Statement of Joseph Barboza, in the presence of Sgt. Det. Frank L. Walsh, Det. John Doyle of the District Attorney's Office, and Dennis Dondon and Paul Rico on Tuesday, September 12, 1967 at about 9:50 A.M. at the Barnstable House of Correction:

"I think it was the day before the killing that I heard from Roy French, that he was going into the alley on the score. I found out from French early in the day, that's when I got all the info. It was at the Ebb Tide, I'm pretty sure that Chico and Nickie were there, they must have been, maybe Patsy was there too, I don't know for sure.

I had talked to French when I came back from Florida ... Greco and I grabbed French together a few days after we got back.

French had had a beef with McLean.. he said he wasn't scared or concerned but he was. I was going to square the beef for him with McLean.

I came back from Florida the first week in March. I was there eight days, about the end of February, maybe about March 3rd. I stayed at the Cadillac Hotel for three or four days, under my own name, with my wife, and then we went to Fort Lauderdale for four or five days and stayed at Ronnie's place. There was a man named Westler owned the house. I know that Westler owned Channel #10 and went bankrupt. He had the Liston-Clay fight that was postponed. I don't know the address, but it was quite a house. One room had a round bed, with a white rug in the living room. It was one of those houses that had a screened patio with sliding doors leading to a lawn and a pier. I remember one bed had a canopy over it. Ronnie's girlfriend, Sis, was there. She was Joe Morelli's girl and Ronnie had Westler's books. Ronnie drove there from the airport. He used

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his own name on the plane. I think it was around one or two P.M. My wife would know where the apartment house was...it was near San Souci Boulevard and I know Biscayne Boulevard was handy. Westler rented it for $1,000.00 a month.

I was at a cafe with Johnny Foto and Hy Gordon when Greco drove up one day. He wanted me to croak his wife, but I refused. I told him about the hit that I had and we discussed it. We made arrangements to see French. I saw Greco the day after I came back from Florida. He came down to my corner in East Boston. It could have been two days after I came back. We went to the Ebbtide and a few days went by when French said, "I'm going on a score with Deegan". I remember the Ebbtide was real jammed the night we left for the hit. Greco had asked French to set this up for us out of friendship and I told French that I would straighten out his beef with McLean. I think French came down to my corner or maybe it was at the Ebbtide it was early in the afternoon about 2:00 P.M. I spoke with the other guys after he told me he was going on the score with Deegan.

Another reason for them wanting Deegan out of the way, was the fact that John Fitzgerald, went to a gas station and with Deegan, got a $1,000.00 off of Peter Limone for George McLaughlin. Fitzie had to go and speak to a witness, named Herbie, who was in California. Peter was mad and he thought that Georgie McLaughlin was shaking him for the money. I'm sure Fitzie will testify on the stands that he got the $1,000.00. One time, Stevie Hughes got $1,000.00 from Larry Baione who got it from Raymond. After I talked to French, I went to

Fleet Street. Greco, Ronnie, Joe the Horse, Chico and Romeo Martin were there. Maybe Nick was there, I don't remember. Peter Planque was there, so we told him to go for coffee. I told them I would meet them on Fleet Street. I went to see Peter Limone and that's when Limone said to me, "I'll give you $2500.00 more to hit Stath." Later, I checked with Henry Tamelio and he said, "Yes, hit Stath, too. He's caused a lot of trouble at the Ebbtide".

French said the Financy Company they were going to hit was on Fourth Street, over the Franklin Bank. The other guys knew the place. I think Louis Greco drew a map, because he knows the area. There had to be precision because Stath might do some shooting. The night of the score French told me the kind of a car Stath would be in. When I left Fleet Street, I went to see Henry to confirm it. I met him at the Ebbtide that afternoon about 4:30 P.M. - it only took me 10 minutes. The night we were going, Joe the Horse, went out and got two .357 Magnums and a .45. He was gone about 10 or 15 minutes and then came back. I had a bullet-proof vest. Louis Greco took the .45. I had a Magnum, Ronnie had a Magnum, Joe the Horse had a .38. They were Ronnie's guns, but Joe got them. I had a .38 alloy gun and I gave it to Joe the Horse and told him, "Don't use it if you don't have to". Ronnie had a moustache on and horned-rimmed glasses. Joe the Horse had a wig on that made him look bald. I had horned-rimmed glasses with me, but I didn't have them on. Ronnie was wearing a white rain or shine coat and Joe had a black one. I had on a rain or shine coat, I forget what color, but it was dark. I had a soft hat

Statement of Joseph Barboza, Continued:

Ronnie had no hat, and Joe the Horse had no hat. French was wearing a sport coat. Idon't remember too well, but I think it was grey color. I don't think he had an overcoat on. I left the Ebbtide before Roy French and when I left, Romeo Martin, Joe the Horse, Freddie Ciampa, and Frank Imbuglia all left. Greco left at the same time. Frank Imbuglia and Freddie Ciampa had no part in the thing. Greco was wearing a brown topcoat, about medium color, and when Greco went into the alley, he had no hat on. When he got out of the car on Pearl Street, he had a hat on. They had a dark olive green Ford. I think they got it from Wilmington Ford. When we left the Ebbtide we went separately and when I got there, Louis Greco and Romeo Martin were about 12 yards in on Pearl Street. Across from the alley, there was a woman over the store, peeking out the window. It was prearranged that French would leave the scene with Greco and Martin . Pearl Street is one way. I stopped my car across the street from them. I got out and they got out of their car and they walked into the alley and I saw them.

We expected Deegan about 9:30 or so. Romeo and Louis were going to get into a doorway. They knew the door was left open. The original plan was to shoot them inside the building to muffle the noise but Roy French (Obs.) it up. I drove down Pearl Street, across Broadway, took a right onto Fourth Street and parked on Fourt on the left-hand side against the curbstone.

Statement of Joseph Barboza, Continued:

The guy that came to the door of my car after he looked at the bent plate was wearing a black hat, black topcoat, was about 50 years old, square build, and looked Jewish. He unbuttoned his coat and reached with his hand into the coat. I took off and I don't remember whether I went right on Broadway or down Fourth Street...I was in a hurry. I think now I went right on Broadway. I stopped at the bagel factory and Ronnie ran up Pearl Street and got Chico and came back to the Ebbtide with him. I waited till Chico's car pulled up. When we got to the Ebbtide, I got out and Joe the Horse parked my car. My blue Olds was parked in front. I had bent the front plate and Ronnie bent the rear plate. It was 404-something. Ronnie bent it so that only half of the plate was showing.

When I saw Roy, he had blood on his sportcoat and both shoes. He told me he was going to say that he had broke up a fight in the joint. Roy had no jam that night. We went into the office in back of the coat rack, there was Ronnie, French, Romeo Martin, Joe the Horse, Louis Greco, Chico, and myself. Roy said, "I shot him first". Louis Greco said that he shot him a couple of times in the chest, and Romeo said the same thing. Roy French said that when he went to the front of the alley, he signaled with his hands to Stath to leave. Louis Greco had hollered, "Get that bastard, too". I don't know why French signaled to Stath. We stayed there about 10 minutes in the rear room. Greco left right away and I met him the next day at Bennington and Brook Street about 2:30 in the afternoon and gave

AFFIDAVIT

I, William C. Nally of South Yarmouth depose and say as follows:

1. I am retired from the Massachusetts State Police, where I attained the rank of Major prior to my retirement.

2. I have known retired Colonel Peter W. Agnes longer than either of us would care to recount. We have retired to the same community and see one another frequently.

3. Like Colonel Agnes, I was one of five senior Massachusetts Police officers who would have been affected by an outside section of the FY '82 state budget. Like Captain Agnes, and for the reasons set forth in his Affidavit, which I have read, I know of no facts which support the comparatively recent allegations that the budget item was payback for an investigation of "Whitey" Bulger.

