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Mobster says he stopped a hit

By Shelley Murphy, Globe Staff, 10/31/2001

Retired FBI agent John J. Connolly is awaiting trial on charges that he leaked information to his prized informants, gangsters James "Whitey" Bulger and Stephen Flemmi, that prompted them to kill three men - including two FBI informants.

But in an affidavit filed in court yesterday, Flemmi says that Connolly enlisted his help in saving the life of another FBI informant: a Mafia soldier who was targeted by a Las Vegas bookie.

Flemmi alleges in the affidavit that he warned Connolly in 1987 a Las Vegas bookie had recruited an associate to "assassinate" Rhode Island mobster Anthony "The Saint" St. Laurent because St. Laurent was extorting the bookie and had threatened the bookie's 15-year-old daughter.

Flemmi alleges Connolly revealed that St. Laurent was also an FBI informant. The FBI agent asked him to "intercede and stop the attempted assassination," Flemmi wrote in the affidavit filed in Providence Superior Court. "I was able to accomplish this task."

Boston lawyer Tracy Miner, who represents Connolly, said, "There's no way that John Connolly ever told one informant who another informant was. It's just not the way he operated."

The Flemmi affidavit, dated Dec. 13, 1999, was submitted yesterday by convicted Rhode Island mobster Robert DeLuca, along with a motion to set aside his May 1994 state gambling conviction.

DeLuca argues that he is innocent and that St. Laurent, a co-defendant in his case, set him up for investigators while working as an informant for the FBI and Rhode Island State Police.

St. Laurent, who is jailed in Rhode Island while awaiting trial on gambling charges, denied in 1997 when the allegations first surfaced during federal court hearings in Boston that he was an FBI informant.

DeLuca, who gained notoriety as one of four soldiers inducted into the New England Mafia in 1989 during a blood-oath ceremony that was bugged by the FBI, has about four years left to serve in federal prison on racketeering and extortion charges.

EXHIBIT
951

He then faces an additional five years in prison for the state conviction he is trying to overturn.

This story ran on page B2 of the Boston Globe on 10/31/2001.
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AFFIDAVIT

I, Steven Flemmi, on oath, do hereby depose and state the following:

1) For many years, including the 1980s, I acted as a confidential informant for the FBI.

2) My FBI handler was Special Agent John Connolly.

3) In or near 1987, I reported to John Connolly about information I knew concerning a number of meetings involving Anthony St. Laurent of Rhode Island and other members of the LCN regarding the "shakedown" of a Las Vegas bookmaker.

4) At some point I received reliable information that an associate of the Las Vegas bookmaker was planning to assassinate Anthony St. Laurent because St. Laurent had threatened the bookmaker's 15 year old daughter.

5) I immediately gave this information to Connolly. At that point Connolly told me that St. Laurent was also a confidential informant for the FBI. Connolly asked me to intercede and stop the attempted assassination. I was able to accomplish this task.

MEMO SENSITIVE: ADMINISTRATIVE OPERATIONS AND PROCEDURES (F.B.I. DOCUMENT) THREAT TO LIFE - DISSEMINATION OF INFORMATION

EFFECTIVE 1/21/87

Signed under the pains and penalties of perjury this 13 day of DECEmber, 1999.

Stephen J Flemmi

Steve Flemmi

THE HONORABLE WILLIAM D. DELAHUNT
1317 LONGWORTH BUILDING
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202-225-3111
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To: Tom Bowman **Date:** 11/30

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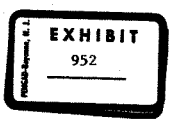
Comments:



Congress of the United States
House of Representatives
Washington, DC 20515

November 6, 2001

The Honorable John Ashcroft
Attorney General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear General,

As Members of the House from Massachusetts who sit on the Judiciary Committee, we were very disappointed by the Department's posture in the lawsuit brought against the United States government by the family of John McIntyre.

As you know, the family is seeking damages on the grounds that John McIntyre was murdered by James Bulger and Stephen Flemmi during the time when they were FBI informants working closely with the Boston office of the Bureau. In fact, the Justice Department agrees with the family that Bulger and Flemmi were the murderers. And of course the Justice Department has been forced by Judge Mark Wolf to acknowledge the extremely close relationship that existed over a period of years between the Bureau and these two men.

Apparently, faced with this extremely unfortunate -- and embarrassing -- set of facts, the Justice Department has resorted to the kinds of procedural tactics that give the legal profession a bad name. In the name of the United States government, your department has sought to dismiss the suit, not by any reference to the merits nor by any challenge to the underlying facts, but by arguing that the suit comes too late -- thus penalizing the family on the grounds that they had information about the murder of their relative which they did not in fact have, and which the government indeed helped keep from them.

The fact that family members expressed their view that Mr. McIntyre was dead several years ago is legally irrelevant. That belief formed no basis for a lawsuit, and indeed, had such a lawsuit been filed at the time, the department would surely have sought its dismissal.

In fact, the suit is a timely one based on the point at which the information relevant to the suit did become available to the family. Thus, we have the Justice Department whose collaboration with Bulger and Flemmi may have contributed to this murder invoking its own secrecy about that collaboration to thwart an effort by the victim's family to receive justice in federal court. It is hard to think of a response that would be less faithful to the commitment to justice that we expect of the people's government.

In the recent debate over the anti-terrorism bill, we and others expressed the view that we were supportive of the department's request for greater law enforcement powers but believed that we should at the same time enact some safeguards to prevent abuse of those powers. And one of the sets of events that led many of us to stress that latter point was the FBI's entanglement with Bulger and Flemmi. The response the department is making in this effort by relatives of one of Bulger and Flemmi's victims to seek some redress in court can only confirm the fears of many that the FBI -- and, sadly, the Justice Department which should be supervising it -- still fails to understand the importance of this point.

As Members of the legislative branch of the United States government on whose behalf you are fighting the McIntyre family, we urge you strongly to reverse this position and allow this matter to be discussed and ultimately resolved on its merits, not by the invocation of an inappropriate procedural rule.

Rep. Barney Frank Rep. Martin Meehan Rep. William Delahunt

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

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

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

1. Pursuant to Fed.R.Civ.P. 12(b)(1) defendant United States has moved for dismissal of all claims against it for lack of subject matter jurisdiction.

2. For the reasons stated in the attached Memorandum of Law in Support of Plaintiff's Opposition to Defendant United States' Motion to Dismiss with Exhibits, plaintiff hereby opposes the United States' Motion to Dismiss.

3. Plaintiff asserts the Motion to Dismiss should be denied based upon the record submitted by the parties before the Court. However, if the Court should determine that it cannot resolve the government's motion based upon the current record, or is inclined to allow the motion on "wrongful concealment" grounds and the current state of the record on that issue of fact, plaintiff requests that the Court order limited discovery on that issue prior to ruling on the Motion to Dismiss. See Dynamic Image Technologies, Inc. v. United States, 221 F.3d 34, 38-39 (1st Cir. 2000).

REQUEST FOR ORAL ARGUMENT

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

WHEREFORE, plaintiff respectfully requests that this Honorable Court:

A. Deny defendant United States' Motion to Dismiss;

B. Schedule oral argument on the United States' Motion to Dismiss;

C. Order limited discovery on jurisdictional issues, if necessary, for the reasons stated, supra, at ¶ 3; and

D. Grant such further relief as this Court deems necessary and just.

Respectfully submitted,

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

Dated: November 15, 2001

By: William Christie (PAO)

William E. Christie #566896
Two Capital Plaza, 4th Floor
P.O. Box 2703
Concord, NH 03302-2703
(603) 225-7262

CERTIFICATE OF SERVICE

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

William Christie (PAO)
William E. Christie

Jeffrey Denman

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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

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

I. INTRODUCTION

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

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

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

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

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

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

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

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

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

- After representations by government officials to the McIntyre family that John McIntyre was alive and a fugitive from justice, see Complaint at ¶ 299;

- After returning a federal Indictment in April 1986 against John McIntyre seventeen months after his disappearance, see Indictment, United States v. Murray et al., No. 86-CR-118, attached as Exhibit B.

- After defendant special agent in charge James Ahearn publicly denied in 1988 that any special relationship existed between the FBI and Bulger and Flemmi, see Law Enforcement Officials' Lament About and Elusive Foe: *Where Was Whitey?*, The Boston Globe, September 20, 1988 attached as Exhibit C.

- After Assistant United States Attorney Gary Crossen publicly speculated in 1992 that Joseph Murray (rather than Bulger and Flemmi as now known) was responsible for McIntyre's disappearance, see Kevin Cullen, *Valhalla Case Now a Little Murkier Quincy Man Seen as Fall Guy in Leak*, The Boston Globe, December 24, 1992, attached as Exhibit D;

- After Jerry Padalino, special agent in charge of United States Customs, publicly stated in 1995 that officially, U.S. customs officials considered McIntyre a fugitive,

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Thursday, December 20, 2001

Metro/Region

DEEGAN DEFENDANT FREED AFTER 34 YEARS
John Ellement, and Kathleen Burge, Globe Staff

The only man to admit he helped murder Edward "Teddy" Deegan in a Chelsea alley 36 years ago saw his convictions wiped out yesterday by Suffolk prosecutors, who decided recently discovered evidence of FBI misconduct denied Wilfred Roy French a fair trial.

French, who has spent 34 years in prison, was one of six men convicted in the 1960s of killing Deegan in a gangland execution. Yesterday, he was the last to be freed when he walked out of the Suffolk Superior Courthouse into the embrace of his two daughters.

Flanked by his attorneys, Philip A. Tracy and Paul Prew, French declined to talk about the dramatic change in his life, which likely would have ended behind bars if Suffolk District Attorney Ralph C. Martin II's office had not decided to cancel a retrial of French for his role in Deegan's death.

"Merry Christmas," is all French would say to reporters.

