahue ran into Halloran. Mr. Donahue knew Halloran as a neighbor and through Mr. Donahue's union membership as a truck driver. Mr. Donahue had offered Halloran a ride home to the neighborhood. It was while Mr. Donahue and Halloran sat in the car preparing to leave from the Topside that they were killed.

[12] Given the documents which have come to light on hearing of the defendants' motion for a new trial in the case of *Commonwealth v. Limone et al.*, Suffolk Superior Court, Indictment Nos. 32367, 32369 and 32370 (January 8, 2001) (Hinkle, J.), there is evidence that this pattern extends back through the tenure of MORRIS' predecessor as head of the Organized Crime Squad at FBI - Boston, H. Paul Rico. As noted *infra*, Rico was the original head of the Organized Crime Squad and was Flemmi's original handler. It is alleged that Rico intentionally withheld evidence that would tend to exculpate Mr. Limone (and co-defendants) and inculpate an associate of Steven Flemmi in the murder of Teddy Deegan. Further, Judge Wolf held in *United States v. Salemme*, 91 F.Supp.2d 141, at 182, that in 1969 Rico told Mr. Flemmi that he was to be indicted. "In doing so, Rico aided and abetted the unlawful flight of a fugitive in violation of 18 U.S.C. secs. 1073 and 1072." *Id.* The government did not dispute this finding. *Id.* Moreover, Judge Wolf found that Special Agent Rico engaged in criminal misconduct, including suborning perjury. *Id*, at 182.

concert with Mr. Bulger, Mr. Flemmi, and other organized crime figures, to conduct an ongoing pattern of unlawful and inappropriate activity through the Boston Field Office of the FBI, which was intentionally and continuously ignored, and in fact encouraged, by supervisory officials who failed to adequately train, supervise, monitor, and control CONNOLLY, MORRIS and other agents.

44. In fact, the relationship between Flemmi and the FBI began in 1965, when Flemmi became a confidential informant under Special Agent H. Paul Rico, the founding head of FBI-Boston's Organized Crime Squad and therefore MORRIS' predecessor.

45. Bulger was opened as an informant in or about September 1975, by CONNOLLY himself. *Connolly Indictment*, at 2-3. Furthermore, while Flemmi had been closed as an informant for a period of time, CONNOLLY officially re-opened Flemmi as an informant in or about September 1980. *Connolly Indictment*, at 3. At all times relevant, CONNOLLY was Bulger and Flemmi's FBI handler.

46. Bulger and Flemmi's status as informants was continued notwithstanding CONNOLLY and MORRIS' knowledge of crimes, including violent crimes and murder, committed by Bulger and Flemmi before and during this same time period, and CONNOLLY and MORRIS' knowledge and understanding that the confidential information provided by them to Bulger and Flemmi would and did directly result in Bulger, Flemmi and others committing crimes, including murder.

47. CONNOLLY and MORRIS tolerated, and in fact encouraged and assisted, Bulger and Flemmi's commission of certain crimes, including murder and obstruction of justice.

48. CONNOLLY and MORRIS's unlawful and inappropriate exchange of confidential FBI information and assistance and interference with law enforcement efforts for bribes and information from Bulger and Flemmi also continued throughout the time Bulger and Flemmi were informants, and continued even after CONNOLLY retired from the FBI.

49. Moreover, CONNOLLY, MORRIS and other FBI agents undertook unlawful and inappropriate acts to continue Bulger and Flemmi's status as informants, and protect them from investigation, sanction and prosecution, so this mutually advantageous unlawful and inappropriate exchange could continue. This included direct acts of CONNOLLY, MORRIS and other agents in obstructing and frustrating ongoing criminal investigations, providing Bulger and Flemmi with confidential law enforcement information, including the indentity of other confidential informants and potential witnesses, and failing to report and concealing information relevant to ongoing criminal investigations. This also included facilitating and encouraging the prosecution of innocent individuals for crimes committed by Bulger, Flemmi, and their associates.

50. MORRIS, at all relevant times the head of the Organized Crime Squad and the direct supervisor of CONNOLLY, in knowing and willful violation of his responsibilities as an FBI supervisor, also intentionally and recklessly disregarded, and in fact encouraged and assisted, as a pattern and practice, the unlawful and inappropriate activities of CONNOLLY, Bulger, and Flemmi. MORRIS also promoted and maintained an environment at FBI-Boston, and specifically in the Organized Crime Squad, that encouraged this unlawful and inappropriate conduct. This pattern and practice was accomplished in willful and reckless disregard to the Constitutional civil rights of private

citizens, and did as a foreseeable consequence violate the civil rights of private citizens, including the Donahues.

51. SARHATT, FITZPATRICK and other supervisory officials, at all relevant times the SAC and ASAC of FBI – Boston and therefore the supervisors of CONNOLLY and MORRIS, in knowing and willful violation of their responsibilities as an FBI supervisors, also intentionally knowingly and recklessly disregarded, and in fact encouraged and assisted, as a pattern and practice the unlawful and inappropriate activities of CONNOLLY, MORRIS, Bulger, and Flemmi. SARHATT, FITZPATRICK nad other supervisory officials also promoted and maintained an environment at FBI-Boston over four decades that encouraged this unlawful and inappropriate conduct. This pattern and practice was accomplished in willful and reckless disregard to the Constitutional civil rights of private citizens, and did as a foreseeable consequence violate the civil rights of private citizens, including the Donahues.

52. The FBI itself also intentionally, knowingly and/or recklessly disregarded, and in fact encouraged and assisted, as a pattern and practice, the unlawful and inappropriate activities of CONNOLLY, MORRIS, Bulger, and Flemmi, and condoned and encouraged the lack of supervision on the part of SARHATT, FITZPATRICK, MORRIS, and other supervisory officials. The FBI also promoted and maintained an environment at FBI-Boston that encouraged this unlawful and inappropriate conduct, and encouraged the knowing and/or reckless disregard of this conduct by supervisory officials. This pattern and practice was accomplished in knowing and reckless disregard to the Constitutional civil rights of private citizens, and did as a foreseeable consequence violate the civil rights of private citizens, including the Donahues.

53. At the same period of time, guidelines were in effect regarding FBI engagement of informants, promulgated by the Attorney General. "The Attorney General directed that, '[u]nder no circumstances shall the FBI take any action to conceal a crime by one of its informants.'" *United States v. Salemme*, 91 F.Supp.2d 141, at 194. Further, "[t]he [Attorney General] Levi Memorandum also established the same procedure where the FBI had 'knowledge' that one of its informants had committed a 'serious' crime 'unconnected with his FBI assignment. As described in [the Wolf Findings of Fact], these requirements too were regularly ignored with regard to Bulger and Flemmi." *Id*, at 194.