4. In particular, I assert that (a) I had no contemporaneous knowledge of the Lancaster Street Garage investigation and played no role in it; (b) that there was no payback message ever delivered to me by the Senate President; and (c) Senate President Bulger never appeared to me to be either a friend or foe on matters involving the state police or me. I could not have been punished for a role in the Lancaster Street Garage matter as I played no role in it.

Signed under the pains and penalties of perjury this 14 day of June, 2003.

William C. Nally

William C. Nally

PSI/CAD Bayonne, N.J.
EXHIBIT
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AFFIDAVIT

I, Peter W. Agnes of Massachusetts on oath depose and say as follows:

1. I am a retired Lieutenant Colonel in the Massachusetts State Police Department and am one of five former senior officers who would have been adversely affected by an outside section of the FY 1982 state operating budget that never took effect because Governor Edward King vetoed it. The other potentially affected officers and the ranks they then held were Lieutenant Colonel John O'Donovan, Major John Regan (now deceased) and Captains William Nally and Robert Zoulas.

2. I am aware of news stories and columns written some time later attributing the outside section which would have affected me to former Senate President William Bulger and suggesting that its insertion in the state budget was some form of retribution for the work of the state police in a surveillance effort related to his brother James "Whitey" Bulger that focused on a Lancaster Street garage. I believe that this is inaccurate.

3. First, the claim was made after the fact. Attached to this affidavit is a copy of a news article from the Boston Globe written when the budget was before the Governor for his review. There was no suggestion in it or any contemporaneous news accounts that I recall of any connection between the State Police interest in James "Whitey" Bulger, nor that Senate President William Bulger played any sponsorship role in the matter.

4. Second, I was generally aware that certain members of the uniformed branch of the State Police favored limitations on career advancement opportunities and retirement benefits for officers like me who entered the State Police as Detective Lieutenants. The proposed outside section would impose such limitations on officers like me.

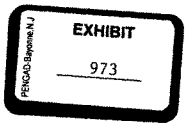
5. Third, I was not involved in the investigation of the Lancaster Street Garage in any capacity.

6. Finally, I have never believed William Bulger to be unfavorably disposed to me personally.

Signed under the pains and penalties of perjury this 14th day of June, 2003.

Peter W. Agnes

Peter W. Agnes



quite a threat . . .

By Candace Pierce
State House News Service

By the time the peaky, leaf-eating gypsy moths finished their annual meal this year, they had defoliated approximately half the land in the commonwealth, according to Stan Hood, chief of the Bureau of Insect Pest Control.

Hood estimated that the caterpillars munched through 2.5 million acres this year. Last year, 907,000 acres were damaged by gypsy moths, he said. The bureau will not know exactly how many trees were destroyed for at least another year, since trees normally do not die immediately after being defoliated.

Hood said he could not put a price on the damage caused to the trees, and he maintained that the nuisance cost to residents – the cost of lost business at campgrounds, the closing of swimming pools and recreation areas and the like – probably was far more costly.

Hood said he is not yet sure what caused the record outbreak of gypsy moths this year. It is common for the insects, which are native to Europe, to have one year of relatively little activity and a huge feast on another, he said.

The state's agencies had been aware they were headed for "trouble" with the gypsy this year, but they did not know how much damage would be caused, Hood said. "I have to be honest. We probably did not do as much spraying as we could have done."

Hood said Massachusetts probably will suffer from the moths again next year, although the problem will not be as severe.

This year, many residents used home remedies on the insects. Some people sprayed a mixture of soap and water on the caterpillars or wrapped a metal strip around a tree to prevent the caterpillars' upward climb. The latter method was effective only when the caterpillars above the metal had been killed already, Hood said. Otherwise, they were forced to remain in the tree.

Chemical spraying and use of biological deterrents were more effective, but cities and towns had to fund these methods, he said. Aerial spraying of chemicals costs approximately $8 per acre, and biological controls cost $30 to $35 per acre. People often do not want to spray because they think it is dangerous, but spraying is safe if label warnings are obeyed, and it is a much more effective method than biological controls, Hood said.

Mike Hurnicle is on vacation

Gypsy moth caterpillar

1 J

By Joseph M. Harvey
and Connie Pryzant
Globe Staff

An agreement was filed yesterday in Suffolk Superior Court that brings the long-delayed $125 million air cargo and marketing center project at Logan Airport's Bird Island Flats one step closer to being built.

Suffolk Superior Court Judge William G. Young indicated he probably will give his approval to the agreement early next week despite objections of Massachusetts Environmental Affairs Secretary John A. Bewick.

The agreement, signed by the East Boston environmental group Air Impact Relief (AIR) and the Massachusetts Port Authority, includes provisions for Massport to limit use of the 90-acre flats for a combination of air cargo handling, market and conference center and computer and high technology training center.

Massport also would be required to bar truck and other airport traffic from using Porter and Maverick streets in East Boston as access routes to the airport. Such traffic was a principal point of protest by East Boston residents.

Massport also would have to build on its airport property roads that would route all heavy traffic to the Bird Island Flats area, and also would have to provide noise barriers together with constant monitoring to reduce traffic and aircraft noises.

The agreement also calls for Massport to consider providing a day care center for airport employees and Jeffries Point residents and workers. It also provides for Massport to construct a walk-to-the-sea type park, at Jeffries Point Cove and other recreational facilities in the Jeffries Point area.

"From my perspective, it (the agreement) would put the project one step closer to becoming a reality; it would put 2000 construction workers out on the site," Massport spokesman Patrick Moscaritolo said in a telephone interview yesterday.

Assistant Atty. Gen. Stephen Leonard said that Bewick opposed the agreement because it might be used as a bar to any future litigation that might be needed to force Massport to comply with environmental regulations.

Young said he would consider including in his new order language that would leave the way open for any future lawsuits.

Peter Koff, lawyer for AIR, urged Young to approve the agreement.

Koff said the agreement is acceptable to AIR and "Massport has gone out of its way to comply with environmental requirements."

Moscaritolo said the project has received the approval of the Environmental Protection Agency, the Department of Transportation and the Federal Aviation Administration.

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State budget item called threat to crime unit

By Frank Mahoney
Globe Staff

The hierarchy of the criminal intelligence division of the Massachusetts State Police would be dismantled if a state budget "side item" requiring reduction in grade or mandatory retirement at age 50 is passed.

State Secretary of Public Safety George Luciano and Public Safety Comr. Frank Trabucco yesterday called on Gov. Edward J. King to veto the one line item that has been tacked on to a 1974 state act that consolidated the State Police detective bureaus.

Trabucco said his division chief, Lt. Col. J[illegible] R. O'Donovan, bureau com[illegible] Maj. John F. [illegible]gan and three captains, Peter Agnes, William Nally and Robert Zullas, who are all over 50, would be forced to retire or accept reduction to lieutenant detective under terms of the amendment.

There are more than 300 "side items" that have been added to the budget and public safety leaders say no one knows exactly where they came from. Unlike a bill, Trabucco said, they are not usually signed by a sponsor.

"Only organized crime can benefit from this action," Luciano said.

He said that if the investigators lose their jobs through reduction in rank or retirement "we would lose our entire intelligence gathering management team."

Neither the secretary nor the commissioner were consulted by anyone before the item was inserted in the budget, both men said yesterday.

Prior to consolidation in 1974 the Public Safety Division had two detective bureaus. One was composed of men promoted from the uniformed branch which handled investigations that generally were initiated out of the various barracks. From time to time they would also be assigned to work with Civil Service detectives, particularly on a major crime.

The other, and la[illegible] was made up of appointees from a Civil Service list – men and women who had passed an examination for lieutenant detective. Prior police experience was a prerequisite. They were assigned to State Police headquarters, the state fire marshal's office and the various district attorney offices.