Two of his codefendants, Peter J. Limone and Joseph Salvati, who long insisted on their innocence, had their convictions wiped off the books earlier this year after a judge found that FBI agents did not hand over exculpatory evidence to their lawyers. The three other defendants are dead.

The FBI documents were found by a special Justice Department task force assigned to investigate the relationship of FBI agents in the Boston office with South Boston gangsters James "Whitey" Bulger and Stephen "The Rifleman" Flemmi. Federal authorities have admitted the two were longtime FBI informants, and they are under indictment for at least a dozen murders and other crimes during the same period.

The reports suggest the FBI knew in advance that Deegan had been targeted for murder by organized crime figures, but that agents did not stop it. They also indicate that agents withheld information that would have undermined the credibility of the star prosecution witness, Joseph Barboza, a hit man and loan shark who implicated all six men.

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Assistant District Attorney Mark T. Lee said that while the FBI reports strongly indicated Limone and Salvati were not involved in Deegan's murder, they did not absolve French.

"It has always been our view that he was one of the shooters," Lee said of French. Deegan was shot by three different weapons. "And that hasn't changed," he said.

In a 1983 affidavit, French said that the five other men were not "involved with me directly or indirectly in the shooting death of Teddy Deegan."

Lee said Martin's office decided to effectively wipe off French's accessory-to-murder convictions from his criminal record because the revelations in the FBI reports seriously undermine their ability to retry French, especially since Barboza is dead. French's attorneys were seeking a new trial based on the FBI reports.

Lee also said prosecutors had an ethical obligation to consider whether the orignal jury would have acquitted French if they had heard the FBI information that undercut Barboza's credibility on the witness stand. "It's quite possible they would have returned a different verdict if that information was available," Lee said.

Finally, Lee noted that French's 34 years in prison have been a longer term than some people convicted of second-degree murder have been incarcerated. "He has served a significant amount of time . . . and, arguably, he had paid his debt to society," Lee said.

Suffolk Superior Court Judge Margaret Hinkle, who also presided over the release of Limone, applauded Martin's office for concluding the Deegan murder case, now tainted by allegations of FBI misconduct.

"This is a courageous step for the office to take," Hinkle said from the bench.

---- INDEX REFERENCES ----

NAMED PERSON: MARTIN, RALPH C II; LIMONE, PETER J; BARBOZA, JOSEPH; LEE, MARK

ORGANIZATION: FEDERAL BUREAU OF INVESTIGATION

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

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

The Estate of Edward Brian Halloran	)	
Plaintiff,	)	
v.	)	Civil Action No. 01-11346-NG
United States of America, *et al.*	)	
Defendants.	)	

UNITED STATES' BRIEF IN SUPPORT OF
ITS MOTION FOR DISMISSAL

INTRODUCTION

This action against the United States and certain individual defendants arises from the death of Edward Brian Halloran in 1982. Complaint, ¶¶ 2, 193. Plaintiff, decedent's estate, alleges that the decedent was a cooperating witness with the FBI. Complaint, ¶ 186. The decedent allegedly implicated two long-term FBI informants in a murder. Complaint, ¶ 186. Subsequently, the Estate contends, an FBI agent told the informants about decedent's cooperation with the FBI. Complaint, ¶¶ 192-194. Plaintiff alleges that after the informants learned of decedent's cooperation with the FBI, they murdered him. Complaint, ¶ 193.

The United States has moved for dismissal of all claims against it for lack of subject matter jurisdiction under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680, the exclusive remedy for common law torts caused by federal employees acting within the scope of employment. 28 U.S.C. § 2679(b)(1). The basis for the motion is that plaintiff failed to present its administrative claim within two years of its accrual as required by statute, 28 U.S.C. § 2401(b). Having failed to timely assert the claim, it is "forever barred." *Id.*

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Plaintiff's administrative claim was submitted on September 27, 2000. As shown below, more than two years earlier, evidence was introduced at public hearings and widely reported in the press, which placed plaintiff on notice of its claim that the FBI was responsible for the death of its decedent by leaking decedent's status as an informant. Because plaintiff knew of, or by reasonable diligence should have ascertained, the basis for its claim more than two years prior to presenting its administrative claim, plaintiff's action against the United States is barred for lack of subject matter jurisdiction.

STATEMENT

I. The Complaint

According to the Complaint,[1] between the late 1960s and early 1990s, the FBI in Boston used two informants, James Bulger and Stephen Flemmi, known to have committed serious crimes and murders. Complaint, ¶¶ 39-57, 65-94, 104. Bulger and Flemmi provided information to their "handler," FBI Special Agent John Connolly, and Connolly's superior, FBI Supervisory Special Agent John Morris. Complaint, ¶¶ 10-11, 65-103. The FBI allegedly protected the two informants from prosecution and warned them about certain cooperating witnesses who had accused them of crimes. Complaint, ¶¶ 101-103.

Halloran was a criminal associate of Bulger and Flemmi. Complaint, ¶ 181. In January 1982, while under indictment for murder, decedent approached the FBI and implicated Bulger and Flemmi in the murder of Roger Wheeler. Complaint, ¶¶ 180-222. When Morris learned of Halloran's allegations he told Connolly. Connolly, in turn, told Bulger and Flemmi. Complaint,

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[1]The facts alleged in the Complaint are assumed to be true for purposes of the motion to dismiss. *See Sebago, Inc v. Beazer East, Inc.*, 18 F. Supp.2d 70, 84 (D. Mass. 1998); *Lowden v. William M. Mercer, Inc.*, 903 F. Supp. 212, 216-17 (D. Mass. 1995).

¶¶ 186-191. A short time later, Bulger "and others caused Halloran to be murdered" on May 11, 1982. Complaint, ¶¶ 193, 288.

II. Salemme Hearings

Hearings in *United States v. Salemme*, 91 F. Supp. 2d 141 (D. Mass. 1999) *rev'd in part, United States v. Flemmi*, 225 F.3d 78 (1st Cir. 2000), *cert. denied*, 531 U.S. 1170 (2001), were convened by Judge Wolf in January 1998, in connection with the criminal RICO trials of Francis Salemme, Stephen Flemmi, and several other defendants. Some of the hearings were publicized by Boston media outlets in detail.

According to the April 1998 testimony of former Supervisory Special Agent John Morris, around January 1982, he told Special Agent Connolly that Halloran was cooperating with the FBI and had implicated Bulger and Flemmi in the murder of an Oklahoma millionaire named Roger Wheeler. Salemme Hearing, Testimony of John Morris, April 22, 1998, at 112 (attached as Exhibit 1); April 24, at 74-75 (attached as Exhibit 2). Halloran alleged that Bulger and Flemmi had offered him a contract to kill Wheeler. Morris Testimony, April, 22, at 112. Exhibit 1. Morris testified that he expected Connolly would inform Bulger and Flemmi about Halloran's allegations. *Id.* at 112, 116, 118-19. Exhibit 1. Connolly indicated to Morris that he had shared the information with Bulger and Flemmi before Halloran was killed in May 1982. *Id.* at 114-16, 119 (Exhibit 1); April 27, at 114. Exhibit 3. Morris suspected that Bulger and Flemmi were responsible for murdering Halloran.[2] Morris testimony, April 22, at 121. Exhibit 1. The

[2]Further, during the same hearings, Morris also testified that he spoke with Agent Connolly in 1988 about an undercover investigation of a Boston bookmaker named John Bahorian. Morris told Connolly to tell Bulger not to harm Bahorian because Morris "didn't want another Halloran." Morris Testimony, April 22, 1998, at 121. Morris "was concerned that (continued...)

testimony of John Morris was widely reported in the local media (see below).

III. Media Reports

The allegations involving the FBI's use of confidential informants in Boston, including the revelation that two of Boston's top criminals were longtime FBI informants, received extensive media coverage in the Boston area. Articles discussing Bulger's role as an FBI informant were published as early as 1988 (stories describing Flemmi as an informant appeared later).[3] Other news stories, directly pertinent to the assertions raised in plaintiff's complaint which mention Halloran by name were published more than two years prior to the submission of plaintiff's administrative claim. They include the following:

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[2](...continued)
[Bulger and Flemmi] may have been involved in the murder of Brian Halloran, and I didn't want – if that were the case, I didn't want it to happen again with Bahorian." *Id.*

[3]The Boston Globe reported Bulger's "special relationship" with the FBI in September 1988. Globe Spotlight Report, *The Bulger Mystique*, THE BOSTON GLOBE, Sept. 20, 1988 (describing how the FBI "has for years had a special relationship with Bulger that has divided law enforcement" and suggesting that the FBI protected Bulger from prosecution and other law enforcement investigations). *See Salemme*, 91 F. Supp. 2d at 155 n.5 (describing September 20 Boston Globe article). The Globe and other publications issued numerous follow-up reports over the next ten years spelling out Bulger and Flemmi's relationship with the FBI in increasing detail. *See e.g.* Dick Lehr and Kevin Cullen, *Liquor Purchase Fuels Friction Over FBI-Whitey Bulger Tie*, THE BOSTON GLOBE, Nov. 11, 1990 (describing Bulger as FBI informant); Sean P. Murphy, *Tape Topic: FBI Link to Whitey Bulger*, THE BOSTON GLOBE, Feb. 8, 1991 (identifying Bulger as FBI informant and describing tape recording of two criminals speaking and one stating that Bulger never got arrested because he was friends with Connolly); Shelly Murphy, *Finding his Way Home Reputed Crime Boss Returns to Old Haunts*, THE BOSTON GLOBE, July 31, 1994 (describing Bulger as informant); Richard Chacon, *Three Reputed Mobsters have Longstanding Ties to Each Other*, THE BOSTON GLOBE, Jan. 6, 1995 (same); Dick Lehr, *Bulger's Flight Spares FBI Burden of Ties being Aired, Insiders Say*, THE BOSTON GLOBE, Mar. 5, 1995 (same); Patricia Nealon, *Flemmi Says he, Bulger Got FBI's OK on Crimes*, THE BOSTON GLOBE, June 26, 1997 (describing Bulger and Flemmi as FBI informants). Patricia Nealon, *FBI Loyalty to Mob Duo is Detailed; DEA, Others Kept in Dark about Bulger, Flemmi Ties*, THE BOSTON GLOBE, Jan. 9, 1998 (same). Exhibit 4.