54. "The evidence in this case indicates that at least with regard to Organized Crime matters, the [Attorney General's] Guidelines were ignored from the outset. There were no special seminars or major training concerning the guidelines that was received be the witnesses in this case. MORRIS apparently did not read the new informant Guidelines when they were issued. The informant Guidelines were discussed occasionally in more general training sessions, but the Organized Crime Squad supervisors in Boston did not get answers to any questions that they had." *United States v. Salemme,* 91 F.Supp.2d 141, at 194.

55. "In general, MORRIS and his successors as the supervisor of the Organized Crime squad, Ring, viewed the Attorney General's Guidelines as inconsistent with the Top Echelon informant program and utterly unrealistic. Thus, they felt the Guidelines did not apply to Organized Crime matters. In their view, Top Echelon informants were, by definition, members of Organized Crime, who had been involved in serious criminal matters. Thus, Morris and Ring ignored provisions of the Attorney

General's Guidelines that required authorization of criminal activity and reporting of unauthorized crime committed by informants." *United States v. Salemme*, 91 F.Supp.2d 141, at 195.

56. "With regard to Flemmi and Bulger, at least, the requirements of the Guidelines were either ignored or treated as a bureaucratic nuisance." *United States v. Salemme*, 91 F.Supp.2d 141, at 196.

57. "The evidence also indicates that FBI Headquarters did not effectively supervise the implementation of the Guidelines." *United States v. Salemme*, 91 F.Supp.2d 141, at 196.

58. When the FBI Headquarters did audit the Boston Office it routine overlooked obvious deficiencies in the files concerning Bulger and Flemmi. "Moreover, while FBI Headquarters periodically audited the Boston office's informant files, no deficiencies with regard to the handling of Bulger or Flemmi were noted, despite the fact that those files were replete with information indicating that Bulger and Flemmi were involved in serious criminal activity that had not been authorized in writing, investigated by the FBI, reported to other law enforcement agencies, or reported to the Assistant Attorney General for the Criminal Division as required by the Guidelines." *United States v. Salemme*, 91 F.Supp.2d 141, at 196.

59. "Thus, at least with regard to Bulger and Flemmi, the FBI as an institution essentially disregarded the carefully calibrated standards and procedures that were developed by Attorney General Levi and his successors for continuing to use informants after the FBI had decided to employ them." *United States v. Salemme*, 91 F.Supp.2d 141, at 196.

60. "As a result, it is not disputed that the Guidelines were not obeyed at least with regard to Flemmi and Bulger." *United States v. Salemme*, 91 F.Supp.2d 141, at 197 United States Attorney Donald Stern acknowledged that FBI Guidelines were not followed in critical areas: "The FBI and attorney general informant guidelines, together with FBI administrative controls, are intended to provide the necessary checks and balances and to ensure that often difficult decisions are made at appropriate levels, based on complete and accurate information. While admittedly no system is foolproof, clearly those objectives were not met here, at least in certain critical respects." *Id*, at 197.

61. CONNOLLY and MORRIS routinely ignored FBI policies and procedures regarding reporting on contacts with informants, and thereby hid the true nature of their relationship with Bulger and Flemmi. In so doing, they concealed, and assisted, in ongoing criminal activity in which Bulger and Flemmi were involved. *United States v. Salemme*, 91 F.Supp.2d 141, at 188-198.

62. Throughout the same period of time, and extending to the present, the FBI and the supervisory officials of FBI - Boston, including but not limited to SAC SARHATT and ASAC FITZPATRICK, intentionally attempted to and did conceal the unlawful and inappropriate activities of CONNOLLY, MORRIS, Bulger, and Flemmi. MORRIS, in turn, as supervisor of CONNOLLY, intentionally attempted to and did conceal the unlawful and inappropriate activities of CONNOLLY, Bulger and Flemmi. These supervisory officials, and the FBI itself, also promoted and maintained an environment at FBI-Boston that encouraged concealment of unlawful and inappropriate activities by agents and informants.

63. The FBI's willful disregard, encouragement and eventual concealment of these unlawful and inappropriate activities was motivated, in part, by a policy and desire to prosecute the LCN, an organized crime group competing with that of Bulger. The concurrent and subsequent cover-up activity was additionally motivated by a desire to protect the FBI, FBI-Boston, and its agents from embarrassment, sanction, and/or possible prosecution.

64. Notably, the FBI, and specifically SARHATT and FITZPATRICK as the SAC and ASAC of FBI-Boston, continued Bulger and Flemmi as FBI informants, and continued the relationship between CONNOLLY, MORRIS, Bulger and Flemmi, despite strong evidence known to these supervisory officials that: a) Bulger and Flemmi were involved in serious and violent crime, including murder; b) CONNOLLY and MORRIS were providing confidential law enforcement information to Bulger and Flemmi, including the identities of other informants, resulting in crimes including murder and the compromise of criminal investigations; and c) CONNOLLY and MORRIS, and others, were giving and receiving bribes. MORRIS, in turn, knowing the unlawful and inappropriate activities of CONNOLLY, Bulger and Flemmi, and in his supervisory role as head of the Organized Crime Squad, encouraged and assisted in continuing the relationship between CONNOLLY, Bulger and Flemmi.

65. Furthermore, the FBI and its supervisory officials, including SARHATT and FITZPATRICK, their successors, and MORRIS himself, knowing of the unlawful and inappropriate conduct of CONNOLLY, MORRIS, Bulger and Flemmi, undertook efforts to conceal these crimes, and most especially took efforts to conceal the involvement and complicity of FBI personnel in these crimes. This effort included the

encouragement of and assistance in prosecutions of innocent individuals for crimes actually committed by Bulger, Flemmi and their associates. As detailed below, this intentionally crafted veil of concealment continues to the present day, and has only recently been partially pierced by the investigative and prosecutorial efforts of the United States Attorney's Office in Boston under United States Attorney Donald Stern and a special investigative unit of the United States Attorney's Office under Special Prosecutor John Durham, and the judicial efforts of United States District Court Judge Mark Wolf in *United States v. Salemme*[13] and Suffolk Superior Court Judge Margaret Hinkle in *Commonwealth v. Limone.*[14]

D. The Lancaster Street Garage Investigation

66. One example of the above-described pattern of unlawful and inappropriate conduct, willful disregard and concealment within FBI-Boston occurred almost two years before Halloran and Mr. Donahue were murdered.

67. In and around July and August of 1980, the Massachusetts State Police were investigating organized crime activity at a garage on Lancaster Street in Boston. See Judge Wolf's Findings, *United States v. Salemme*, 94-CR-10287, 91 F.Supp.2d 141, at 202 (D. Mass. 1999).

68. "Flemmi and Bulger were among those targeted by the Massachusetts State Police [in this investigation]." *United States v. Salemme*, 91 F.Supp.2d 141, at 202.