Uniformed men retire at age 50. Civil Service employees can work until they are 65.

When the two detective bureaus were merged, a grandfather clause was invoked which assured Civil Service detectives their jobs until they reached age 65.

The budget "side item" would negate the grandfather clause and require the five men to step down and be replaced by men under 50 years of age.

But a "Catch 22" situation would develop, Trabucco said, because under the terms of the 1974 agreement only Civil Service lieutenant detectives can be named to the jobs and that stipulation was to prevail until all those covered by the grandfather clause had retired.

Then the law was to be changed to allow the appointment of uniformed troopers to the job.

If the side item becomes law now, Trabucco said, he only has one man below the age of 50 eligible for the jobs and he could not appoint troopers because the present law does not allow it.

Tauro said Harrington
FBI investigation establish
was no relationship betwe
and Kelly.

The judge said Harring
not object until a defense
was filed accusing the pro
of using false testimony du
trial.

To step out of the case
said, would establish "an
ting precedent that would
courage the inherently und
practice of judge shopping.

"Under our system,
do not choose their judges,
declared.

According to Harrington
tion, Tauro said during Kel
trial last April that the
tion's case was very weak
was up to him he would
ly. That proceeding ended
trial, with the jury deadlo
for conviction.

"Kelly is accused of e
$34,500 from a Worcester
tural firm.

The 1966 legislative inv
volved allegations of abu
board contracts by the
ministration.

Harrington claimed th
the hearing," which Kelly
the senator, although a D
"adopted a stance favora
Republican Volpe admini
resisting efforts to subpo
governor's brother, going
witnesses, manipulating
tion of the committee's
minimize its unfavorable
on the Volpe administra
leaking an advance cop
Volpe administration to
its defense.

During the disqualif
hearing, Harrington claim
played a major role prepa
nesses for their testimony,
ing what information the
volunteer and advising
the political implications
testimony.

Tauro said he played
the 1966 hearing except o
with Atty. Walter H. Mel
counsel for the governor's
at the end of the hearing

Harrington claimed Ta
ings excluding key eviden
the Kelly trial substantia
ened the prosecution's c
Kelly's lawyer, George A. L
lin Jr., who urged Tau
withdraw, argued. One ju
ings excluding the evide
warr[illegible]

AFFIDAVIT OF HAROLD BROWN

I, Harold Brown, on oath depose and say as follows:

1. I am currently engaged as the Chairman of the Hamilton Realty Companies and have been involved in real estate development and rentals in the Greater Boston marketplace for forty-seven years. During the 1980's, I gained a measure of notoriety in connection with the development of a particular parcel of real estate that is known as 75 State Street.

2. I am aware that there is a lingering question, fueled by the misperception of Mr. Bulger's involvement, that investigations into the development of 75 State Street were prematurely stopped. I believe the implications of that question to be false. In May of 2002, the long-since closed chapter in my life was re-opened following the federal conviction of former FBI agent John J. Connolly, Jr. At that time, I was asked by Cosmo Macero, Jr., of the Boston Herald about the role either Mr. Bulger or Mr. Connolly played in the matter. I told him, truthfully, that neither played any role to my knowledge. Mr. Macero wrote a column based on our interview, which appeared in the Boston Herald on May 29, 2002, in which I am accurately quoted. It is attached to this affidavit as Exhibit A. I reaffirm and adopt the statements I made to Mr. Macero at that time.

3. Rather than being prematurely closed, the investigative activity concerning the development of the 75 State Street project spanned a period of many years. It was fully investigated by the FBI and then the United States Attorney via an investigative grand jury before the head of the New England Organized Crime Strike Force, Jeremiah O'Sullivan, took over as United States Attorney and conducted what was then labeled a "tertiary" or third review. When Mr. O'Sullivan publicly closed that tertiary review on March 31, 1989, he stated "no witness has even alleged that State Senator Bulger was criminally involved in this matter through his relationship with Mr. Finnerty and any inferences that he was are not supported by the weight of the evidence" and he told the press his decision "was not a close call." Mr. O'Sullivan's decision with respect to the Senate President was clearly correct. The federal investigations and media glare both grew out of a civil lawsuit between Mr. Finnerty and me and neither in that suit nor at any subsequent time have I indicated that Senator Bulger had any involvement in my project. That is because he had none. That simple fact did not stop the media snow ball.

4. Following the third federal closure, Massachusetts Attorney General James Shannon and the Chief of his criminal bureau looked at the matter from a state perspective and decided there was no basis to proceed. In the 1990 campaign for Attorney General, Scott Harshbarger committed to undertaking a thorough investigation of the matter, if elected. Mr. Harshbarger defeated Mr. Shannon in the primary election and was elected in November and followed through on his promise.

5. A year after Scott Harshbarger took office, he closed his investigation of the 75 State Street Project. I attach his statement from the time of the closure as Exhibit B. He concluded there was no credible evidence to support the allegations of improper action by any individual, specifically mentioning Mr. Bulger by name, in connection with the 75 State Street development. He too said it was "not a close call."

6. Despite these five levels of federal and state review, a small group within the journalistic ranks in Boston refuse to let go of their story. I was pleased to be approached by Cosmo Macero, Jr., following Mr. Connolly's conviction to say once again there was nothing to the story and equally pleased to be asked to provide this affidavit. I am sorry the lawsuit caused others to speculate about Senator Bulger's conduct concerning me and pleased to help him dispel the myth. The truth is simple: Mr. Bulger played no role in connection with my project.

Signed under the pains and penalties of perjury this 16th day of June, 2003.

Harold Brown

Affidavit of David Davis

I David Davis on oath depose and say as follows:

1. From 1975 through 1989 (with a two or three month break in service that is irrelevant to this statement) I was the Executive Director of the Massachusetts Port Authority, the body politic and corporate created by law in 1956 which owned and operated Logan Airport at all times relevant to the matter discussed in this affidavit.

2. As a result of my official duties at the time, I am aware of an incident described in a September 1988 Boston Globe article (copy attached) describing a contact between James "Whitey" Bulger and State Trooper William Johnson at Logan Airport. I am also aware that members of the media in Massachusetts have questioned whether Mr. Bulger's brother, William M. Bulger, interceded with me or my office with respect to our handling of the incident and/or the dissemination of information about it.

3. At the time of both the 1988 article and the incident described in it, William M.Bulger was the President of the Massachusetts Senate. He and I had a professional relationship which caused us and our offices to interact on a periodic basis.

4. At no time did William M. Bulger or any person purporting to act on his behalf intercede with me to affect our handling of the incident or how we dealt with information about it. I never provided copies of reports written by Trooper Johnson to Senate President Bulger. No one at the Massachusetts Port Authority ever indicated to me they were contacted on those matters by William M. Bulger or any person purporting to act on his behalf. No form of sanction was ever imposed on Trooper Johnson concerning this incident or any other at the behest of Senate President Bulger.

5. Whenever I have been asked about what I have described as the incident, which did occur, or William M. Bulger interceding in any way in connection with it or Trooper Johnson, which did not occur, I have attempted to make clear that the former Senate President did not, to my knowledge, involve himself in the matter in any way. Nevertheless, the insinuation that he did persists among some circles. The insinuation is false.

Signed under the pains and penalties of perjury this 16th day of June, 2003.

David Davis

PENGAD Bayonne N.J.
EXHIBIT
975

AFFIDAVIT

I, Carl Gustin, on oath depose and say as follows:

1. I am presently engaged as the President of Clark & Company of Boston, Massachusetts, but the events set forth in this affidavit relate to the time period during which I was employed as Senior Vice President of Boston Edison Company. While so employed, I was aware of circumstances surrounding Edison's hiring of former FBI special agent John Connolly to head our security unit and was the company official who selected him to head the government affairs unit.