July 1997: The Boston Globe reported that the FBI continued to use Bulger and Flemmi as informants despite indications that they had been involved in the murder of Halloran and two others. The article described Halloran as an informant who told the FBI that Bulger and Flemmi had offered him a murder contract on Wheeler. Halloran "was gunned down in South Boston on May 11, 1982." Ralph Ranalli, *FBI used Whitey, Despite his Ties to 3 Murders*, BOSTON HERALD, July 7, 1997. Exhibit 5.

October 1997: It was reported that Halloran told the FBI about several murders committed by Bulger without realizing that Bulger "was one of the most prized FBI informants of all time" and describing Bulger's "20-year relationship with the FBI." According to the news story, federal court hearings were to be held "to determine whether the FBI deliberately ignored Bulger's criminal exploits while secretly using him to gather intelligence on the local Mafiosi." Shelley Murphy, *In 80s, FBI saw Bulger as Both Informant and Murder Suspect*, THE BOSTON GLOBE, October 3, 1997. Exhibit 6.

November 1997: A newspaper article stated, "Flemmi discloses his defense to the racketeering charges: that if he was involved in any criminal activity, it was sanctioned by the FBI." Edmund Mahony, *World Jai Alai, Mob Hits, and the FBI: A Chronology*, HARTFORD COURANT, November 9, 1997.[4] Exhibit 7.

December 1997: The Boston Herald published an article describing leaks in the Boston

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[4]Both the Boston Globe and the Boston Herald reported that Flemmi asserted in an affidavit that he and Bulger were assured that the two could commit any crime short of murder without fear of prosecution. Patricia Nealon, *Flemmi Says He, Bulger Got FBI's OK on Crimes*, THE BOSTON GLOBE, June 26, 1997 ("Mr. Morris told Mr. Bulger and I that we could do anything we wanted so long as we didn't clip anyone."); Ralph Ranalli, *Hood: Whitey Tipped by FBI; Flemmi Says Warning Let Mobster Escape Arrest; Flemmi: Feds Tipped Us off on Indictment*, BOSTON HERALD, June 26, 1997. Exhibit 8.

FBI office and speculating that Bulger was able to flee prior to being arrested on a 1995 indictment because "he had been tipped off by his old FBI contacts." According to the story, Flemmi wrote in an affidavit that he and Bulger had been leaked advance word of the pending charges by the FBI. The story further reported that "Edward Brian Halloran, may have been killed because others learned of his affiliation with the [FBI]." Ralph Ranalli, *FBI Suspected Leaks to Mob*, BOSTON HERALD, December 15, 1997. Exhibit 9.

April 1998: Numerous articles were published in the Boston Globe, the Boston Herald, and the Hartford Courant, as shown by the following excerpts from these papers:

Patricia Nealon, *Ex-agent Says he Told of Informer[,] Fringe Gangster Turned up Dead*, THE BOSTON GLOBE, Apr 23, 1998 (exhibit 10):

> In his most explosive testimony, the former head of the organized crime squad of the Boston FBI office said yesterday that he told the agent who handled gangster/informants James J. "Whitey" Bulger and Stephen J. "The Rifleman" Flemmi that another informant had implicated them in the murder of a World Jai Alai executive – fully expecting the agent would pass the information along to his two prized snitches
>
> The informant, fringe gangster Edward "Brian" Halloran, soon turned up dead. Yesterday, former organized crime supervisor John M. Morris said he suspected that Bulger and Flemmi were involved in Halloran's murder.

Shelly Murphy, *Worst Fears Came True as Informant Lost Race for His Life*, THE BOSTON GLOBE, Apr. 23, 1998 (exhibit 11):

> And yesterday in US District Court in Boston, a former top-ranking FBI official confessed that the FBI may have caused Halloran's murder by revealing his cooperation to Bulger and Flemmi.
>
> Testifying under a grant of immunity, John M. Morris, former supervisor of the FBI's organized crime squad in Boston, said that in 1982 he told the agent who handled Bulger and Flemmi that Halloran was cooperating against the pair.

Morris said he told John Connolly, a special agent, that Halloran claimed Bulger, Flemmi, and others had offered him a contract to kill Roger Wheeler, the millionaire chairman of the Telex Corporation and owner of World Jai Alai.

Halloran claimed Bulger, Flemmi and others carried out the plot without his help, gunning down Wheeler on May 27, 1981 . . . .

* * *

Within weeks, Morris said, Connolly reported to him that he had told Bulger and Flemmi about Halloran's claims . . . .

* * *

. . . Morris admitted he was "concerned" that Bulger and Flemmi may have been involved in Halloran's murder.

Ralph Ranalli, *Ex-FBI Honcho: Agent Tipped Mobsters on Stoolie*, BOSTON HERALD, Apr. 23, 1998 (exhibit 12):

An FBI agent admitted he tipped off gangsters Whitey Bulger and Stephen Flemmi that another bureau informant – who was later executed in South Boston – had implicated them in a murder scheme, a former FBI supervisor testified yesterday.

Former Supervisory Special Agent John M. Morris also said he was so convinced Bulger and Flemmi were behind the 1982 execution of FBI cooperating witness Brian Halloran that six years later, when he feared they would murder a Roxbury bookmaker, he sent a message to the pair that he "didn't want any more Hallorans."

Peter Gelzinis, *'Good Guys' Weren't Good to Halloran*, BOSTON HERALD, Apr. 23, 1998 (exhibit 13):

Edward "Brian" Halloran made a ton of mistakes in the 41 years he walked among us. But the biggest was placing his trust in the hands of the FBI.

That blunder most certainly got him slaughtered on Northern Avenue 16 years ago.

John Morris, once a G-man supervisor, never actually said he doomed this

Dorchester hoodlum. But then, he didn't have to.

Edmund Mahony, *Testimony Ties FBI Leak to Slaying of Gangster*, THE HARTFORD COURANT, Apr. 24, 1998 (exhibit 14):

> In perhaps the most explosive admission to date, a retired supervisory agent testified in court Wednesday that he believes the bureau tipped off James "Whitey" Bugler and Stephen "The Rifleman" Flemmi that another gangster – later shot down in the street – had implicated them in the 1981 execution of World Jai Alai owner Roger Wheeler of Tulsa, Okla.
>
> John Morris, an organized-crime squad supervisor in the FBI's Boston office from 1977 to 1983, testified under immunity that he believes an intentional leak from his squad led to the killing of that gangster, Edward Brian Halloran.
>
> * * *
>
> In court on Wednesday, Morris testified that in early 1982 he told FBI agent John Connolly that Halloran had implicated Bulger and Flemmi in Wheeler's death. At the time, Connolly was Bulger and Flemmi's handler, the agent they reported to. Connolly, in turn, reported to Morris, who ran the organized crime squad. Morris said he gave Connolly the information, fully expecting it would be relayed to the two informants.

Ralph Ranalli, *Ex-FBI Agent Likely to Take Fifth*, BOSTON HERALD, Apr. 24, 1998. Exhibit 15. "Allegations against Connolly include: [] That he tipped Bulger and Flemmi off that another FBI informant, Edward "Brian" Halloran, was accusing them of murder and that the tip may have led to Halloran's execution on May 11, 1982 . . ."

Patricia Nealon, *Prosecutor Hints Ex-FBI Handler of Bulger, Flemmi May Face Charges*, THE BOSTON GLOBE, Apr. 25, 1998. Exhibit 16. "Morris said he told Connolly about the claims of informant Edward "Brian" Halloran, who was shot to death in May 1982. Morris says Halloran was alive when he passed the information to Connolly . . . ."

May 1998: At least three articles were published in May adding further pertinent

information about Halloran's murder. The Boston Herald reported that Morris "has also accused Connolly of serious wrongdoing, including tipping off Flemmi and Bulger that another hoodlum had become an FBI informant and was accusing them of murder. That informant, Edward Brian Halloran, was killed in 1982 shortly after being told he was no longer under the FBI's protection." Ralph Ranalli, *Ex-Agent Wants to Clear His Name*, BOSTON HERALD, May 1, 1998. Exhibit 17.

Ralph Ranalli, *Whitey Taunted Fed about Slain Stoolie*, BOSTON HERALD, May 16, 1998 (exhibit 18):

> The May 1982 gangland execution of Halloran has been at the eye of the storm in ongoing federal court hearings about the FBI's controversial long-term informant relationships with Bulger . . . and criminal cohort Stephen "The Rifleman" Flemmi . . . .
>
> Halloran – not knowing Bulger and Flemmi were FBI informants – went to the bureau in 1982 with a story that the pair had offered him a $10,000 contract hit on Tulsa, Okla., businessman Roger Wheeler
>
> * * *
>
> . . . A former FBI supervisor testified last month that Bulger and Flemmi's primary bureau "handler," former Special Agent John Connolly, admitted telling Bulger about Halloran's accusations before the murder.

The Boston Herald also reported that "[f]ormer FBI supervisor John Morris testified last month that before Halloran's murder, Bulger and Flemmi were told that Halloran had accused them of offering him a $10,000 murder contract." Ralph Ranalli, *FBI's Mafia Bugs in Peril- Key Wiretap Requests May Have Contained False Info, Weld testifies*, BOSTON HERALD, May 28, 1998. Exhibit 19.

June 1998: At least two more articles about Halloran's death were published in June. The Boston Herald reported that "[f]ormer FBI supervisor John Morris testified two months ago

that Bulger and Flemmi's FBI 'handler,' Special Agent John Connolly, admitted telling Bulger and Flemmi about Halloran's cooperation before he was killed." Ralph Ranalli, *Whitey Linked to IRA Gun-Running*, BOSTON HERALD, June 3, 1998. Exhibit 20.