[13] *United States v. Salemme*, 94-CR-10287-MLW, 91 F.Supp.2d 141 (D. Mass. 1999).
[14] Suffolk Superior Court, Indictment Nos. 32367, 32369 and 32370 (January 8, 2001). See also Footnote 12, supra.

69. Despite efforts of the State Police, "MORRIS discerned that the Massachusetts State Police was conducting electronic surveillance at the Lancaster Street Garage...." *United States v. Salemme*, 91 F.Supp.2d 141, at 202.

70. Upon information and belief, with MORRIS' information, "CONNOLLY was ... able to confirm for Flemmi and Bulger that the Lancaster Street Garage was bugged." *United States v. Salemme*, 91 F.Supp.2d 141, at 202.

71. "Flemmi and Bulger advised some of their associates ... and the discussion of criminal activity at the Lancaster Street Garage ceased." *United States v. Salemme*, 91 F.Supp.2d 141, at 203.

72. "[SAC] SARHATT recognized that Bulger and Flemmi might be prosecuted for committing serious crimes. Their prosecution would have raised within the FBI, and perhaps more widely, questions concerning the Bureau's decision to work with them rather than investigate them." *United States v. Salemme*, 91 F.Supp.2d 141, at 203.

73. Furthermore, SARHATT knew of concerns that CONNOLLY and MORRIS had tipped Bulger and Flemmi to the investigation and electronic surveillance. *United States v. Salemme*, 91 F.Supp.2d 141, at 203.

74. However, after speaking only with CONNOLLY, MORRIS, Assistant United States Attorney Jeremiah O'Sullivan[15], and Bulger himself, "SARHATT in December 1980 decided to continue Bulger and Flemmi as informants, rather than target

[15] Judge Wolf's Findings call into question SARHATT's rendition of his discussion with AUSA O'Sullivan, and AUSA O'Sullivan was unable to testify at hearing due to health problems. See *United States v. Salemme*, 91 F.Supp.2d 141, at 204. Furthermore, AUSA O'Sullivan was the prosecutor who opted not to indict Bulger and Flemmi in a 1978 race-fixing scheme investigation in which Bulger was a "primary subject." *United States v. Salemme*, 91 F.Supp.2d 141, at 199-200.

them for investigation." *United States v. Salemme*, 91 F.Supp.2d 141, at 205. See also *id*, at 203-205.

75. ASAC Robert Fitzpatrick, who had come to Boston in January 1981, also met with Bulger in early 1981. *United States v. Salemme*, 91 F.Supp.2d 141, at 207.

76. "Fitzpatrick testified [at hearings held in *United States v. Salemme*] that he had misgivings [after this meeting, and before the Wheeler, Halloran, Donahue and Callahan murders] about continuing Bulger and Flemmi as informants. More specifically, he stated that he was concerned that Bulger and Flemmi were not being sufficiently productive, and were engaged in serious crime, including crimes of violence and collecting 'tribute' from drug traffickers. There is no written record indicating that Fitzpatrick ever expressed such concerns to Sarhatt, however." *United States v. Salemme*, 91 F.Supp.2d 141, at 207.

77. With no dissent from FITZPATRICK, SARHATT again decided to continue Bulger and Flemmi as informants, and upon information and belief, any investigation into the unlawful and inappropriate activities of CONNOLLY, MORRIS, Bulger and Flemmi ceased. *United States v. Salemme*, 91 F.Supp.2d 141, at 207.

78. In fact, "[a]t the same time the FBI was receiving, but not investigating, reports from informants regarded as reliable concerning criminal activity in which Bulger and Flemmi were engaged." *United States v. Salemme*, 91 F.Supp.2d 141, at 208.

79. "For example, in 1981 and 1982, the FBI was told that Bulger and Flemmi were involved in cocaine distribution with Brian Halloran. The Bureau was also advised that bookmakers were required to pay Bulger and Flemmi to operate in South Boston. These allegations were not investigated by the FBI. Rather, with regard to Flemmi's

reported drug activity, Connolly wrote that "source's contacts, at my direction, with individuals thought to possess information regarding [Judge Wood's] murder, may have resulted in the false belief that source is involved in narcotics."" *United States v. Salemme*, 91 F.Supp.2d 141, at 208.

80. The Lancaster Street Garage investigation, among other previous and subsequent events, provided the FBI and its supervisory officials notice of the unlawful and inappropriate conduct of CONNOLLY, MORRIS, Bulger, Flemmi, and others within FBI – Boston. The FBI and its supervisory officials recklessly and/or intentionally failed to remedially act upon this notice, and other events, and instead allowed and encouraged the unlawful and/or inappropriate relationship between CONNOLLY, MORRIS, Bulger and Flemmi, and the unlawful and inappropriate activities that defined this relationship, to continue.

E. FBI – Boston Continues its Relationship with Bulger and Flemmi after Mr. Donahue's Murder, and Intentionally Keeps Information regarding the Murder from Other Law Enforcement Agencies, the Public and the Donahue Family

80. "No one has ever been convicted of [the Donahue and Halloran] murder[s]. MORRIS, however, believed [and, upon information and belief, knew] that Bulger and Flemmi were responsible. [In fact, t]he next time that MORRIS asked CONNOLLY to tip Flemmi off to an investigation, he added that he "did not want another Halloran" -- meaning another murder." *United States v. Salemme*, 91 F.Supp.2d 141, at 210.

81. "MORRIS did not, however, hesitate to capitalize on the extraordinary disclosure of highly confidential information that he had caused CONNOLLY to make to Bulger and Flemmi. At some point prior to Halloran's murder CONNOLLY had told MORRIS that Bulger and Flemmi "really liked him," and hoped that MORRIS would let them know if he ever needed anything." *United States v. Salemme*, 91 F.Supp.2d 141, at 210.

82. "Several weeks after Halloran's murder MORRIS was sent [by the FBI] to Glencoe, Georgia for drug training. At that time, although married, MORRIS was romantically involved with his secretary. While in Georgia, MORRIS decided that he would enjoy a visit from her. Recalling the offer communicated through CONNOLLY, he asked CONNOLLY if Bulger and Flemmi would provide the funds necessary to buy his secretary a plane ticket." *United States v. Salemme*, 91 F.Supp.2d 141, at 210.