2. I am aware of the rumors, repeated in the press, that former Senate President William M. Bulger got Mr. Connolly his jobs at Edison. The rumors are false.

3. When John Connolly was initially hired, the senior Edison officer most involved with the matter was John Higgins, then a Vice President for Human Resources. I discussed the hiring with him then and have also discussed it with him since. Mr. Connolly did have an influential advocate when he sought the security job, but it was John Keough, who was retiring from the position, and not William Bulger. Mr. Keough was a retired public safety official before he joined Edison and was aware of John Connolly's reputation as a successful and highly decorated agent who was well qualified for the top security position at the company. John Connolly was recommended by John Keough and selected by John Higgins.

4. When I tapped John Connolly for the government affairs position, there was no intercession from William Bulger or anyone in his office. We were downsizing and consistent with that effort, made the decision to assign from within. Mr. Connolly was an obvious choice based on his experience in federal government, his contacts in state government, his master's degree in public administration from the John F. Kennedy School of Government at Harvard University and his performance at Edison. There were no external influences on his selection.

Signed under the pains and penalties of perjury this 12 day of June, 2003.

Carl Gustin

PENGAD Bayonne N.J.
EXHIBIT
976

AFFIDAVIT OF WILLIAM M. BULGER

I, William M. Bulger on oath depose and say that I am the same William M. Bulger who appeared pursuant to a subpoena before the Committee on Government Reform on June 19, 2003 and testified under court ordered immunity having first invoked my Fifth Amendment privilege. This affidavit is made under that same court order; I would not voluntarily expand on my testimony and I provide the information contained in this document only because it is demanded by Committee staff. I further depose and say as follows:

1. On the first Wednesday in January, 1995, I was a candidate for election as President of the Massachusetts Senate. The election was contested. It followed a grueling primary and general election, during which Senator William Keating publicly sought to unseat my supporters and replace them with his own. Contrary to the implications in the questioning by Committee members and staff, on January 4, 1995 and the months surrounding it, my personal focus was on my own personal re-election and the direction the Senate would take. To achieve my purposes, I focused internally on the other thirty-nine members of the chamber.

2. My re-election on Wednesday January 4, 1995 did not end my need to pay particular attention to internal Senate matters. After I was re-elected, pulling together a potentially splintered body was of critical importance to the Chamber and the people of the Commonwealth, as reflected in my January 4 address to my Senate colleagues. Attachment A. Essential to that effort was appointing an effective leadership team. I

announced my appointments to leadership positions on January 12, 1995. Attachment B. Between January 4 and January 12, 1995, my full attention to these key legislative matters was required.

3. My brother James was one of a handful of individuals who were the subject of a one-count Criminal Complaint that issued on January 4, 1995, the very day I was re-elected. His co-defendant, Stephen Flemmi, was arrested the night of January 5-6. At that time, I refused to be distracted from my duties to my constituents and colleagues by the media attention those events generated. As a general proposition, I declined to discuss the subject of the charges against my brother and I stayed focused on the tasks at hand, as reflected in Attachment C.

4. When I testified on June 19, 2003, I had no memory of any contact I might have had with the FBI in the period discussed in paragraph 2, above. I indicated, however, that if FBI agents indicated they contacted me then, they were probably correct. I still have no memory of any contact with FBI agents between January 4, 1995 and January 12, 1995, but I do have reason to believe a contact was at least attempted and probably made at that time.

5. The bases for my current belief that a contact was at least attempted and probably made are information I acquired after my June 19, 2003 appearance before the Committee and my own normal course of doing business. The first source of such after-acquired information is the attached articles by Shelley Murphy of *The Boston Globe*, (Attachment D) attributing to retired FBI Agent John Gamel a visit to my office in early January 1995, during which he was told I was unavailable. According to the *Globe's* account of Gamel's story, the visit occurred a couple of days after my brother was

charged, which would be Friday, January 6th, (the day Mr. Flemmi's arrest became public), and I called Agent Gamel back on January 9, 1995, which would have been the following Monday. It would have been consistent with the practices in the office of the Senate President for Mr. Gamel to have been greeted by a receptionist and then seen by a more senior staffer, who would have informed Agent Gamel of my unavailability at that time and taken a message, card or phone number to permit follow up by me or my counsel.

6. My second source of after-acquired information concerning the Gamel contact is Attorney Robert Popeo, whom I apparently informed of Agent Gamel's visit almost immediately after it happened. Attorney Popeo is one of four attorneys who represented me over the last two decades and I believe I was in touch with all four in early 1995. The other three attorneys were William Homans, who is now deceased, Thomas Finnerty and my current counsel, Thomas Kiley. Mr. Popeo was able to confirm for me a discussion between us on January 9, 1995, dealing with Mr. Gamel's state house visit. I believe I also informed each of those gentlemen about the telephone conversation with my brother James that occurred at the home of Edward Phillips, who was serving as my driver on the evening of the call.

7. I believe and therefore aver that my disclosure to each of these four gentlemen concerning the call I received from my brother came shortly after that call and was made in a privileged, attorney-client context. The individual attorney I had in mind when I testified concerning advising my lawyer of the call was Robert Popeo, although I may be confused on the subject. Affidavits from Attorneys Popeo, Finnerty and Kiley

are attached as Attachments E, F and G, respectively. By submitting these affidavits I am not intentionally waiving the attorney-client privilege or any rights I might have.

8. Neither my staff nor I would tell Agent Gamel to "get lost," to borrow Congressman Shays' phrasing. Instead, as a matter of practice, either I or my attorney would have followed up on Agent Gamel's visit to my office. That is what occurred on January 9, according to the *Globe's* story (Attachment D). My brother became a "fugitive" after that call and the government set up a task force to locate him months after that. I do not recall being interviewed by that task force and would not characterize the contact apparently made by agent Gamel as an "interview."

Signed under the pains and penalties of perjury this 22nd day of July, 2003.

William M. Bulger

AFFIDAVIT OF R. ROBERT POPEO

I, R. Robert Popeo, on oath depose and say that certain information contained in the article which appeared in the Boston Herald on June 20, 2003 (attached hereto) is inaccurate, as will be more fully explained herein. The cause of these inaccuracies was either a miscommunication between me and a spokesperson from my office or a miscommunication or misunderstanding between that spokesperson and the reporter for the Boston Herald.

1. At the time of that communication with the Boston Herald I did not believe I was the attorney identified by William Bulger in his testimony before the Congressional Committee as having been informed of a phone call from Whitey Bulger to William Bulger and who reported that call to the Office of the United States Attorney. I knew that I was not the attorney who reported that call to the Office of the United States Attorney.

2. Without disclosing privileged attorney-client communication I will attempt to recite my involvement with the events relating to the contact of William Bulger by F.B.I. Agent James Gamel as well as my knowledge of a phone call from Whitey Bulger to William Bulger, as I believe the two may be related.

3. During early January 1995 I was representing William Bulger on a certain matter pending before the Massachusetts Ethics Commission that had nothing to do with 75 State Street. Because of that matter and other matters about which Mr. Bulger sought my legal advice, I was in frequent contact with Mr. Bulger.

4. During that same period, I believe William Bulger was also represented by Attorneys Thomas Finnerty, Thomas Kiley and William Homans.

5. On or about January 9, 1995, William Bulger informed me of a contact he had with Agent Gamel regarding the federal criminal complaint against his brother, Whitey Bulger.

6. Sometime thereafter, I learned that Mr. Bulger had received a telephone communication from his brother Whitey who communicated that he was alright, that he would be alright and that William Bulger should not be concerned about him. I further learned that William Bulger did not know the point of origin of the call or his brother's whereabouts.

7. Because I did not discuss this call with any person from the Office of the United States Attorney and I was aware of William Bulger's representation by other attorneys, I assumed I was not the attorney identified in William Bulger's June 19, 2003 testimony with respect to this matter.