In another article, Ranalli again reported that "[a]nother former supervisor, John Morris, testified two months ago that Bulger and Flemmi's FBI "handler," Special Agent John Connolly, admitted tipping off the criminal duo about Halloran's allegations." Ralph Ranalli, *FBI Was Allegedly Told of Bulger Role in Murder*, BOSTON HERALD, June 4, 1998. Exhibit 21.

July 1998: The Boston Globe reported the following statement: "In 1982, [Halloran] was gunned down after Connolly, according to testimony, told Bulger and Flemmi that the man had implicated them in a string of gangland slayings and the murder of an Oklahoma businessman." Shelly Murphy, *Cases Disappear as FBI Looks Away*, THE BOSTON GLOBE, July 22, 1998. Exhibit 22.

August 1998: Additional articles were published in August. Ralph Ranalli, *Questions Arise over FBI Agent's Knowledge of Slaying*, BOSTON HERALD, Aug. 5, 1998 (exhibit 23):

> In April, a former FBI supervisor testified that Connolly admitted tipping off Bulger and Flemmi about another FBI snitch, Brian Halloran.
>
> Halloran said Bulger and Flemmi offered him a $10,000 murder contract on a Tulsa, Okla., businessman, according to FBI reports. Halloran reportedly told the FBI he believed Litif had been murdered by Bulger in 1980.
>
> Halloran was murdered on the South Boston waterfront in May 1982. Connolly admitted that the tip-off happened before Halloran was gunned down, former supervisor John Morris said.

Later that month, the Boston Herald reported that "Connolly's former boss, John Morris, testified in April that Connolly admitted leaking Halloran's status to Bulger before he was

murdered." Ralph Ranalli, *Ex-FBI Agent Says Slain Dealer Was Informer*, BOSTON HERALD, Aug. 6, 1998. Exhibit 24.

September 1998: The Boston Herald reported:

> Gangster/FBI informant Stephen "The Rifleman" Flemmi has admitted being tipped off to the identity of another informer who was later executed, a federal judge revealed yesterday.
>
> Edward Brian Halloran was machine-gunned to death on the South Boston waterfront on May 11, 1982, shortly after telling the FBI that Flemmi and crime boss James "Whitey" Bulger had offered him a $10,000 murder contract on an Oklahoma businessman.
>
> Earlier this spring in ongoing pre-trial hearings about the FBI's controversial relationship with Bulger and Flemmi, former FBI supervisor John Morris testified that Flemmi and Bulger had been tipped off about Halloran's accusations prior to his death.
>
> Yesterday, U.S. District Court Judge Mark L. Wolf said Flemmi himself -- perhaps without fully realizing what he was doing-- blurted out confirmation that he had indeed been tipped about Halloran's status as an FBI cooperating witness.
>
> * * *
>
> . . . [Assistant U.S. Attorney Fred M.] Wyshak said the government believes Flemmi and Bulger were tipped off by their primary handler, former Special Agent John Connolly. He said the tip would prove the Flemmi-Bulger-Connolly relationship was "corrupt" and undercuts Flemmi's claim that he was given immunity for any crime "short of murder" - a claim Flemmi is using to fight a 1995 racketeering and murder indictment.
>
> * * *
>
> Morris testified that Connolly admitted tipping off Flemmi and Bulger about Halloran before the murder. Connolly took the Fifth when called to the witness stand . . . . In 1989, a former Bulger associate and marijuana smuggler told the FBI that Halloran was murdered by Bulger and South Boston henchman Patrick Nee.

Ralph Ranalli, *Flemmi Admits Tip-off to Informant's Identity*, BOSTON HERALD, Sept. 2, 1998.[5] Exhibit 25.

ARGUMENT

This case is barred because the Estate failed to file a timely claim. The plaintiff knew of its injury, the death of the decedent, and its cause, murder, when Halloran was shot to death in May 1982. In addition, plaintiff became aware, or through reasonable diligence should have become aware, of the factual basis for its wrongful death claim – the wrongful disclosure of the decedent's status as an informant – at the latest, in April 1998. Nonetheless, the Estate delayed filing its claim until September 27, 2000, more than two years after accrual. As a result, plaintiff's wrongful death suit against the United States is untimely and "forever barred." 28 U.S.C. § 2401(b). For this reason, the Court lacks subject matter jurisdiction to hear it under the Federal Tort Claims Act (FTCA), 28 U.S.C. §§ 1346(b), 2671-2680. *See United States v. Kubrick*, 444 U.S. 111 (1979).

I. CLAIMS MUST BE PRESENTED WITHIN TWO YEARS OF ACCRUAL OR BE "FOREVER BARRED"

The United States as sovereign is immune from suit except to the extent it consents to be sued. *United States v. Sherwood*, 312 U.S. 584, 586 (1941). Absent a "clear relinquishment" of that immunity, a court has no jurisdiction over tort actions against the United States. *Dalehite v. United States*, 346 U.S. 15, 30-31 (1953). One of the limited waivers of sovereign immunity is the FTCA, which provides a remedy against the United States for certain torts of its officers and employees. *United States v. Orleans*, 425 U.S. 807, 813 (1976).

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[5] It is likely that additional reporting concerning Halloran's death and Morris' testimony occurred on radio and television shows in the Boston area.

Under the FTCA, "'a] tort claim against the United States shall be forever barred unless it is presented in writing to the appropriate Federal agency within two years after such claim accrues . . . ." 28 U.S.C. § 2401(b); *United States v. Kubrick*, 444 U.S. 111, 113 (1979). The purpose of this requirement "is to encourage the prompt presentation of claims." *Id.* at 117 ("Section 2401(b), the limitations provision involved here, is the balance struck by Congress in the context of tort claims against the Government; and we are not free to construe it so as to defeat its obvious purpose, which is to encourage the prompt presentation of claims. . . . We should regard the plea of limitations as a "meritorious defense, in itself serving a public interest.") (citations and punctuation omitted); *Zelezniik v. United States*, 770 F.2d 20, 24 (3d Cir. 1985) ("Section 2401(b) does not guarantee that every injured party will necessarily be able to find and make a claim against a possibly responsible governmental agency."). The limitations period is a condition of the waiver of immunity. *Id.* at 117-18. Thus, filing "a timely administrative claim is a jurisdictional prerequisite which cannot be waived." *Attallah v. United States*, 955 F.2d 776, 779 (1st Cir. 1992); *Roman v. Townsend*, 224 F.3d 24, 28 (1st Cir. 2000); *Heinrich v. Sweet*, 44 F. Supp. 2d 408, 414 (D. Mass. 1999).

A. Accrual of a Claim Occurs when Plaintiff Knows of the Injury and its Cause

The general rule under the FTCA is that a plaintiff's claim accrues at the time of injury. *See Kubrick*, 444 U.S. at 120; *Attallah*, 955 F.2d at 779. As the Supreme Court has ruled, the critical facts necessary to proceed are knowledge of the injury and cause. *Kubrick*, 444 U.S. at 122. Where the injury and its cause are not immediately apparent, the First Circuit applies the "discovery rule" which extends the accrual period to the point in time "when the injured party knew or, in the exercise of reasonable diligence, should have known the factual basis for the

cause of action." *Attallah*, 955 F.2d at 780 (*citing Kubrick*). An "objective test" is used to determine whether the discovery rule applies: "[i]n order for the statute of limitations to be tolled pursuant to the discovery rule, the factual basis for the cause of action must have been *'inherently unknowable'* at the time of the injury." *Attallah*, 955 F.2d at 780 (citations omitted) (emphasis added).[6]

A plaintiff is obligated to attempt to uncover the facts surrounding the injury. *See Gonzalez-Bernal v. United States*, 907 F.2d 246, 250 (1st Cir. 1990). Suspicion of a claim "give[s] rise to a duty to inquire into the possible existence of a claim in the exercise of due diligence." *Kronisch v. United States*, 150 F.3d 112, 120, 121-22 (2d Cir. 1998) (dismissing suit where plaintiff, after watching televised congressional hearings, believed that he had been the unwitting subject of a experiment but failed to file an administrative claim within two years).

II. BECAUSE PLAINTIFF KNEW OR SHOULD HAVE KNOWN OF THE ALLEGED MISCONDUCT OF FEDERAL EMPLOYEES OVER TWO YEARS PRIOR TO FILING ITS ADMINISTRATIVE CLAIM, THE SUIT IS BARRED

Plaintiff presented its administrative claim on September 27, 2000. Exhibit 26. Thus, if its claim accrued prior to September 27, 1998, it is untimely. *See Kronisch*, 150 F.3d at 121. Overwhelming evidence shows that plaintiff's claim accrued before September 27, 1998.[7] As

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[6]"[A] plaintiff need not know each and every relevant fact of his injury or even that the injury implicates a cognizable legal claim. Rather, a claim will accrue when the plaintiff knows, or should know, enough of the critical facts of injury and causation to protect himself by seeking legal advice." *Kronisch v. United States*, 150 F.3d 112, 121 (2d Cir. 1998) (*quoting Guccione v. United States*, 670 F. Supp. 527, 536 (S.D.N.Y. 1987) (citations omitted), *aff'd on other grounds*, 847 F.2d 1031 (2d Cir. 1988).

[7]On a 12(b)(1) motion to dismiss "[t]he court, without conversion [to a summary judgment standard], may consider extrinsic materials and, to the extent it engages in jurisdictional factfinding, is free to test the truthfulness of the plaintiff's allegations." *Dynamic* (continued...)

shown below, the Estate's claim accrued as early as May 1982 but in no event later than April 1998.