83. "CONNOLLY subsequently gave MORRIS' secretary an envelope containing $1000 cash, which MORRIS understood had come from Bulger and Flemmi.... She took the money and made the trip." *United States v. Salemme*, 91 F.Supp.2d 141, at 210.[16]

84. "MORRIS knew that the fact that Bulger and Flemmi had been told by CONNOLLY of Halloran's effort to cooperate with the FBI would be relevant to any investigation of Halloran's murder, but he never provided this information to anyone in the FBI. Nor did he tell the Suffolk County District Attorney's Office, which conducted an investigation and obtained an indictment, but not a conviction, of Jimmy Flynn for the Halloran murder." *United States v. Salemme*, 91 F.Supp.2d 141, at 210. CONNOLLY

[16] Judge Wolf's findings indicate that Morris' secretary was told that the money was Morris', *U.S. v. Salemme*, 91 F.Supp.2d 141, at 210, and it does not appear that there is no evidence that she knew the money derived from Bulger and Flemmi.

also failed to provide this information to anyone at the FBI or at the Suffolk County District Attorney's Office.

85. Furthermore, while SAC SARHATT and ASAC FITZPATRICK knew of Halloran's cooperation, neither provided this information to the Suffolk County District Attorney's office or other law enforcement agencies investigating the Halloran, Donahue, and Wheeler murders. In fact, upon information and belief, FBI-Boston participated in the investigation underlying the prosecution of Mr. Flynn, and efforts were taken to conceal information about Bulger and Flemmi's role in the Wheeler, Halloran and Donahue murders.

86. Around the same time, "a decision was made [by supervisory officials at the FBI, including SAC SARHATT, ASAC FITZPATRICK, and MORRIS] to keep Bulger and Flemmi open as sources unless and until "substantiated information" implicating them in the murders was received." *United States v. Salemme*, 91 F.Supp.2d 141, at 210.

87. "It does not appear that there was any discussion of whether Bulger and Flemmi had immunity that would protect them from possible prosecution for the Wheeler or Halloran [or Donahue] murders. Nor does it appear that the implications of the Attorney General's Guidelines concerning informants were considered [with regard to Bulger and Flemmi]. More specifically, there was evidently no discussion of whether local law enforcement authorities in Boston or Oklahoma, which were conducting investigations, should be advised of the information Halloran had provided concerning Bulger and Flemmi or of whether the Assistant Attorney General should have been consulted." *United States v. Salemme*, 91 F.Supp.2d 141, at 210-211.

88. "On August 4, 1982, the body of John Callahan was found in the trunk of his car in Miami, Florida. He had evidently been dead for several weeks." *United States v. Salemme*, 91 F.Supp.2d 141, at 211.

89. "On September 23, 1982, Flemmi was administratively closed as an informant. CONNOLLY and MORRIS told FBI Headquarters that they were closing Flemmi because he was being targeted for possible prosecution in the 98 Prince Street and 51 North Margin investigations. [Not because of the Donahue, Halloran, Wheeler, or Callahan killings]. This was not true." *United States v. Salemme*, 91 F.Supp.2d 141, at 211.

90. "As in the past, Flemmi was not told he had been closed as a source. In any event, Flemmi continued to provide information regularly to the FBI. Indeed, the records reflect forty-six contacts between Flemmi and the FBI between February 1983 and May 1986, a period when Flemmi was administratively closed as a source." *United States v. Salemme*, 91 F.Supp.2d 141, at 211.

91. "There was no diminution in Bulger's official status as an informant. Rather ... in February 1983, Bulger was elevated to Top Echelon status." *United States v. Salemme*, 91 F.Supp.2d 141, at 211.

92. "Nevertheless, [SA] Montanari attempted to investigate whether Bulger and/or Flemmi played a role in the Wheeler homicide and related matters. Pursuant to standard practice, the files of his investigation were kept in an area that was accessible to other agents. Montanari, however, suspected that CONNOLLY was surreptitiously reviewing those files and furnishing information about his investigation to Bulger and Flemmi. He complained to [Assistant Special Agent in Charge Robert] FITZPATRICK,

who was sufficiently concerned that he locked the files in his own office." *United States v. Salemme*, 91 F.Supp.2d 141, at 211.

93. "However, FITZPATRICK [apparently] did not want anyone outside of the Boston office of the FBI to have access to Bulger and Flemmi. In April 1983, the FBI in Oklahoma City sought authority from the Director of the FBI to interview Bulger and Flemmi. FITZPATRICK strongly and successfully opposed this request", *United States v. Salemme*, 91 F.Supp.2d 141, at 211, "in part by falsely claiming that he had interviewed Bulger about the matter." *Id*, at 156. "FITZPATRICK claimed that he had interviewed Bulger concerning the Wheeler and Callahan murders, and that Bulger had denied being involved. As FITZPATRICK testified, this was not true. FITZPATRICK had never questioned Bulger on these subjects. Although he himself did not trust CONNOLLY fully, FITZPATRICK also argued that Oklahoma City should not be allowed to interview Bulger and Flemmi in part because CONNOLLY was in continual contact with them and was disseminating all relevant information that he received regarding the Wheeler and Callahan murders. In essence, the Boston office of the FBI was determined to control the information, and therefore the decisions to be made, concerning its prize informants." *Id*, at 211.

94. "In May 1983, shortly after FITZPATRICK prevented FBI agents from Oklahoma City from interviewing Bulger and Flemmi, CONNOLLY urged the SAC to reopen Flemmi as an informant because he was continuing 'to voluntarily furnish sensitive information of an extremely high quality.'". *United States v. Salemme*, 91 F.Supp.2d 141, at 211.

95. "The timing of this memorandum suggests that it may have been, in part, an attempt by CONNOLLY to determine whether there was a threat that Flemmi would soon be charged as a result of the Halloran and Callahan murder investigations." *United States v. Salemme*, 91 F.Supp.2d 141, at 211-212.

96. "[I]n November 1983, Bulger and Flemmi were interviewed together by Montanari and [Special Agent] Brendan Cleary. It was highly unusual for two subjects of an investigation to be interviewed together. Bulger and Flemmi denied any involvement in the Wheeler and Callahan murders. They refused, however, to take a polygraph examination and objected to being photographed." *United States v. Salemme*, 91 F.Supp.2d 141, at 212. Upon information and belief, no follow up was conducted on this interview, and "[o]fficially, [the investigation into the Wheeler, Halloran and Donahue murders] remains open." *Id*, at 212.

97. In sum, "[t]he FBI in Boston ... succeeded in keeping agents from other offices and local law enforcement officials from speaking to Bulger and Flemmi," *United States v. Salemme*, 91 F.Supp.2d 141, at 208, and consequently, from successfully investigating the murders of Wheeler, Halloran, and Mr. Donahue.

98. Subsequently, "the FBI in Boston ... departed from the Bureau's standard procedures to render the information that it had received from Halloran regarding Bulger and Flemmi virtually inaccessible to others who might wish to review or evaluate it. More specifically, in 1982 and 1983, FBI reports containing allegations against an individual were to be indexed by that individual's name and placed in an investigative file. With one exception, however, the many reports containing Halloran's charges against Bulger and Flemmi were not properly indexed with a reference to their names.