8. When a spokesperson from my office was contacted by the Boston Herald on a Friday evening, June 20, 2003, while I was absent from my office, I authorized her to inform the reporter that I was not the attorney identified by William Bulger in that testimony and that I had not represented William Bulger with respect to this matter either during his interview with the Office of the United States Attorney General or with respect to his appearance before the grand jury. I did acknowledge that I had represented William Bulger with respect to the Federal and

State investigations regarding 75 State Street and acknowledge that I had been accurately identified as having been William Bulger's attorney with respect to those investigations. Those facts got slightly garbled in the Herald article.

9. Prior to William Bulger's appearance before the Congressional Committee I had not discussed his testimony before the grand jury with him or his attorney, Thomas Kiley, and was not aware of his testimony with regard to communications with me or any other subject.

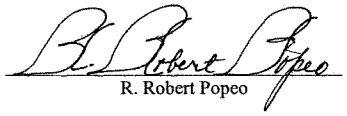
10. In addition, prior to his appearance before the Congressional Committee, I did not discuss with William Bulger or his attorney, Thomas Kiley, his testimony before the Congressional Committee and was not aware that he would give testimony regarding his communication with me.

11. The only communications between Attorney Thomas Kiley and my office regarding preparation for the testimony of William Bulger before the Congressional Committee involved making our files regarding the 75 State Street investigation available to Mr. Kiley. That effort was coordinated by a partner in my office other than me.

12. At the time the grand jury sought information from William Bulger regarding his brother Whitey Bulger, it is my understanding that he was represented by Attorney Thomas Kiley. Neither prior to, nor at the time of, his appearance before the grand jury was I informed that his testimony was being sought, that he had agreed to appear and testify before the grand

jury nor that he had done so. I first learned of his grand jury appearance when it was disclosed by the media.

Signed under the pain and penalties of perjury the 17th day of July 2003.



R. Robert Popeo

.awyer says Billy ıever told him ıbout Whitey call

By JACK MEYERS and MAGGIE MULVIHILL

UMass President William M. Bulger's testimony that his attorney told federal authorities "immediately" about his January 1995 telephone conversation with his fugitive brother is questionable.

Last week, Bulger testified before the House Government Reform Committee that he told his lawyer about the phone call "just about immediately" and the lawyer "in turn told (federal) officials."

However, interviews with lawyers who have represented Bulger raise serious doubts about that portion of his testimony, and had Bulger partisans backtracking yesterday. Last Friday, Bulger attor-

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Kiley, on Tuesday spokesman Robert the attorney who notified authorities about Whitey's call to William Bulger. When told Popeo denied any involvement, Connolly said he would check with Bulger himself.

Connolly later called to say he assumed Popeo was the lawyer involved and referred a Herald reporter back to Kiley. Yesterday, Kiley contradicted his earlier statements.

"I don't know if I'm the lawyer who is identified there," said Kiley, referring to Bulger's answers to Rep. Christopher Shays (R-Conn.), a member of the committee holding hearings on FBI mis-

Kiley said he would not explain how Bulger's statement that he told his lawyer about the phone call "just about immediately" could be accurate when Kiley did not start representing him until roughly two years later.

"I'm not going to help you," Kiley said. "The president's testimony was all, in my view, perfectly truthful."

Keith Ausbrook, chief counsel for the House Committee for Government Reform, said committee members are reviewing a transcript of Bulger's testimony.

"If it turns out to be false, Ausbrook said. He added that the immunity order the UMass president was testifying under "doesn't protect false statements."

Asked if he had any concerns about the six-year time gap between Whitey Bulger's 1995 telephone call to his younger brother and the fact William Bulger was not officially questioned by federal authorities about his brother until 2001, Ausbrook said: "We are concerned about the way law enforcement has handled this . . ."

A spokeswoman for the U.S. Attorney's Office de-

THURSDAY, JUNE 26, 2003 BOSTON HERA

AFFIDAVIT OF THOMAS E. FINNERTY

I, Thomas Finnerty, on oath depose and say that:

1. I am a member in good standing of the Massachusetts bar. I was first admitted in 1960 and, but for four years service as District Attorney of Plymouth County, I have practiced law privately ever since. For a significant period of that time, I have been associated in the practice of law with William Bulger.

2. For a period of years in the 80's and into the 90's, I had an attorney-client relationship with William Bulger. I provided advice to him on a variety of matters, but do not believe I ever filed an appearance on his behalf. When an attorney appearance was necessary, I typically recommended a lead attorney and provided whatever support services I could to that lead attorney. I have successively recommended Attorneys Alexander J. Cella, William Homans, Robert Popeo and Thomas Kiley as the issues facing Mr. Bulger required their particular expertise. My own role as attorney-adviser remained constant, except for a brief time in 1995 when I was not practicing law.

3. 1995 was a transitionary period in Mr. Bulger's representation. Mr. Cella had died. Mr. Homans' health was fading and so Mr. Popeo pulled the laboring oar while Mr. Kiley's role was increasing.

4. I do not know whether I am the attorney to whom William Bulger referred during his congressional testimony in connection with the phone call he received from his brother James, but I believe I was told virtually immediately about the call.

5. It was never my role to make disclosures to the government authorities. At different but overlapping points in time Attorneys Homans, Popeo or Kiley would have performed such a function, if in their judgment it was prudent and appropriate to do so.

Signed under the pains and penalties of perjury this [illegible] day of July, 2003.

Thomas Finnerty

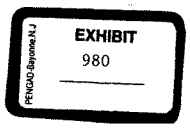
AFFIDAVIT OF THOMAS R. KILEY

I, Thomas R. Kiley on oath depose and say as follows:

1. I am an attorney in good standing in the Commonwealth of Massachusetts and have practiced law continuously since my admission to the Massachusetts bar in 1973. On June 19, 2003, I testified before the House Committee on Government Reform at the invitation of Chairman Davis. My testimony concerned a so-called "outside section" of the Massachusetts FY '82 budget and was based on both personal knowledge gathered during my tenure as First Assistant Attorney General for the Commonwealth from 1977 to January, 1987 and factual research conducted this year in my role as counsel to William M. Bulger. My brief testimony came during that of my client. This affidavit supplements my testimony based on subsequent research. It also provides answers to a question subsequently put to me by the Committee's Chief Counsel.

2. During my brief testimony, I told Congressman Meehan that the particular outside section in question may not have been inserted by the Senate, as the Committee's questioning appeared to posit. I told the Committee that an article (which appeared in the Patriot Ledger) written in August 1981 indicated the budget rider was inserted while the budget was in the Massachusetts House of Representatives in June of 1981. I have since researched the matter and concluded the Patriot Ledger article, not the innuendo-laced articles on which some Committee members based their questions, is accurate.

3. The FY '82 budget cycle was a difficult one in Massachusetts, as state political leaders tried for the first time to deal with the effects of a voter-backed initiative known as "Proposition 2½" that limited local taxes and thus had the practical effect of increasing the need for local aid in the state budget. House 1 (1981), as always, was the Governor's proposed



operating budget for the following fiscal year. It was referred to the House in accordance with Amendment Article 63 of the Massachusetts Constitution and in turn referred to the House Ways and Means Committee. That Committee's initial work product, House 6800 (1981), was released in the spring but roundly criticized by the minority party. William Robinson, the Minority Leader, submitted his own "Better Budget" which contained many ideas attractive to the House members on both sides of the aisle. As a consequence, the House Ways and Means Committee proposal was recommitted to the House Ways and Means Committee. What emerged on June 4, 1981 was House 6969 (1981), an amalgam of the House Committee's earlier work and Representative Robinson's "Better Budget".