A. Plaintiff's Claim Accrued in May 1982

Applying the principle specified in *Kubrick*, the Estate knew of its injury, the death of the decedent, and its cause, murder, in May 1982. Accordingly, the Estate's administrative claim should have been filed by May 11, 1984. As the First Circuit has stated, failure of the alleged wrongdoer to disclose his or her wrongdoing is not fraudulent concealment and likewise the failure of a claimant to discover the existence of a potential wrongdoer does not toll the statute of limitations. *Richman v. United States*, 709 F.2d 122, 123 (1st Cir. 1983). *See Gonzalez-Bernal*, 907 F.2d at 250 ("[m]ere silence of the defendant and failure by the plaintiff to learn of the right of action, alone, are not sufficient"; "[t]he government is under no duty to announce its suspicions or internal investigations to the world at large.") (internal citations and punctuation omitted).

Zeleznik v. United States, 770 F.2d 20 (3d Cir. 1985) is instructive on this point. In that case plaintiffs learned approximately seven years after their son was murdered that the killer, several days before their son's death, informed an INS employee that he was an illegal alien who had been involved in illegal drug transactions. The killer's contact with the INS was uncovered by a state legislative investigation. Within two years of the state investigation, the Zeleznikes filed an administrative claim with the INS. The court held that plaintiffs' knowledge of the immediate cause of their injury, the murder of their son, sufficed and they did not need to know

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[7](...continued)
Image Technologies, Inc. v. United States, 221 F.3d 34, 37-38 (1st Cir. 2000); *see also Aversa v. United States*, 99 F.3d 1200, 1210 (1st Cir. 1996) (same).

of the INS' alleged negligent role in order for their claim to accrue. "Discovery of the cause of one's injury . . . does not mean knowing who is responsible for it. The 'cause' is known when the immediate physical cause of the injury is discovered." *Id.* at 23 (*quoting Dyniewicz v. United States*, 742 F.2d 484 (9th Cir. 1984)). Accrual, the court held, occurred when:

> the injured party had sufficient notice of the invasion of his legal rights to require that he investigate and make a timely claim or risk its loss. Once the injured party is put on notice, the burden is upon him to determine within the limitations period whether any party may be liable to him. . . . An injured party with the knowledge of injury and its immediate cause is in no worse position than any other plaintiff who must determine whom to sue in a obscure factual context.

Id. (citations omitted). *Accord Gibson v. United States*, 781 F.2d 1334, 1344-45 (9th Cir. 1986) (plaintiff who is aware injury caused by fire had enough information for her claim to accrue and the statute of limitations was not tolled until she learned that the FBI was allegedly responsible for setting the blaze). *See Dyniewicz v. United States*, 742 F.2d 484, 487 (9th Cir. 1984) (wrongful death claims against Department of Interior for negligence in failing to close highway during flood accrued against the Department when death of victims was ascertained and not when possible negligence of Department employees was discovered); *see also Gonzalez-Bernal v. United States*, 907 F.2d 246, 250 (1st Cir. 1990) (unnecessary for a plaintiff to know the identities of the specific individuals who murdered the decedent for the cause of action to accrue). Similarly, in this case, the plaintiff was required to investigate the death of decedent within two years of the death, or risk loss of its claim.

B. Plaintiff's Claim Accrued at the Latest in April 1998

Further, even under the "discovery rule" which extends the limitations period until "the

factual basis for the cause of action" is known. *Attallah*, 955 F.2d at 780, plaintiff's claim accrued no later than April 1998, with the extensive reporting of the testimony of a former FBI agent that Halloran's informant status had been revealed to Bulger and Flemmi. Because plaintiff's claim was submitted out of time, its suit must be dismissed for lack of subject matter jurisdiction. *See Attallah*, 955 F.2d at 780; *Gonzalez-Bernal*, 907 F.2d at 250.

Through the widespread publication of articles detailing the April 1998 testimony, every critical fact necessary to pursue the wrongful death claim was available to the Estate. On April 22, 1998, Morris testified that he told Connolly that Halloran had implicated Bulger and Flemmi in the murder of Wheeler; that Connolly relayed this information to Bulger and Flemmi while Halloran was alive; and that Morris believed Bulger and Flemmi had murdered Halloran as a result. This information was widely reported in Boston area newspapers of wide circulation. Further, these allegations are the precise premise of plaintiff's suit.

Where, as here, a potential plaintiff has access to the pertinent facts, the claim accrues for limitations purposes. *See Hoskins v. United States*, No. CIV.A. 00-1713, 2001 WL 175237, at *2 (E.D. La. Feb. 20, 2001) (lawsuit alleging United States negligently permitted entry of Formosan termites barred as untimely because plaintiff failed to diligently investigate the claim where "a simple trip to the public library" to review newspaper articles would have put him on notice more than two years before the claim was submitted); *Guccione v. United States*, 670 F. Supp. 527, 536 (S.D.N.Y. 1987), *aff'd on other grounds*, 847 F.2d 1031 (2d Cir. 1988) (extensive press coverage and trials made subject matter of suit public knowledge thereby establishing accrual of claim more than two years before it was filed); *Leftridge v. United States*, 612 F.Supp. 631, 635 (W.D.Mo. 1985) (applying due diligence rule, plaintiff was on notice of potential claim involving

OSHA where local newspaper report on workplace fire stated that OSHA had inspected the workplace).

Kronisch v. United States, 150 F.3d 112 (2d Cir. 1998), is pertinent. In that case plaintiff sued claiming that a CIA agent had placed LSD in his drink in a Paris café in 1952, causing him to suffer mental problems. In 1977, plaintiff's sister sent him an article detailing the CIA's experiments with the drug LSD and he began to watch televised Senate hearings about the CIA program. At this time he came to believe he had been drugged by the CIA. In late 1977 and January 1978, plaintiff wrote letters to federal officials describing this belief. Sometime prior to January 1978, plaintiff sought legal counsel. However, he delayed filing an administrative tort claim until December 1981. The court ruled that plaintiff had enough information prior to December 1979 to have filed an administrative claim and his claim was therefore time-barred. *Id.* at 123.

Likewise, in this case, the knowledge and information the Estate was on notice of in 1998, or reasonably should have been expected to discover, amounted to much more than a hunch or suspicion. *See Guccione*, 670 F. Supp. at 537 ("[t]he diligence discovery rule does not preclude a claim from accruing until a plaintiff has actual access to every detail of his alleged injury."). Plaintiff knew its injury – and the factual basis for its claim against the United States no later than April 1998. Nonetheless, plaintiff waited more than two years before submitting its claim. Accordingly, the Estate's claim is jurisdictionally barred.

CONCLUSION

For the foregoing reasons, the United States' motion for dismissal should be granted.

Respectfully submitted,

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Dated: January 10, 2002

CERTIFICATE OF SERVICE

I hereby certify that on January 11, 2002, I caused to be served upon the following counsel a true and correct copy of the United States' Motion to Dismiss and Supporting Memorandum by U.S. Mail to:

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LOCAL NEWS

Justice Dept. won't turn over memo in Salvati case

by J.M. Lawrence
Tuesday, February 12, 2002

The Department of Justice won't give Congress a 1967 memo by then-Massachusetts federal prosecutor Edward F. Harrington about whether to prosecute mob boss Raymond L.S. Patriarca and others in a murder that led to the wrongful imprisonment of Joseph Salvati and three other men.

While federal attorneys acknowledge the memo exists, they claim the old document is protected by President Bush's executive privilege, according to House Government Reform Committee sources.

Harrington, who became a federal judge in 1988, has agreed to testify to the committee Thursday on his role in convincing Mafia hit man Joseph ``The Animal" Barboza to testify against the mob in the late 1960s.

``We're not bringing him in to accuse him," a committee source said. ``We're bringing him in to ask him some questions and try to understand why this happened."

FBI documents uncovered a year ago revealed Barboza perjured himself in 1968 in the Edward ``Teddy' Deegan case and sent Salvati to prison for life. He was released after 30 years and the case against him was dropped last year.

The FBI had an unauthorized bug in Patriarca's headquarters in the early 1960s that caught the mob boss giving Barboza authorization to assemble a crew to kill Deegan, according to the documents and committee sources.

In an interview with reporter Dan Rea of WBZ-TV that aired last night, Harrington grew emotional when asked about whether the government should compensate Salvati for the 30 years he spent in prison.

If Salvati was not involved in the murder, no amount of money would make up for the years he lost, Harrington said.

Harrington did not directly answer whether he ever saw the FBI report that details the names of Deegan's actual killers. Harrington, who battled the mafia under orders from then-U.S. Attorney General Robert F. Kennedy, declined a Herald request for

Barboza's attorney, F. Lee Bailey, said yesterday he doubted Harrington knew Barboza lied at tl murder trial. Bailey blamed FBI agents H. Paul Rico and Dennis Condon for thwarting Barboza's recant his testimony.

Barboza canceled a 1970s jailhouse polygraph that Bailey had arranged to attempt to uncover tl Deegan case.

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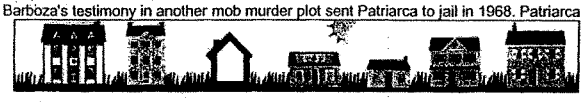
EXHIBIT 956

The House committee also has subpoenaed Rico, 76, to testify on Thursday about his role in he beat first-degree murder charges in Santa Rosa, Calif., while he was in the Witness Protection f committee has subpoenaed agent Condon but the 78-year-old agent is seeking permission to re bed, committee sources said.

Jack Zalkind, the Suffolk County assistant district attorney who handled the prosecution in the D yesterday he had no conversations with Harrington about the men whom Barboza accused.

Zalkind said he despised Barboza. But the former prosecutor contended the hit man's testimony corroborated by others involved in the case.

Barboza's testimony in another mob murder plot sent Patriarca to jail in 1968. Patriarca died in 1



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Ex-FBI Agent Convicted Of Helping Gangsters

Official Shielded Head of Boston Mob

By Pamela Ferdinand
Special to The Washington Post

BOSTON, May 28—Former star FBI agent John J. Connolly Jr., who developed high-level mob informants in the 1970s and '80s in the fight against New England's Mafia, was convicted here today of charges that he shielded the gangsters, accepted a bribe and tipped them to impending indictments.