Thus, these documents were not found or considered by the Department of Justice officials who were assigned, in July 1997, as a result of [the *United States v. Salemme* matter] to review allegations that had been made by informants and witnesses against Bulger and Flemmi." *United States v. Salemme*, 91 F.Supp.2d 141, at 212.

99. In 1988 or 1989, Joseph Murray, a known member of the Winter Hill Gang, was referred to the FBI-Boston Office with information. *United States v. Salemme*, 91 F.Supp.2d 141, at 157, 256-258. Murray had implicated Bulger and another individual named Patrick Nee in the murders of Halloran and Mr. Donahue, and "claimed to know of a witness who saw Bulger participate in the Halloran [and Donahue] murder[s]." *Id*, at 157. Also see *id*, at 256-258. Murray also alleged that CONNOLLY and SA John Newton (and others) were selling information regarding law enforcement activities to Bulger and Flemmi. *Id*, at 157, 256-258.

100. In June of 1989, SA Edward Clark and SA Edward Quinn of the Boston FBI Office interviewed Murray. *United States v. Salemme*, 91 F.Supp.2d 141, at 257. SA Quinn was "a member of the Organized Crime squad who had then worked with CONNOLLY for thirteen years and characterized CONNOLLY as a 'close friend'." *Id.*

101. In this interview, "Murray was either not asked about his allegations concerning CONNOLLY and Newton or his responses were not recorded in the notes and FBI report of the interview. ASAC Dennis O'Callahan, however, subsequently prepared a memorandum, which Ahearn sent to FBI Headquarters, stating that Murray's allegations were unsubstantiated. In addition, Murray evidently was not questioned in detail about the information he indicated that he had concerning Bulger's role in the Halloran murder. Moreover, the information Murray did provide was not given to the FBI agents

responsible for the Halloran murder investigation or indexed in a way that would permit them to find it. Nor was any effort made to employ the willing Murray as a source of information to be used against Flemmi, Bulger, or anyone." *Id,* at 154 n.3, 157, 256-258. "Accordingly, Murray was effectively eliminated as a threat to the symbiotic relationship between the FBI and Bulger and Flemmi." *Id,* at 258.

102. "After CONNOLLY retired, in about 1992, the United States Attorney's Office began a grand jury investigation of Bulger and Flemmi." *United States v. Salemme*, 91 F.Supp.2d 141, at 158.

103. "In 1992, the FBI refused a request by the then United States Attorney Wayne Budd, and his assistants, to confirm that Bulger was an informant or to permit them to review Bulger's informant file." *United States v. Salemme*, 91 F.Supp.2d 141, at 158.

104. "On about December 22, 1994, in anticipation of the imminent, additional charges in [*United States v. Salemme*], the United States Attorney's Office again asked the FBI if Bulger was an informant, emphasizing its need to know because the government would soon have to disclose exculpatory information to Bulger and his codefendants. Once again, the FBI resisted this request." *United States v. Salemme*, 91 F.Supp.2d 141, at 158.

105. Bulger's identity as an FBI informant was not admitted to the United States Attorney's office until January 9, 1995, four days after Flemmi had been arrested and the day before Bulger and Flemmi were indicted in the *United States v. Salemme* case,[17] see *United States v. Salemme*, 91 F.Supp.2d 141, at 295, and was not publicly

[17] 94-CR-10428. The original indictment in this case was returned on October 25, 1994 against one defendant, Robert DeLuca. See *United States v. Salemme*, 91 F.Supp.2d 141, at 296. The superceding

admitted until an affidavit was filed in *United States v. Salemme*, 94-CR-10287 on June 3, 1997, pursuant to an Order of the Court (Wolf, J.) entered in on May 22, 1997.

106. According to Judge Wolf's Findings, "[f]rom the FBI's perspective, exposure of its agents' conduct had the foreseeable potential to reveal an extraordinary effort to protect Bulger and Flemmi that involved serious impropriety, if not illegality." *United States v. Salemme*, 91 F.Supp.2d 141, at 213. Therefore, "questions remain regarding ... the full degree to which the FBI in Boston has, from 1981 until recently, attempted to keep any such role from being discerned and demonstrated." *Id.*

107. Furthermore, soon after the murder of Michael J. Donahue, Patricia Donahue was in contact with the Boston Office of the FBI, seeking information related to the death of her husband.

108. Each effort of Ms. Donahue, including this initial contact, was met with responses indicating that the FBI had no information, which was in each case untrue.

109. In fact, the first conclusive information which Ms. Donahue and her three sons received about Michael J. Donahue's death came through Judge Wolf's Findings of Fact in *United States v. Salemme*,[18] and the subsequent Bulger and Connolly indictments,[19] seventeen years or more after Mr. Donahue's death. Through these sources, the family of Michael J. Donahue learned that the FBI, which they had unwittingly turned to for information seventeen years prior, was directly responsible for the murder of their husband and father.

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indictment was returned against the additional defendants, including Bulger and Flemmi, on January 10, 1995. *Id*, at 301.

[18] *United States v. Salemme*, 91 F.Supp.2d 141 (D. Mass. 1999).

[19] *United States of America v. James J. Bulger et al.*, United States District Court for the District of Massachusetts, Docket No. 99-CR-10371; *United States v. John J. Connolly, Jr. et al*, U.S. District Court for the District of Massachusetts, Docket No. 99-CR-10428.

F. Indictments

110. Beginning in or around January 1998 and continuing through June 1999, the Court (Wolf, J.) heard witnesses, received exhibits, and heard arguments on various motions to dismiss and suppress in *United States v. Salemme*, 94-CR-10287, culminating in the Order of the Court including Judge Wolf's Findings, referenced throughout this Complaint. Much, if not the vast majority of the information elicited at this extended hearing had never been previously disclosed outside the confines of the FBI, most notably the connection between the FBI, Bulger and Flemmi, and the murders of Mr. Donahue and Halloran. Some information relevant to this Complaint and Mr. Donahue's murder inevitably remains under seal in that case.

111. Presumably as a result of being provided with information first elicited at the hearing held by Judge Wolf, in 1999, along with information gathered and verified by ongoing investigations by the Office of the United States Attorney in Boston under United States Attorney Donald Stern and a special investigative unit under Special Prosecutor John Durham, a Federal Grand Jury returned an indictment against Bulger implicating him in the murder of Mr. Donahue. The indictment, in relevant part, reads: "On or about May 11, 1982, in the District of Massachusetts, the defendant **James J. Bulger**, and others known and unknown to the grand jury, did commit an act involving murder, that is, aiding and abetting one another and being armed with dangerous weapons, did assault Michael J. Donahue with the intent to murder Brian Halloran and did thereby kill and murder Michael J. Donahue in violation of Section 1 of Chapter 265 and Section 2 of Chapter 274 of the Massachusetts General Laws." *United States of*

America v. James J. Bulger et al., United States District Court for the District of Massachusetts, Docket No. 99-CR-10371.