4. When introduced to the House of Representatives, House 6969 contained numerous outside sections. As printed following extended debate on Friday, June 5 that extended into Saturday, June 6, House 6969 contained what was numbered section 99 and provided in full:

> Section 99. Section 6 of Chapter 639 of the Acts of 1974, as amended by Section 3 of Chapter 389 of the Acts of 1976, is hereby amended by inserting at the end thereof the following: --; provided that no such person shall serve in a grade above detective lieutenant inspector in the office of investigation and intelligence or the bureau of investigative services upon attaining the age of fifty years.

This is the outside section which Senate President Bulger's critics contend he inserted in the Senate Budget to send a warning shot across the bow of state investigators who had surveilled his brother. In fact, however, it originated in the House, thus undercutting the after-the-fact concoctions of those critics of the former Senate President. When the House engrossed House 6969 and sent the measure to the Senate, House Journal, pp. 1060-1061 (1981), the supposedly offensive rider was clearly already part of the bill. I attach as Exhibit 1 to this affidavit a copy of the pages of House 6969 setting forth section 99.

5. Section 99 had an unremarkable journey through the Senate. It was adopted virtually verbatim by the Senate Ways and Means Committee, (see Senate 2222, sec. 108 (1981)), was part of the Budget adopted by the Senate on June 20 (Senate Journal, p. 880 (1981)), and, since there was concurrence on the substance of item, not a contentious subject for the conference committee.

6. Only after the conference committee report [House 7100] was enacted on July 15 by the House and the Senate did Section 99 become controversial. When then Governor King signed the FY '82 budget into law on July 21, 1981, and it became Chapter 351 of the Acts of 1981, he vetoed section 99. See House 7101 (1981). Exhibit 2 to this affidavit contains the relevant portion of that veto message. Section 99 was one of seventy seven sections in the general appropriation act disapproved by the Governor, prompting the House of Representatives where most of those sections originated, to ask the Supreme Judicial Court of Massachusetts whether the Governor had the constitutional power to disapprove such items. Opinion of the Justices, 384 Mass. 820, 820 (1981). The Senate (unlike the Governor, the Attorney General and the House) stayed out of that fray, filing no brief on the question, Id. at 821, n. 1. The Court's affirmative answer was issued on September 2, 1981. On September 15, 1981, the House voted 149 to 0 to sustain the Governor's disapproval of Section 99. Supplement, No. 409 (1981). No Senate vote occurred concerning the veto. There the story ends, or so it ought to.

7. Following the hearing on June 19, 2003, Committee Counsel Ausbrook asked me if I was authorized to identify the lawyer about whom Mr. Bulger was speaking during his colloquy with Congressman Shays as reflected beginning at page 118 of the transcript of that day's proceedings. I did not do so (in part) because, as Mr. Ausbrook's use of the word "authorized" implies, the answer implicates the attorney-client privilege. I also believed the

question to be a product of a Herald story that I think manufactured an issue where none exists in order to cloud the issues that were before the Trustees of the University of Massachusetts the day the story appeared. The Herald story is attached as Exhibit 3. I spoke with reporter Maggie Mulvihill on June 20, 2003 as did a spokesperson for R. Robert Popeo. Despite extensive daily coverage between the 20th and the date of the special meeting of the University of Massachusetts Board of Trustees, the Herald published nothing about what we had to say until the morning of the special meeting. Then the "story" was front page news. In my opinion, instead of reporting a news story, the Herald was trying to manufacture a story to pressure the Trustees to take the action for which the Herald – and Governor Romney – were advocating. That effort to influence rather than report events is what I had in mind when I was re-contacted on the evening of the 25th by Jack Meyers, and I told him I "would not help" them in their effort. With that background, I then believed the question posed by Counsel to be immaterial to the Committee's legitimate inquiries and not likely to lead to relevant information. On reflection, I believe the answer could theoretically lead to relevant contacts made by the attorney with federal authorities. Accordingly, without revealing attorney-client privileged information, I state as follows:

> I cannot state with certainty when I began representing William Bulger in connection with his brother's flight. Contrary to the memory I had last month and conveyed in a casual statement to Herald reporter Mulvihill the day after Mr. Bulger appeared before the Committee, I was providing legal advice to William Bulger on matters related to his brother James as far back as 1995. At all times during my representation I was aware of the phone call received by my client at the home of Edward Phillips. I did inform one or more Assistant United States Attorneys with responsibility for the matter of the existence of the call, but do not recall making any disclosure to FBI agents. I made the disclosures to the AUSA(s) in connection with Mr. Bulger's grand jury appearance when it was appropriate to do so.

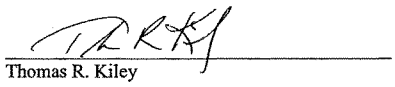
8. Because of the interest expressed by a member of the Committee, and to try to shed some light on the comments attributed to former FBI Agent Gamel concerning his attempts

to contact my client in January 1995, I have also examined the dockets of criminal cases brought in this district against James Bulger. They reveal that James Bulger was not a fugitive at the time of the Gamel contacts that William Bulger now has reason to believe occurred. On January 4, 1995, a one-count conspiracy complaint issued against Francis P. Salemme, Sr., Francis P. Salemme, Jr., George J. Kaufman, James T. Bulger and Stephen J. Flemmi. It charged them with conspiracy to extort money from a bookie named Burton L. Krantz and warrants were issued for their arrests. Docket Entry #1 in USA v. Salemme, et al., (1:95:MJ-00001-LPC). The complaint and arrest warrants were sealed. Docket Entry #2. Stephen Flemmi was arrested on the night of January 5, 1995, Docket Entry #3. On the following Monday, January 9, the case was terminated at the magistrate level as to all defendants. Docket Entry #9.

On January 10, 1995, a superceding indictment was issued against James T. Bulger in case number CR 94-10287 MLW. In his subsequent decision on Mr. Flemmi's motion to dismiss that indictment, Judge Mark Wolf wrote "After Bulger's indictment on January 10, 1995, the FBI opened a fugitive investigation of him." (Excerpt attached as Exhibit 4). From these entries and the statements attributed to Agent Gamel in The Boston Globe, it is reasonable to infer that Agent Gamel's visit to the Senate President's office occurred on Friday, January 6, 1995 (a few days after the complaint issued and when news of Flemmi's arrest first leaked) and that the Agent's purpose had to be executing the arrest warrant and seeking James Bulger's appearance on the Criminal Complaint. When Agent Gamel and President Bulger spoke on January 9, 1995, (according to The Boston Globe reports quoting Gamel) the Agent had to have the same purpose, as the complaint was sealed and the superceding indictment had not yet been returned or the fugitive investigation begun.

9. Portions of Judge Wolf's memorandum are attached as Exhibit 4 to this Affidavit for another reason as well; it is that document to which Mr. Bulger repeatedly alluded during his June 19 testimony concerning the effort of FBI Agent John Morris to cause the murder of James Bulger because James had "outlived his usefulness" and become a threat to Morris because of his knowledge of criminal acts committed by FBI Agent Morris. It is not the first time Judge Wolf linked informant status with death in the case spawned by the superceding indictment discussed above; in his June 19, 1997 memorandum reported at U.S. v. Salemme, 978 F. Supp. 379, Judge Wolf pointedly spoke of the danger disclosure of informant status posed, citing to the murder of Robert Donati because he was believed to be an informant. 978 F., Supp. At 383, n. 3. The Salemme opinion is Exhibit 5 to this Affidavit.

Signed under the pains and penalties of perjury this 18th day of July, 2003.



Thomas R. Kiley

ALL-STATE LEGAL® EXHIBIT 1

3 tence the following sentence: — The fee for such a certificate shall
4 be set by the board of aldermen or the selectmen.

1 SECTION 96. Section 6 of chapter 163 of the General Laws, as
2 so appearing, is hereby amended by inserting after the first sen-
3 tence the following sentence: — The fee for such a permit shall be
4 set by the authorities having jurisdiction over such public ways.