After deliberating two days, a federal jury found Connolly, 61, guilty of one count of racketeering, three counts of obstruction of justice and one count of making a false statement to the FBI.

Jurors determined that Connolly had alerted James J. "Whitey" Bulger and his associates in a predominantly Irish American crime syndicate in South Boston to pending indictments against them. Bulger disappeared in January 1995 and remains on the FBI's list of 10 most wanted fugitives.

Jurors found Connolly not guilty of one crime: leaking the identities of three men who had been talking to the FBI. The men were killed by mobsters in retaliation, prosecutors alleged.

Of the 14 allegations related to the racketeering charge, jurors found nine false. But they found Connolly guilty of the five others, including giving $1,000 and a case of wine from Bulger to his former supervisor, former special agent John Morris. Morris was granted immunity and testified against Connolly.

Testimony severely damaged the reputation of the FBI's Boston field office, prompting the Justice Department to revamp its guidelines for handling informers and leading a congressional committee to investigate the Boston office's handling of mob informants in the 1960s. In the two-week trial, a rogue's gallery of witnesses, including several admitted killers, testified alongside federal judges and law enforcement officials.

Today, Connolly, who retired from the FBI in 1990, sat in the front row of the courtroom next to his wife and appeared to swallow hard as the verdict was read. Released on $200,000 unsecured bond, he declined to comment as he left the courthouse. He faces a maximum total of 20 years in prison, and sentencing is scheduled for Aug. 7.

deeply gratifying, it is always a somber moment when it becomes necessary to prosecute a member of law enforcement who has abused his authority and crossed the line from crime fighter to criminal," U.S. Attorney Michael Sullivan said.

"We're obviously happy we won the most serious of the charges," said Tracy A. Miner, Connolly's attorney. "I believe it was a compromise verdict and a compromise in John's favor."

From the moment of Connolly's 1999 arrest, prosecutors said he was a traitor to the cause of justice. Connolly, though, said he was a fall guy for the feds. He maintained that he had acted with the full knowledge, direction and approval of his superiors at the Justice Department and was unaware of the extent of his informants' crimes, which reportedly include more than 20 murders.

During the trial, Miner said Connolly only followed orders at a time the bureau was fighting the Mafia—which was the Bulger syndicate's chief rival—as intensely as it is now fighting al Qaeda. She said the information Connolly acquired from informants was critical in dismantling the Italian syndicate in New England.

However, Special Assistant U.S. Attorney John Durham argued that Connolly was corrupt from the time he recruited Bulger in the 1970s and became so close to mob informants that they nicknamed him "Zip" and "Elvis."

Prosecutors maintained that Connolly, during and after his stint as an FBI special agent from November 1968 to December 1990, helped the reputed mobsters in a racketeering enterprise that included illegal gambling, loan sharking, extortion and bribery. He also was accused of failing to report serious crimes in order to protect the informants from prosecution.

Connolly did not take the stand in his own defense, although his attorneys showed a 1983 FBI training video in which he gives agency rookies advice on how to handle criminal informants:

"You can get friendly with them and you can like them, but you can never forget who you work for and that you're an FBI agent," he said.

EXHIBIT
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John J. Connolly Jr. leaves federal court following the verdicts yesterday. His lawyer, Tracy Miner, is behind him at left. (Globe Staff Photo / David L. Ryan)

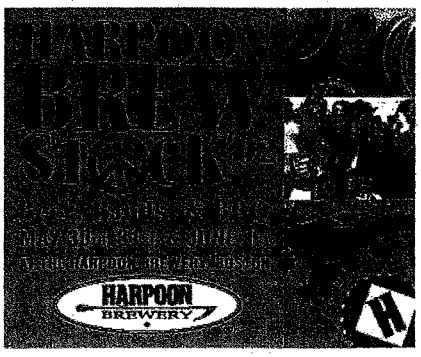
Connolly convicted

But jury acquits ex-agent of most serious charges

By Shelley Murphy and Thanassis Cambanis, Globe Staff, 5/29/2002

John J. Connolly Jr. left the FBI a hero for turning Boston's most vicious gangsters into powerful informants against the Mafia. But yesterday the retired FBI special agent was convicted of being a criminal himself for protecting those same informants, James "Whitey" Bulger and Stephen "The Rifleman" Flemmi, by tipping them off to their indictment and trying to undermine the government's efforts to convict the pair.

Yet even as jurors convicted Connolly, 61, of racketeering, obstruction of justice, and lying to an FBI agent, they found that prosecutors failed to prove the most serious charges against Connolly: that he leaked information that prompted the two gangsters to kill three men in the 1970s and 1980s.



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Jurors also found that prosecutors didn't prove that Connolly assisted Bulger and Flemmi when they forced a couple to sell their South Boston liquor store in 1984.

The jury found that prosecutors proved that Connolly delivered a case of wine with $1,000 tucked inside to FBI supervisor John Morris from Bulger and Flemmi in 1982 or 1983. But the jury rejected additional allegations that Connolly delivered two other bribes of $5,000 and $1,000 to Morris or that he participated when Morris alerted Bulger and Flemmi in 1988 that a Roxbury bookie's telephone was tapped.

And the jury also concluded that prosecutors failed to prove that Connolly received a two-carat diamond ring from Bulger. That charge hinged almost solely on the testimony of confessed hit man John Martorano, who said that he gave the stolen diamond to Bulger, who said he was giving it to Connolly as a present to his then-wife.

Neither Connolly's lawyer nor federal prosecutors would speculate on how much prison time he is likely to face under federal sentencing guidelines, but legal specialists have said it could be as much as eight to 10 years.

US District Judge Joseph L. Tauro said he would have revoked Connolly's bail immediately if he had been convicted of leaking information that caused the three killings, because he would have faced significantly more prison time. Instead, he set sentencing for Aug. 7 and allowed Connolly to remain free on the same $200,000 unsecured bond that was set after his December 1999 arrest.

"It is always a sober moment when it becomes necessary to prosecute a member of law enforcement who has abused his authority and crossed the line from crime fighting to criminal," US Attorney Michael Sullivan said after the verdict.

Connolly's "appalling" conduct was an affront to all law enforcement, Sullivan said, adding that any charges against other FBI agents raised during trial testimony would be investigated.

"We must always be ready to address head-on

the search for "WHITEY" BULGER

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- Gangster Kevin Weeks
- Hitman John Martorano
- FBI agent John Connolly
- FBI agent John Morris

EXTRAS

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allegations of misconduct and corruption, even when directed at members of the FBI," Sullivan said.

Charles Prouty, the special agent in charge of the Boston FBI office, and Colonel Thomas Foley, head of the State Police, also joined Sullivan in reacting to the verdict.

Prouty said the FBI would continue to take steps to repair any damage caused by the Connolly case. "It's a morale-buster, there's no question about it," he said yesterday evening.

In reaction to the case, Prouty said, the FBI now has all new agents take polygraph tests and has stepped up its monitoring of current agents. There is an ongoing investigation into Special Agent John Newton, who was suspended this month because of charges raised during the trial.

"This conduct was abhorrent to all honest FBI agents," Prouty said. "We do want to turn the page and we hope to move on."

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As the verdict was read following 121/2 hours of deliberations over two days, Connolly blinked repeatedly and stared straight ahead, avoiding eye contact with the jury or his wife, Liz, who stood by his side. Once the jury of six women and six men left the courtroom, Connolly hugged his teary-eyed lawyer, Tracy Miner.

But Connolly, who has given countless interviews in the past to protest his innocence, insisting that FBI superiors blessed his handling of Bulger and Flemmi, left the courthouse with only two words, "No comment."

"We are obviously happy that the most serious charges were found to be not proven," said Miner, adding, "It seems to me to be an inconsistent verdict."

Part of the jury's verdict did appear contradictory when it came to the question of whether Connolly, who retired in 1990, warned his longtime informants, Bulger and Flemmi, and their codefendant, New England Mafia boss Francis "Cadillac Frank" Salemme, to flee on the eve of their January 1995 indictment. Bulger remains a fugitive on the FBI's 10 Most Wanted list with a $1 million reward for his capture.

In finding Connolly guilty of racketeering, jurors found that he had tipped off Bulger, Flemmi, and Salemme in advance of their indictment. But jurors found Connolly not guilty of a separate obstruction-of-justice charge of tipping off the gangsters to their indictment.

About two hours before reaching its verdict, the jury sent Tauro a question asking whether they could make different findings on the two charges, even though they contained the same allegation. The judge sent back a note, saying, "Yes."

While Connolly was convicted of four of the five charges against him, the verdict sent a strong message that jurors were unwilling to accept the uncorroborated word of a rogue's gallery of government witnesses that included Martorano, who admitted killing 20 people; former Bulger enforcer Kevin J. Weeks, who participated in five murders; and Morris, who admitted pocketing $7,000 in bribes from Bulger and Flemmi and tipping them off to investigations.

Martorano testified that he, Bulger, and Flemmi killed Revere bookie Richard Castucci in 1976. Martorano acknowledged he never met Connolly, but testified that Bulger told him Connolly had warned him that Castucci was an FBI informant and had revealed the hideout of two fugitive members of Bulger's gang.

Weeks had testified that he served as "lookout" when Bulger gunned down Brian Halloran on the South Boston waterfront on May 11, 1982, after he was allegedly tipped off by Connolly that Halloran was an FBI informant and had implicated him in the murder of a Tulsa businessman the previous year.

Again, Weeks's information about Connolly being the source of the leak was second-hand, coming through Bulger.

And Martorano said he killed Winter Hill gang associate John Callahan in August 1982 because Bulger told him that he'd learned from Connolly that the FBI was seeking Callahan as a potential witness against them.

Connolly cultivated Bulger as an informant in 1975 and inherited Flemmi from another agent a year later. He is the only agent to be charged since the FBI's corrupt relationship with Bulger and Flemmi was first exposed during federal court hearings in 1998.