112. Similarly, on December 22, 1999, a federal Grand Jury returned an original indictment against CONNOLLY in *United States v. John J. Connolly, Jr. et al*, U.S. District Court for the District of Massachusetts, Docket No. 99-CR-10428-JLT. The Superceding Indictment, quoted throughout this Complaint, was returned by a Federal Grand Jury and filed in the case against CONNOLLY on October 11, 2000. The Superceding Indictment alleges that CONNOLLY committed various criminal acts of racketeering, racketeering conspiracy, obstruction of justice, conspiracy to obstruct justice, and false statement, including those acts which led to the death of Mr. Donahue and assisted in the subsequent cover-up. *See Connolly Indictment.*

113. Upon information and belief, MORRIS was given immunity from criminal prosecution regarding his unlawful and inappropriate activities with Bulger, Flemmi and CONNOLLY, in return for his agreement to provide testimony against CONNOLLY and others before the Federal Grand Jury and in *United States v. John J. Connolly, Jr. et al*, U.S. District Court for the District of Massachusetts, Docket No. 99-CR-10428-JLT. See Shelley Murphy, *FBI Corruption Case Aimed at One Man*, THE BOSTON GLOBE, October 18, 2000, at B1.

114-128. **Reserved.**

350. As a result of their actions, the FBI Bivens defendants did, in fact and among other things, actually deprive Thomas Donahue of his rights under the Fifth and First Amendments to the Constitution. This deprivation includes, but is not limited to, the events leading up to, surrounding and including Michael J. Donahue's murder.

b. Conspiracy to Violate Constitutional Rights

351. As outlined herein, the FBI Bivens defendants, between themselves, with CONNOLLY, MORRIS, SARHATT, and FITZPATRICK, and with others, did conspire to deprive the plaintiffs, and each of them, of their Constitutional rights, and in so doing, did in fact deprive the plaintiffs their Constitutional rights by virtue of said conspiracy.

COUNT VIII AND IX – RESERVED

(FEDERAL TORT CLAIMS ACT COUNTS AGAINST UNITED STATES OF AMERICA, AND ITS AGENCY THE FEDERAL BUREAU OF INVESTIGATION, AS DEFENDANTS; TO BE ADDED BY AMENDMENT)

352-367. **Reserved.**

PRAYER FOR RELIEF

WHEREFORE, the plaintiffs respectfully demand Entry of Judgment against all defendants, jointly and severally, as follows:

(a) Declaring that the United States Government is estopped from denying the essential allegations of Mr. CONNOLLY's criminal offenses as outlined herein, by nature of the indictment (as amended) issued by the Government and returned by the

Grand Jury in United States of America v. John J. CONNOLLY, Jr. et al, U.S. District Court for the District of Massachusetts, Docket No. 99-CR-10428-JLT;

(b) Similarly declaring, pursuant to 18 U.S.C. §1964(d), that Mr. CONNOLLY himself is estopped from denying the essential allegations of Mr. CONNOLLY's criminal offenses as outlined herein, should a judgment enter in favor of the United States in United States of America v. John J. CONNOLLY, Jr. et al, U.S. District Court for the District of Massachusetts, Docket No. 99-CR-10428-JLT;

(c) Declaring that the defendants are collaterally estopped from denying the essential Findings of Fact included in the September 15, 1999 Order of the Court, issued in United States of America v. Salemme et al., U.S. District Court for the District of Massachusetts, Docket No. 94-CR-10287 (Wolf, J);

(d) Declaring, after a trial on the merits, that the defendants' individual and collective acts as described herein constitute a violation(s) of the federal Racketeering Influenced and Corrupt Organizations statute, 18 U.S.C. § 1962 (b), (c), and (d), and that these violations caused pecuniary injury to the estate of plaintiff's decedent Michael J. Donahue, Patricia Donahue, Michael T. Donahue, Shawn Donahue, and Thomas Donahue;

(e) Declaring, after a trial on the merits, that the defendants' individual and collective acts and omissions as described herein constitute a violation(s) of the Constitutional rights of the plaintiff's decedent Michael J. Donahue, Patricia Donahue, Michael T. Donahue, Shawn Donahue, and Thomas Donahue under the First, Fourth and/or Fifth Amendments to the Constitution of the United States of America, that the plaintiffs were in fact thereby deprived of such Constitutional rights, and that the

defendants committed such acts and omissions intentionally and with reckless disregard to the plaintiffs' Constitutional rights;

(f) Declaring, after a trial on the merits, that the defendants conspired to deprive the plaintiffs of their Constitutional rights, and by conspiring did in fact so deprive the plaintiffs of their Constitutional rights as outlined herein;

(g)-(h) **Reserved.**

(i) Awarding the plaintiffs all compensatory damages allowed under *Bivens*, 403 U.S. 388 (1971), the Racketeering Influenced and Corrupt Organizations Act, 18 U.S.C. § 1961 et seq., and any other applicable law;

(j) Awarding the plaintiffs treble actual damages pursuant to the Racketeering Influenced and Corrupt Organizations statute, 18 U.S.C., § 1962 et seq.;

(k) Awarding the plaintiffs any and all other punitive damages allowed under law, including pursuant to *Bivens* and its progeny, in an amount to be determined by a jury at trial;

(l) Awarding the plaintiffs their reasonable attorneys fees, costs and disbursements incurred in connection with this action, pursuant to Racketeering Influenced and Corrupt Organizations statute, at 18 U.S.C., § 1964(c), the Equal Access to Justice Act, at 28 U.S.C. § 2412, Rule 54 of the Federal Rules of Civil Procedure, and/or any other applicable law;

(o) Awarding of interest regarding the above damages, and granting such other and further relief as this Honorable Court may deem just and proper.

JURY DEMAND

The plaintiffs demand a trial by jury on all issues so triable.

Respectfully submitted,
The Plaintiffs,
PATRICIA DONAHUE, Individually, and
in her Capacity as Administratrix of the
Estate of MICHAEL J. DONAHUE,
MICHAEL T. DONAHUE,
SHAWN DONAHUE, and
THOMAS DONAHUE,
By their Attorneys,

Edward T. Hinchey, BBO #235090
Christopher T. Meier, BBO #640995
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Three Center Plaza
Boston, MA 02108
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and

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ASSOCIATES, P.C.
138 Newbury Street, Suite Three
Boston, MA 02116
(617) 262-6900

Dated: 3·12·2001

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2001 WL 3924123
(Publication page references are not available for this document.)