1 SECTION 97. Section 34 of chapter 262 of the General Laws is
2 hereby further amended by striking out clause (64), as appearing
3 section 1 of chapter 550 of the acts of 1948, and inserting in place
4 thereof the following clause: — (64) Unless otherwise established
5 in a town by town meeting action and in a city by city council
6 action; and in a town with no town meeting by town council action,
7 by adoption of appropriate bylaws and ordinances to set such fees,
8 the fee for filing by a person engaged in buying, selling or dealing in
9 milk or cream in cans or who uses cans, tubs or cabinets in the sale
10 or storage of frozen deserts and/or ice cream mix with his name
11 and the word "registered" produced thereon, a description of the
12 name so used by him, shall be one dollar, but in no event shall any
13 such fee be greater than five dollars.

1 SECTION 98. The fourth paragraph of section 7A of chapter
2 271 of the General Laws is hereby amended by striking out the
3 seventh sentence, as appearing in chapter 810 of the acts of 1969,
4 and inserting in place thereof the following sentence: — Unless
5 otherwise established in a town by town meeting action and in a
6 city by city council action; and in a town with no town meeting by
7 town council action, by adoption of appropriate bylaws and ordi-
8 nances to set such fees, a fee of ten dollars shall accompany each
9 such application and shall be retained by the city or town, but in no
10 event shall any such fee be greater than fifty dollars.

1 SECTION 99. Section 6 of Chapter 639 of the Acts of 1974, as
2 amended by Section 3 of Chapter 389 of the Acts of 1976, is hereby
3 amended by inserting at the end thereof the following: — ; pro-
4 vided that no such person shall serve in a grade above detective
5 lieutenant inspector in the office of investigation and intelligence

6 or the bureau of investigative services upon attaining the age of
7 fifty years.

1 SECTION 100. Paragraph (a) of section 2 of chapter 200A of
2 the General Laws is hereby further amended by striking out the
3 word "seven", inserted by section 5 of chapter 130 of the acts of
4 1980, and inserting in place thereof the following word: — five.

1 SECTION 101. Paragraph (b) of said section 2 of said chapter
2 200A is hereby amended by striking out the word "seven", inserted
3 by section 3 of said chapter 130, and inserting in place thereof, in
4 each instance, the word: — five.

1 SECTION 102. Section 3 of said chapter 200A is hereby
2 amended by striking out the word "seven", inserted by section 7 of
3 said chapter 130, and inserting in place thereof the word: — five.

1 SECTION 103. Section 4 of said chapter 200A, as appearing in
2 section 8 of said chapter 130, is hereby amended by striking out, in
3 line 6, the word "seven" and inserting in place thereof the word: —
4 five.

1 SECTION 104. Section 5 of said chapter 200A, as so appear-
2 ing, is hereby amended by striking out, in line 10, the word "seven"
3 and inserting in place thereof the word: — five.

1 SECTION 105. Section 5A of said chapter 200A, as so appear-
2 ing, is hereby amended by striking out, in lines 5 and 25, the word
3 "seven" and inserting in place thereof, in each instance, the
4 word: — five.

1 SECTION 106. Section 5B of said chapter 200A, as so appear-
2 ing, is hereby amended by striking out, in lines 9, 15 and 20, the
3 word "seven" and inserting in place thereof the word: — five.

1 SECTION 107. Section 5C of said chapter 200A, as so appear-
2 ing, is hereby amended by striking out, in line 3, the word "seven"
3 and inserting in place thereof the word: — five.

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EXHIBIT
2

In rejecting these sections we do not reject the need to structure and further streamline state operations. In my budget message in January I said that we were working on just such a program.

To carry forward the substantial progress we have made on a reorganization plan involving Human Services, Public Safety and Manpower Affairs, and to more systematically consider ways to make the rejected paper reorganization of Communities and Development, Consumer Affairs and Manpower Affairs a cost saving reality, I will announce in the near future the formation of a task force that will present a reorganization plan that can be filed under Article 87 of the Amendments of the Constitution. My charge to them will be to report on or before February 1, 1982 with a plan to make agency operations more efficient and less costly; to redefine the traditional parameters of state government to more accurately reflect the new era of the 1980's.

In addition to these efforts to consolidate and streamline the structure of state agencies, it is imperative that we give our public administrators the flexibility they need to efficiently manage their operations. We were greatly encouraged by the serious consideration given towards ending the practice by which the legislature schedules personnel positions. We look for a continuing review of this procedure so that, in a less strained moment, a significant reform might be possible.

With respect to our state managers, there are two legislative proposals, unrelated to the budget process, yet critical to our ability to do more with less: civil service reform and the management pay plan.

Our civil service laws no longer reflect the public employer-employee relationship. Over 64,000 employees are covered by the Commonwealth's collective bargaining contracts -- agreements which detail the rights and responsibilities of the parties. Archaic laws which impede a modern personnel system must be revised.

Of equal importance is the management pay plan. We have made substantial cuts in state spending in order to provide $265 million in new local aid to the cities and towns. Yet there are local health officials who make more than our Commissioner of Public Health, local school superintendents whose salary exceeds our Commissioner of Education, local police chiefs paid more than the head of our State Police. We in no way begrudge the cities and towns their need for increased local aid dollars, but it is imperative that the state be able to attract and retain capable managers. Without them, the efficiencies we need, indeed, the efficiencies we demand, will not be possible. Your Honorable Bodies must enact these legislative proposals at the earliest opportunity.

In the matter of management flexibility there are a number of items that restrict and mandate state managers and operations.

I am disapproving section 99 which would destroy the effectiveness of our state police intelligence gathering

management team. This section will require five experienced, sophisticated law enforcement professionals to resign their positions because it lowers the retirement age for their jobs to age 50. We cannot accept this loss of continuity in investigative services nor can we lose the individuals who have been called upon in every complex case, including most homocides, throughout the state.

I am disapproving section 30, which would prohibit the intersubsidiary transfer of funds between the "01, Salaries, Permanent Positions" and "08, Heat and Other Plant Operations" accounts without the prior written approval of the Commissioner of Administration and the House and Senate Committees on Ways and Means. To achieve the economies called for in this budget we must give our managers the greatest possible flexibility in allocating expenditures within their overall appropriation level.

I am disapproving section 274 which would severely restrict inter-basin water transfers. It is critical that our water resource managers have the maximum flexibility to respond to conditions of scarcity. By requiring full legislative action for such transfers we would set in place a process that could seriously delay and impede critical relief for the citizens of the Commonwealth.

I am disapproving section 276 which prohibits certain advertising and educational campaigns for the development of solid and hazardous waste facilities. The safe and legal disposal of such material is a top priority of this administration. One major obstacle to the facility siting is public fear of the unknown. We can accept no limitation on our ability to provide the information upon which rational decisions can and will be made.

I am disapproving section 196 which would prohibit the Treasurer from issuing commercial paper without the approval of the Commissioner of Administration and Finance, and the House and Senate Ways and Means Committees. We believe that the Treasurer should be given the maximum flexibility to manage and invest the Commonwealth's funds. Tedious approvals may make it impossible for his office to take advantage of short term market fluctuations.

I am also disapproving section 197, which purports to establish a debt limit for the Commonwealth's bond obligations. We are very concerned with the impact such a restriction might have on our Highway and Bridge maintenance and rehabilitation programs. We have a commitment to the continued improvement of the Massachusetts Bay Transportation Authority and the half million people it serves. This section could preclude the receipt by the MBTA of over a half billion dollars in federal funds for the completion of the Red and Orange Lines, the acquisition and rehabilitation of vehicles, the renomination of a number of stations that will economically revitalize their respective neighborhoods. MBTA bond counsel advises that for the Authority to enter into contracts for the future they must demonstrate the ability to borrow for that purpose. This restriction would cast doubt on that ability. There is also some question as to the legality of one General Court attempting to bind the next one on what action it may take.