The hearings were triggered by Flemmi's assertion that the FBI had authorized him and Bulger to commit crimes in exchange for information from them about local Mafia leaders.

Ultimately, US District Judge Mark L. Wolf, who presided over those hearings, rejected the claim by Flemmi, who later pleaded guilty and was sentenced to 10 years in prison. But the revelations of his betrayal prompted many of his former cohorts to cut deals with the government and cooperate against him and Connolly.

And it was Connolly's meddling in the 1995 case and his attempt to help Flemmi get it dismissed that came back to haunt him yesterday.

Jurors found Connolly guilty of obstruction of justice for writing an

anonymous letter to Wolf in March 1997 on Boston police stationery in an effort to persuade the judge to drop the charges against Flemmi. The letter falsely accusing retired Boston police Sergeant Detective Frank Dewan of fabricating evidence against Bulger and Flemmi.

Contacted in Florida last night, Dewan said he was "tremendously pleased" by the verdict, adding, "As far as I'm concerned that clears all the rumors that were spread by Connolly and his friends. He got so cocky. He had been able to do what he wanted for so long that he thought he was immune."

Jurors also convicted Connolly of another obstruction count for helping to persuade Flemmi to lie when he testified in the Wolf hearings and falsely accuse Morris of leaking word to him of the 1995 indictment.

And Connolly was also found guilty of making a false statement to an FBI agent in 1997 by denying he'd been in contact with Flemmi's defense team. Telephone records proved he'd made numerous calls to Flemmi's lawyer.

Special Assistant US Attorney John Durham, who led the prosecution team, said, "Nobody in this country is above the law, an FBI agent or otherwise, and ultimately the ends do not justify the means."

This story ran on page A1 of the Boston Globe on 5/29/2002.
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Saturday, August 3, 2002

NEWS

Connolly letter may be ethics violation

JONATHAN WELLS

A U.S. District Court judge may have violated ethical rules for federal judges this week by writing a letter to another federal judge urging leniency in the sentencing of former FBI agent John J. Connolly Jr.

In the July 31 letter, Judge Edward F. Harrington urged his colleague, U.S. District Judge Joseph L. Tauro, to "consider the contribution (Connolly) made to the government's campaign against organized crime" before deciding the ex-agent's fate.

In May, Connolly was convicted of racketeering, obstruction of justice and making a false statement in connection with his dealings with crime bosses James J. "Whitey" Bulger and Stephen "The Rifleman" Flemmi, who were both longtime FBI informants handled by Connolly. Tauro is scheduled to sentence Connolly on Sept. 12. Under federal guidelines, Connolly faces between eight and 20 years in prison.

According to the Code of Conduct for federal judges, written by the Judicial Conference of the United States in Washington, D.C., judges must be careful not to exploit the power of their position and, as such, should not volunteer information to sentencing judges unless they are formally requested to do so.

Several legal sources said such a formal request would have to come from the court, not from the defense or prosecution. It was unclear yesterday whether a formal request was made of Harrington by the court.

According to his clerk, Harrington is on vacation until after Labor Day and Connolly's lawyer, Tracy Miner, did not return a Herald telephone call.

Enforcement of the code of conduct for federal judges is carried out by individual Judicial Councils in each district of the federal court system. If a complaint were to be filed against a Massachusettts judge, it would be referred to the Judicial Council chaired by Chief Judge Michael Boudin of the Court of Appeals for the First Circuit.

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Harrington's letter, written on U.S. District Court letterhead, is the second time the judge has gone to bat for Connolly. At trial, Harrington took the stand as a witness for the defense and vouched for Connolly's overall good character and his effectiveness as a handler of criminal informants.

The judge's letter to Tauro echoed his trial testimony. Harrington wrote that Connolly "made a very significant contribution to the United States government's virtual elimination of the mafia from this region of the country by the effective utilization of criminal intelligence derived from top echelon informants."

Harrington added that he "always held Mr. Connolly in the highest regard and considered him to be a man of the highest character and ability."

Harrington, meanwhile, has himself taken heat from a congressional committee for his role in the handling of the late mob hitman Joseph "The Animal" Barboza, who was both an FBI informant and a star government witness in the 1960s and 1970s.

Long-hidden FBI documents which surfaced in December 2000 made it clear the FBI in Boston and Washington knew Barboza falsely accused four men of the 1965 gangland slaying of Edward "Teddy" Deegan, but the bureau remained silent as the men were convicted of murder in what was then a death penalty case.

Harrington and other federal officials went to great lengths to protect Barboza. They created the federal witness protection program forhim and later, Harrington traveled to California to testify on behalf of Barboza after he was charged with murder.

Victor Garo, the lawyer for Joseph Salvati, who was exonerated in the Deegan murder only last year after serving 30 years in prison, was surprised Harrington would try to influence Connolly's sentencing.

"It's a very unusual situation when a sitting judge writes on his own stationery to recommend leniency," Garo said.

Connolly, who retired in 1990, was found guilty of alerting his informants, Bulger and Flemmi, to their impending indictment in 1995, which allowed Bulger to flee and remain a fugitive.

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The veteran agent was also convicted of obstructing the government's subsequent prosecution of Flemmi and lying to an FBI agent about his numerous contacts with the Flemmi defense team.

Harrington has said he bases his glowing evaluation of Connolly on what he saw while serving as U.S. Attorney in Boston from 1977 to 1981 - a time when Connolly was on the FBI's organized crime squad, assigned to the New England Organized Crime Strike Force, and meeting regularly with Bulger and Flemmi.

---- INDEX REFERENCES ----

NAMED PERSON: CONNOLLY, JOHN; HARRINGTON, EDWARD F; BULGER, JAMES J "WHITEY"; FLEMMI, STEPHEN "THE RIFLEMAN"

ORGANIZATION: FEDERAL BUREAU OF INVESTIGATION

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

REGION: United States - Massachusetts; Northeast U.S.; United States; North American Countries; Massachusetts; North America; United States (USMA USE USA NAMZ MA NME US)

EDITION: ALL EDITIONS

Word Count: 717

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Wednesday, May 29, 2002

NEWS

Former FBI agent guilty; Jury's verdict could land Connolly 8-20 year sentence
J.M. Lawrence

A federal jury yesterday convicted former FBI agent John J. Connolly Jr. of becoming a member of the Winter Hill gang and helping fugitive mob boss James "Whitey" Bulger run from the law.

"Their verdict speaks loudly to the fact nobody in this country is above the law, an FBI agent or otherwise. The ends do not justify the means," said special federal prosecutor John Durham, who continues to probe Boston law enforcement ties to organized crime.

In 12 hours over two days, the jury of six men and six women found Connolly guilty of racketeering, two counts of obstruction of justice and lying to investigators - charges that will send him to prison for 8-20 years depending on federal sentencing guidelines, sources said.

"It is always a somber moment when it becomes necessary to prosecute a member of law enforcement who has abused his authority and crossed the line from crime fighter to criminal," U.S. Attorney Michael Sullivan said after the verdicts were announced against the 61-year-old Connolly. "Today's verdict reveals John Connolly for what he became: a Winter Hill gang operative masquerading as a law enforcement agent," he said.

Connolly was once considered a star in the FBI's successful efforts to dismantle the New England Mafia. But prosecutors said he got too close to his informants, including notorious gangsters Bulger and Stephen "The Rifleman" Flemmi.

However, jurors found prosecutors did not prove Connolly was the source of the tip leading to the gang's murders of three men who were helping the government - informants Richard Castucci, Brian Halloran and grand jury witness John Callahan.

The jury also rejected prosecutors' claims that Connolly protected Bulger and Flemmi from prosecution for the 1984 extortion of a South Boston liquor store from Stephen "Stippo" Rakes and his former wife, Julie Dammers, who testified during the trial.

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'We are pleased that the jury found that John Connolly was found not guilty of the most serious acts alleged in the indictment,' Connolly's attorney Tracy Miner said. "None of the acts John Connolly was found guilty of resulted in any physical harm to anyone."

Miner called the jury's verdicts "inconsistent."

In the racketeering portion of the case, jurors found Connolly tipped Bulger and Flemmi in December 1994 to the impending racketeering indictments but found him not guilty on an obstruction of justice count involving providing information tipping Flemmi.

Connolly, who remains free on $200,000 unsecured bond and who faces sentencing Aug. 7, appeared ashen as the verdicts were read at 4:30 p.m. in U.S. District Court Judge Joseph L. Tauro's courtroom. He left the courthouse without comment.

Bulger and Flemmi led the Irish crime syndicate known as the Winter Hill gang that ran loansharking, gambling and drug operations in the Boston area. They were also top-echelon informants who ratted out the Mafia - their criminal rivals - to the FBI.

Bulger fled in January 1995 and remains a fugitive on the FBI's "Most Wanted" list.

Connolly, who retired in 1990, denied any wrongdoing and claimed all of his dealings with Bulger and Flemmi were sanctioned by his supervisors at the FBI in their zeal to bring down the Mafia. He also claimed he was unaware of the extent of his informants' crimes, including at least 20 slayings.

Massachusetts State Police Col. Thomas J. Foley boiled down a decade of state police and Drug Enforcement Administration investigations into Bulger, Flemmi and their corrupt protectors to this. "It wasn't right. It needed to be corrected. It has been and we'll just join together and move on to finish the rest of this case," Foley said.

Foley, a member of the team whose work unearthed the bodies of six mob victims in Dorchester graves in 1999, called Connolly's own children victims of the ex-agent's switch to crime. Connolly brought his twin sons and a 12-year-old to the opening and closing arguments of the trial.

'There are a lot of victims out there right now and unfortunately there's three more victims at least in John Connolly's family -

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three fine young boys who had to live through this. This is not a victory for anybody. This is something that had to be done," Foley said.

Investigators now are closely examining testimony from former FBI agents and supervisors during Connolly's trial regarding other bribes.