The Boston Globe
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Wednesday, March 14, 2001

Metro/Region

KIN OF SLAIN MAN SUE FBI, AGENTS
John Ellement, Globe Staff

Nearly 20 years after Michael J. Donahue died because he gave a ride to a friend, his widow and children yesterday filed suit against the FBI and four retired agents who allegedly tipped off James "Whitey" Bulger that Donahue's friend was providing information against Bulger to the FBI.

Donahue and Brian J. Halloran were shot to death on Northern Avenue in Boston on May 11, 1982, by three men. Federal authorities now allege that Bulger was one of the triggermen and that he was tipped off about Halloran's cooperation by retired FBI special agent John J. Connolly, Jr.

Connolly was named in the 94-page civil lawsuit filed yesterday in US District Court along with his former supervisor, John M. Morris, who has admitted taking bribes from Bulger. Also named are Lawrence Sarhatt, who was the special-agent-in-charge of the Boston FBI office in the 1980s, and Sarhatt's top aide, Robert Fitzpatrick. The FBI was also named as a defendant.

Relying on federal court hearings and last year's indictment of Connolly, Patricia Donahue and her three sons contend the retired agents effectively killed Donahue even though Bulger allegedly pulled the trigger.

At the time of his death, Donahue, 32, lived in Dorchester and was giving Halloran, 41, a ride home when they were shot and killed outside a waterfront bar.

The Donahue family now wants compensation for the years they lost out on Donahue's wages. The family also accuses the agents of violating their civil rights and depriving them of the companionship of their husband and father.

The agents and the FBI were sued under the civil portion of the same federal law routinely used against Mafia and organized crime figures - the Racketeer Influenced and Corrupt Organization, or RICO, act. Under the civil RICO act, triple damages can be awarded by a jury or judge.

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The lawsuit cites 26 specific acts allegedly committed by the four retired agents that cumulatively allowed Bulger to murder Donahue and Halloran. The facts in the lawsuit are based on Connolly's indictment last year and hearings that disclosed that Bulger and his partner, Stephen Flemmi, were longtime informants for the FBI and that Connolly was their handler.

The Boston FBI office had no comment yesterday.

---- INDEX REFERENCES ----

NAMED PERSON: DONAHUE, MICHAEL J; HALLORAN, BRIAN J; CONNOLLY, JOHN

NEWS SUBJECT: English language content; Crime and Courts; Political and General News; Crime (ENGL GCRIM GCAT CRM)

NEWS CATEGORY: MET

EDITION: THIRD

LAYOUT CODES: (LCR)

Word Count: 369

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Wednesday, July 18, 2001

Metro/Region

MOBSTER PLEADS NOT GUILTY TO 10 COUNTS OF MURDER FLEMMI ENTERS PLEAS BEFORE FEDERAL JUDGE

John Ellement, Globe Staff

The prosecution of Stephen "The Rifleman" Flemmi for 10 murders he allegedly committed while working as an informant for the FBI inched forward yesterday in a court proceeding that betrayed little of the terror Flemmi once embodied.

Wearing a red state Department of Correction jumpsuit, Flemmi, 66, stood with his hands clasped behind his back and answered "not guilty" 15 times during his arraignment in US District Court before Magistrate Judge Marianne B. Bowler.

Flemmi was indicted last September in the killings, as well as on charges of extortion, money laundering, and illegal possession of a machine gun and silencers. But the arraignment had been on hold because no Boston lawyer wanted to represent him at the government fee of $75 an hour for in-court work.

Flemmi is now represented by Charles McGinty, a federal public defender. Flemmi and McGinty briefly shook hands but appeared not to chat much during the arraignment, which lasted about 15 minutes.

McGinty left without speaking to reporters.

Among the 10 people Flemmi is accused of killing is Debra Davis, 26, Flemmi's longtime girlfriend. Davis, who wanted to leave Flemmi after falling in love with another man, was allegedly strangled by Flemmi inside his mother's South Boston home in 1981.

Flemmi and his alleged criminal partner James "Whitey"

Bulger buried her in mud flats in Quincy, where her body was found last year, prosecutors said.

The remains of Deborah Hussey, the daughter of Flemmi's longtime companion, Marion Hussey, with whom he had three children, were found in a Dorchester mass grave.

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Flemmi and Deborah Hussey reportedly were having an affair at the time of her killing.

No trial date has been set for the murder case. Assistant US Attorney Brian T. Kelly said the trial would take six months and involve about 50 witnesses.

Kelly also said that if convicted on all counts and sentenced to the maximum for each, Flemmi faces two life terms in prison, plus 195 years, and fines of $4 million.

In May, Flemmi cut a deal with federal prosecutors and pleaded guilty to a separate indictment charging him with extortion, money laundering, and obstruction of justice and was sentenced to 10 years in prison.

In return, prosecutors dropped a 1995 indictment charging him and Bulger with three 1960s gangland murders.

A former FBI agent, John Connolly, is under indictment for alleged criminal acts committed with Flemmi and Bulger when they served as FBI informants.

---- INDEX REFERENCES ----

NAMED PERSON: MCGINTY, CHARLES

ORGANIZATION: FEDERAL BUREAU OF INVESTIGATION

NEWS SUBJECT: English language content; Crime/Courts; Political/General News; Crime (ENGL GCRIM GCAT CRM)

NEWS CATEGORY: MET

REGION: United States; North American Countries; United States; North America (USA NAMZ US NME)

EDITION: THIRD

Word Count: 406

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U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

May 3, 2001

Statement of FBI Director Louis J. Freeh:

The allegations that have been made concerning the circumstances of Mr. Salvati's conviction and thirty-year incarceration speak directly to the need for integrity and commitment in the pursuit of justice under the Rule of Law. These allegations, that law enforcement personnel, including the FBI, "turned a blind eye" to exculpatory information and allowed an innocent man to serve thirty years of a life sentence, are alarming and warrant thorough investigation. Under our criminal justice system, no one should be convicted and sentenced contrary to information known to the federal government. As with the conviction earlier this week in the Birmingham civil rights bombing case, we cannot allow the egregious actions of thirty years ago to prevent us from doing now what is right and what must be done to ensure justice is ultimately served.

To that end, since January 1999, an independent Justice Task Force, lead by Special Attorney John Durham, has been charged with investigating law enforcement corruption arising out of the FBI's handling of criminal informants James "Whitey" Bulger and Stephen Flemmi. The allegations under investigation by the Justice Task Force span the time period from the mid-1960s to the present, covering all periods of time that either Bulger or Flemmi was being operated as a confidential informant of the FBI, and include specific allegations concerning the FBI's role in the Deegan murder investigation and prosecution.

As a result of the Justice Task Force's ongoing investigation, charges have already been brought against former FBI Agent John Connolly for his actions, not related to the Deegan murder investigation, both during and after the time he was an FBI employee. I have provided the Committee with a brief summary of the history of the Justice Task Force and allegations under investigation pertaining to the Deegan murder. I look forward to working with the Committee to ensure that not only the troubling allegations raised by Mr. Salvati's case, but each of the allegations, is investigated fully.

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U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

Justice Task Force Investigation

History of the Justice Task Force

In 1997, the Department of Justice and the FBI initiated an investigation to determine whether any Government official committed criminal acts in connection with investigations into the New England LCN and James "Whitey" Bulger's Winter Hill Gang. The investigative team was lead by the Deputy Chief of DOJ's Public Integrity Section. The Assistant Director of the FBI's Office of Professional Responsibility was the senior FBI official. Then-Inspector Charles S. Prouty (currently SAC Boston) was the senior FBI official on the scene. SSA William D. Chase (currently ASAC Boston) also participated in the investigation.

The investigation concluded after five weeks without filing any criminal charges. The report issued by the task force marked the completion of the "first phase of investigation" and stated that all reasonable and apparent leads had been covered. The report anticipated additional investigation at the conclusion of pre-trial hearings in criminal trial of Bulger, Stephen Flemmi, Frank Salemme and others. Boston press reports have characterized this investigation as a "whitewash," focusing on the fact that SAC Prouty and ASAC Chase were involved and subsequently promoted.

The Justice Task Force (JTF) was created in January 1999 pursuant to a joint directive from then-Attorney General Janet Reno and FBI Director Louis Freeh. The creation of the Task Force was prompted by a request from the United States Attorney for the District of Massachusetts and then-Boston Special-Agent-in-Charge Barry Mawn to establish a group of independent prosecutors and investigators to focus on possible law enforcement corruption relating to the FBI's handling of criminal informants James "Whitey" Bulger and Stephen Flemmi. While many of these allegations surfaced during hearings conducted by Judge Wolf in connection with the criminal prosecution of Bulger, Flemmi, Salemme, and others, the JTF is not connected with the 1997 investigation.

The JTF, comprised of prosecutors and investigators from

outside Massachusetts, operates in the District of Massachusetts as an independent investigative and prosecutive arm of the Criminal Division of DOJ and the Criminal Division of the FBI. There is significant overlap between the matters being addressed by the JTF and those at issue in other pending federal prosecutions involving Flemmi and Bulger.

Allegations under review by the JTF span the time period from the mid-1960s to the present, which includes all periods of time that either Bulger or Flemmi was being operated as a confidential informant of the FBI.

In December 1999, as a result of the JTF's investigation, a grand jury in the District of Massachusetts returned an indictment charging retired FBI SSA John Connolly, Bulger and Flemmi with participating in racketeering activities. A superceding indictment was returned in October 2000 alleging additional federal offenses against Connolly and Flemmi. A trial on these charges has not been scheduled.

The Edward "Teddy" Deegan Murder

One of the allegations under review by the JTF concerns the FBI's role in the investigation and prosecution of the March 12, 1965 murder of Edward "Teddy" Deegan. This matter falls within the scope of JTF's investigation because of issues arising from the role played by Vincent James Flemmi, brother of long-time FBI informant Stephen Flemmi. At different times, both Vincent Flemmi and Stephen Flemmi were operated by the same FBI SA, H. Paul Rico.

Two days before Teddy Deegan was murdered, the FBI received informant information that Vincent Flemmi had advised the informant that an order had been given for Deegan to be killed. That same day, an FBI file was opened to target Vincent Flemmi for possible development as an informant.

The day after Teddy Deegan was killed, SA Rico reported information, provided by the original informant, that identified the individuals who had committed the murder. The informant attributed this information to Vincent Flemmi. Among those Flemmi told the informant did the killing were Flemmi himself, Joseph Barboza, Wilfredo Roy French, Ronald Cassesso and Romeo Martin. FBI files reflect that this information was promptly disseminated to a Captain in the Chelsea, Mass. Police Dept.

In March 1967, while incarcerated and during his first interview as an FBI cooperating witness, Joseph Baron (also

known as Joseph Barboza) agreed to provide information concerning the Deegan murder; however Barboza advised that he would never provide information that would allow Vincent Flemmi to 'fry'. SA H. Paul Rico conducted the first interview with Barboza. Information and eventual testimony provided by Barboza in state court did not implicate Vincent Flemmi, but did implicate, among others, Peter Limone and Joseph Salvati.

On July 31, 1968, Limone and Salvati were among six persons convicted of having played a role in the Deegan murder. Salvati received a life sentence and Limone was sentenced to death. Limone's sentence was subsequently commuted to a life sentence. Barboza was the key prosecution witness in this trial.

In July 1970, Barboza signed an affidavit recanting his trial testimony against Limone, Salvati and two others. However, during an interview conducted one month later by government prosecutors, Barboza reaffirmed his trial testimony. Mr. Barboza was murdered in San Francisco in February 1976.

In August 2000, Limone's attorney, John Cavicchi, was interviewed by the JTF. Later that year, in support of a motion for a new trial for Mr. Limone, Cavicchi made a limited FOIA request to the FBI's Boston office. This request was promptly processed and the three documents sought by Cavicchi were disclosed. Thereafter, Cavicchi made a request to the JTF for Limone related information. Initial JTF attempts to locate responsive material were not successful due largely to the fact that many FBI files from the late 1960s had been destroyed, pursuant to standard FBI policy. However, after a hand search of archived intelligence files, documents were identified and delivered to the prosecution and defense in the Limone and Salvati matters.

Limone was released from prison on January 5, 2001, after his motion for a new trial was granted. Limone's motion was not opposed by the District Attorney's office. The presiding local judge cited the documents released by the JTF as playing a significant role in her decision. Salvati's sentence was commuted in 1997 after exculpatory information concerning Salvati's role was obtained by the US Attorney's office and forwarded to the District Attorney. Salvati was subsequently released from prison.

The House Government Reform Committee has scheduled a hearing on May 3, 2001 concerning the Deegan murder. Over

1200 pages of documents were located by the Boston Office and the JTF and have been provided to the Committee through the Department of Justice.

The JTF is currently investigating not only the FBI's role in the Deegan murder investigation and prosecution, but the FBI's overall relationship with Bulger and Flemmi. The allegations currently under investigation by the JTF closely track the issues of interest to the House Govt. Reform Committee.

The JTF's ongoing Deegan inquiry is focused on:

- Whether the FBI's assistance to local authorities in this murder investigation was designed, at least in part, to protect Vincent James Flemmi from being prosecuted;
- Whether the FBI's motivation linked to Flemmi's status as a former FBI informant and/or the informant status of his brother, Stephen Flemmi, and
- Whether the FBI properly disseminated potentially exculpatory information to local investigators/ prosecutors.