"That information will be pursued to determine whether it's appropriate to pursue charges," Sullivan said.

'The cost of Connolly and others' criminal misconduct and the lack of appropriate controls that allowed the misconduct to continue without interruption has been grave and widespread," he said.

Charles S. Prouty, special agent in charge of the Boston FBI, called the Connolly case a "morale buster" to his bureau and said agents are determined to regain public trust.

'This conduct is abhorent to all honest FBI agents. (The verdict) is exactly what they wanted. We do want to turn the page," he said.

Prouty said steps have been implemented at the bureau to protect against future corruption of agents. The FBI now administers a polygraph to all new agents and also uses random polygraph tests, he said.

Attorneys representing victims of the FBI's ties to criminal informants said the verdict strengthens their cases.

A total of eight civil suits against the government now demand more than $2 billion in damages.

"Once again the criminal link between the FBI and organized crime in Boston has been established beyond a reasonable doubt and that helps the McIntyre case immensely," said attorney Jeffrey Denner, who represents the family of another man killed by the gang when his informant status was leaked from the government.

With Bulger a fugitive seven years after Connolly's tip-off, investigators still have a final chapter to write in 35-year saga of the FBI and organized crime. "We still remain extremely optimistic we're going to be able to return James 'Whitey' Bulger to this courtroom to face justice," Sullivan said.

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Bulger fled in January 1995 and despite numerous sightings in the United States and overseas, he still remains at large.

Caption: CONVICTED: Former FBI agent John J. Connolly Jr. leaves the Moakley Federal Courthouse yesterday with defense attorney Tracy Miner after being found guilty of racketeering, obstruction of justice and lying to investigators. Staff photo by Nancy Lane

---- INDEX REFERENCES ----

NAMED PERSON: CONNOLLY, JOHN; SULLIVAN, MICHAEL; MINER, TRACY; FOLEY, THOMAS J

ORGANIZATION: FEDERAL BUREAU OF INVESTIGATION

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

REGION: United States; United States; United States - Massachusetts; Northeast U.S.; North American Countries; Massachusetts; North America (US USA USMA USE NAMZ MA NME)

EDITION: 1ST EDITION

Word Count: 1039

5/29/02 BOSTONH 004

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Judge withdraws Connolly letter

8-04-02

Public backlash cited after call for leniency

By Thanassis Cambanis
GLOBE STAFF

Bowing to public pressure, Senior US District Judge Edward F. Harrington yesterday withdrew his letter urging a colleague to go easy on convicted FBI agent John Connolly when he is sentenced on racketeering charges next month.

In a letter to the sentencing judge, Joseph L. Tauro, Harrington insisted his submission was appropriate despite ethical guidelines that clearly warn federal judges not to make unsolicited comments about pending cases to other members of the bench.

"I believed that my letter was entirely proper as it was requested by the defendant, relates specialized knowledge I acquired as a federal prosecutor, and concerns the type of information traditionally considered by sentencing courts," Harrington wrote.

EDWARD HARRINGTON

Harrington's office said yesterday that he was on vacation and not available for comment.

Connolly faces up to eight years in prison when he is sentenced Sept. 16 on charges of racketeering and obstruction of justice. A federal jury convicted Connolly in May of collaborating with organized crime kingpins James "Whitey" Bulger and Stephen "The Rifleman" Flemmi, who were high-level confidential informants for the FBI.

Harrington, a former federal prosecutor, testified on Connolly's behalf at

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MA Judicial Canons

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Judge recalls request for Connolly leniency

▶ HARRINGTON
Continued from Page B1

his trial, lauding the agent's contribution to the government's battle against the Mafia in the 1970s and 1980s.

In a four-page letter submitted Thursday and first reported by the Globe, Harrington reiterated his praise of Connolly's work and asked that Connolly's contribution to law enforcement be factored into his sentencing.

But the canon of judicial ethics warns sitting federal judges in strong terms "to be sensitive to possible abuse of the prestige of office" and not to initiate communications with sentencing judges.

Tracy Miner, the court-appointed lawyer representing Connolly, defended Harrington's letter as "totally appropriate."

"I'm concerned that this might have a chilling effect on other people who want to write letters," Miner said of the judge's decision to withdraw his letter. "If everyone who writes a letter is subject to media scrutiny, then some might opt not to."

A congressional committee already has questioned Harrington about his role in allegedly protecting informants when he was a federal prosecutor. Harrington served as US attorney in Massachusetts from October 1986 to April 1987, during the time that Connolly violated the FBI's rules on handling organized crime informants.

Harvard Law School professor Alan Dershowitz said despite the judge's about-face, Harrington's letter "still creates an appearance of impropriety" because Connolly has information that could potentially tarnish the judge's reputation.

"There's a perception out there that Judge Harrington may be protecting himself," Dershowitz said. "The harsher the sentence [for Connolly] the more likely he is to loosen his lips. That's why it was particularly inappropriate for Judge Harrington to weigh in on this case."

Withdrawing the letter mitigates some of the ethical impact, Dershowitz said, but Harrington already has compromised himself by making his position public. "You can't unring a bell once rung," he said.

Citing "the public criticism I have received," Harrington changed his mind about the presentencing letter just two days after sending it to the court.

"Given the present controversy surrounding my letter, I ask that my letter be withdrawn and not be considered in any way," Harrington wrote.

"I sincerely apologize to the court for any inconvenience or distraction my letter has caused."

Thanassis Cambanis can be reached at tcambanis@globe.com.

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Wednesday, August 14, 2002

NEWS

Salvati to sue feds for $300M
J.M. LAWRENCE

Wrongly convicted of murder and imprisoned for 30 years, Joseph Salvati will notify the FBI today he plans to sue the government for $300 million in the largest civil rights lawsuit of its kind.

His longtime attorney Victor J. Garo drew the figure from the amount the Iranian government was ordered to pay in punitive damages to journalist Terry Anderson, who was held hostage by terrorists for more than six years before his release in 1991.

"The Salvati case is worse than the Anderson case because this was done by our own government to our own citizen," Garo said.

Salvati, whose sentence was commuted in 1997, was exonerated last year in the 1965 murder of Edward "Teddy" Deegan.

A Middlesex Superior Court judge ruled FBI agents withheld evidence that might have proved his innocence and the state dropped the charges.

Calling Salvati "a casualty" of the FBI's 1960s war on organized crime, Garo is not the first to color the Salvati saga with images of government-sponsored terrorism.

In February during a Congressional hearing to probe the Deegan case, House Government Reform Committee Chairman Dan Burton (R-Ind.) declared, "It's terrorism being foisted on American citizens who are innocent and that's something we can't tolerate."

Federal courts ordered the Islamic Republic of Iran to pay former AP correspondent Anderson $300 million - three times the government's annual budget for "terrorist activities" - plus $41.2 million in compensatory damages.

Iran ignored the judgment but Congress appropriated the $41.2 million to be paid this year to Anderson, who is now an Ohio University journalism professor.

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Garo claims the FBI in 1968 helped mob hit man Joseph "The Animal" Barboza frame Salvati, now 69, and three others in the bureau's war on organized crime.

The Medford attorney said he is moving to file suit in frustration after discussions with the Department of Justice failed to produce a "fair and reasonable compensation package."

"It's avoidance, evasion and avoidance," Garo said. "What is the deterrent to the young FBI agents of today when no one has been punished for what went on in the Deegan murder?"

The Boston FBI declined comment yesterday on Salvati's claim.

"It's an ongoing matter," said FBI spokeswoman Gail Marcinkiewicz, citing a Justice Department Task Force investigation into possible FBI corruption.

The Deegan murder case has already spurred $375 million in lawsuits filed on behalf of three other men who were wrongfully accused.

Peter J. Limone, who spent 33 years in prison, has a $175 million suit now before U.S. District Court Judge Nancy Gertner.

The families of Louis Greco and Henry Tameleo, both of whom died in prison, are suing the FBI for $200 million.

"I've been specializing in law enforcement misconduct for 30 years and this is the worst case I've ever seen," said attorney Michael Avery, a Suffolk University Law School professor involved in preparing the cases for Limone, Greco and Tameleo.

Avery called the losses to the four men and their families "almost incomprehensible" and declined to discuss how attorneys arrived at the amounts demanded.

He asked how much it would take to convince a person to spend the next 30 years of their life in prison. "Is there any number you would take? I don't think so," he said.

Under federal laws, Salvati must notify the government six months

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before filing suit in federal court.

His claim argues the government should pay him $125 million in damages; $50 million to his wife, Marie Salvati; and $125 million to the couple's four children who grew up without their father.

The Salvatis now live on Social Security and Marie's pension and reside in a small North End apartment, according to Garo, who has represented Salvati for free for 25 years.

The consequences of FBI agents withholding evidence showing Barboza lied on the witness stand at the trial extend far beyond the lives of the men who were wrongly convicted, according to Garo.

"One has to understand the magnitude of the damage to our judicial system by the responsible parties. Judges, juries, appellate courts, including the Supreme Judicial Court, were misled intentionally," Garo said.

Massachusetts judges turned down 25 appeals connected to the Deegan case and the state parole board voted to commute Salvati's sentence in 1989, records show, but his commutation wasn't granted until 1997.

"We may not get a penny," Garo said, "but you're going to hear about the injustice in this state."

Caption: SALVATI

---- INDEX REFERENCES ----

NAMED PERSON: SALVATI, JOSEPH; GARO, VICTOR J; ANDERSON, TERRY

ORGANIZATION: FEDERAL BUREAU OF INVESTIGATION

NEWS SUBJECT: English language content; Page-One Story; Content Types; Front-Page Stories; Crime/Courts; Political/General News; Crime; Lawsuits; General News; Legal/Judicial; Acts Of Terror; Corporate/Industrial News (ENGL NPAG NCAT PAG GCRIM GCAT CRM LWS GEN C12 GTERR CCAT)

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