The Boston Herald

June 26. 2003

Lawyer says Billy never told him about Whitey call

By JACK MEYERS and MAGGIE MULVIHILL

UMass President William M. Bulger's testimony that his attorney told federal authorities "immediately" about his January 1995 telephone conversation with his fugitive brother is questionable.

Last week, Bulger testified before the House Government Reform Committee that he told his lawyer about the phone call "just about immediately" and the lawyer "in turn told (federal) officials."

However, interviews with lawyers who have represented Bulger raise serious doubts about that portion of his testimony, and had Bulger partisans backtracking yesterday. Last Friday, Bulger attor-

EXHIBIT 3

ALL-STATE LEGAL

Lawyer: Billy didn't tell me of Whitey call

R. ROBERT POPEO: Says William Bulger never told him about the call from Whitey.

From Page 1

ney Thomas R. Kiley said he contacted the U.S. Attorney's Office about the January 1995 phone call from James J. "Whitey" Bulger — but only after he began representing the University of Massachusetts president much later.

"I have indeed communicated the fact of the (telephone call) to people in the U.S. Attorney's Office, but I was not Bill's lawyer at the time," Kiley said. "Once I represented Bill, it was either in 1997 or at some point in 1996, I dealt with the (assistant U.S. attorneys) that were handling that case."

Kiley said Bulger was referring in his testimony to another attorney who had earlier contacted authorities. He said he thought the lawyer was R. Robert Popeo.

However, late Friday, Popeo said through a spokeswoman that he represented Bulger on matters relating only to the 75 State Street investigation. Popeo said he never spoke to Bulger about his brother Whitey, or was told by his client about the 1995 phone call.

Like Kiley, on Tuesday Bulger spokesman Robert Connolly identified Popeo as the attorney who notified authorities about Whitey's call to William Bulger. When told Popeo denied any involvement, Connolly said he would check with Bulger himself.

Connolly later called to say he assumed Popeo was the lawyer involved and referred a Herald reporter back to Kiley. Yesterday, Kiley contradicted his earlier statements.

"I don't know if I'm the lawyer who is identified there," said Kiley, referring to Bulger's answers to Rep. Christopher Shays (R-Conn.), a member of the committee holding hearings on FBI misconduct and corruption.

Kiley said he would not explain how Bulger's statement that he told his lawyer about the phone call "just about immediately" could be accurate when Kiley did not start representing him until roughly two years later.

"I'm not going to help you," Kiley said. "The president's testimony was all, in my view, perfectly truthful."

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"If it turns out to be false, we would be concerned," Ausbrook said. He added that the immunity order the UMass president was testifying under "doesn't protect false statements."

Asked if he had any concerns about the six-year time gap between Whitey Bulger's 1995 telephone call to his younger brother and the fact William Bulger was not officially questioned by federal authorities about his brother until 2001, Ausbrook said: "We are concerned about the way law enforcement has handled this ..."

A spokeswoman for the U.S. Attorney's Office declined comment yesterday.

THURSDAY, JUNE 26, 2003 BOSTON HERALD

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leaving the courtroom he saw Quinn. Flemmi Aug. 20, 1998 Tr. at 155, Aug. 21, 1998 Tr. at 50-51. Flemmi knew that Quinn was aware of his valuable service as an informant concerning the LCN. Flemmi Aug. 20, 1998 Tr. at 156-57. Flemmi thought that Quinn would at least do something to facilitate his release on bail. Id. Thus, Flemmi said to Quinn, "How about a break on bail." Flemmi Aug. 20, 1998 Tr. at 155, Aug. 21, 1998 Tr. at 50-51. However, Assistant United States Attorney Kelly, who was with Quinn, told Flemmi that Quinn could not speak to him because Flemmi's attorney would object. Flemmi Aug. 29, 1998 Tr. at 156-57.

After Bulger's indictment on January 10, 1995, the FBI opened a fugitive investigation of him. Charles Gianturco was put in charge of it. Steffens Aug. 10, 1998 Tr. at 24; Walther Oct. 1, 1998 Tr. at 166. He is the brother of Nick Gianturco, who, as described earlier, understood that Bulger had helped save his life when Gianturco was an undercover agent in Operation Lobster, and had subsequently dined and exchanged gifts with Bulger and Flemmi.

On about January 23, 1995, Bulger returned to the Boston area briefly to drop off Stanley. Stanley Sept. 18, 1998 Tr. at 40-41, 47, 84, 85. It was widely known that Stanley had been traveling with Bulger and was back in Boston. Id. at 63. Yet the FBI did not contact her until April 1996, about fifteen months after she had returned. Id. at 42-43, 53; Walther Sept. 10, 1998 Tr. at 166-67.

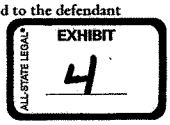
When approached, Stanley was cooperative. Among other things, she told FBI agents Charles Gianturco and Walther that during their trip prior to his indictment Bulger had driven a Grand Marquis, used the alias "Tom Baxter," and stayed with the Matos family in Selden, New York, with whom she and Bulger had stayed before. Stanley Sept. 19, 1998 Tr. at 11-13. Stanley had not, however, heard from Bulger since he returned her to the Boston area. Id. at 48-54. Thus, by the time that she was interviewed by the FBI, the information that Stanley could provide was dated and of diminished value. Nevertheless, the FBI paid Stanley $1000 in November 1996. Walther Sept. 10, 1998 Tr. at 169.

In late June 1995, Assistant United States Attorney Stephen Heymann asked to review Bulger and Flemmi's FBI informant files. Ex. 269. He did so on July 3, 1995. Id. As a result, the United States Attorney's Office evidently decided that it was essential that the prosecutors presenting the case be informed that Bulger and Flemmi had been FBI informants. This was done at some time prior to August 23, 1995. See Aug. 23, 1995 Government's Ex Parte, In Camera Motion for Protective Order.

On August 1, 1995, the government obtained a Second Superceding Indictment that added John Martorano as a defendant. As described previously, John Martorano had, in 1979, become a fugitive from RICO charges in the race-fix case against Winter, himself, and others, which was, in effect, alleged to be a racketeering act of a RICO enterprise known as the Winter Hill Gang. See Winter, 663 F.2d at 1127-28. After he was apprehended, John Martorano's case was assigned to District Judge Reginald Lindsay. On July 24, 1995, over the government's objection, Judge Lindsay dismissed the case against John Martorano, without prejudice, because a violation of the Speedy Trial Act, 18 U.S.C. §§ 3161. Rather than attempting to reinstate the dismissed charges, the government brought new charges against Martorano in this case. Thus, this court became responsible for presiding in the case against John Martorano.

On August 23, 1995, Assistant United States Attorney Herbert filed, under seal, with Magistrate Judge Lawrence Cohen, the Government's Ex Parte, In Camera Motion for a Protective Order concerning documents to be produced in discovery to Flemmi and his counsel. Herbert stated that Flemmi had made "potentially relevant" statements to the FBI "in the context of a confidential relationship over the course of many years." Id. at 1. Herbert explained that trial counsel had not read or been informed of the statements in order to avoid any arguable claim that the statements had been used improperly in investigating Flemmi. Id. at 2 n.1. The government noted that Flemmi had not requested his statements and, therefore, the government had no obligation to produce them pursuant to Fed. R. Crim. P. 16(a)(1)(A) or Rule 116.1 of the Local Rules of the United States District Court for the District of Massachusetts. Id. at 3. The government requested confirmation of this view. Id.

The government also represented that it recognized that it had an independent and continuing obligation to produce exculpatory information pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and its progeny. Id. at 4 n.3. Thus, the government expressed the intention to have the documents reviewed by a senior official of the Department of Justice "to determine whether they contain any information that must be disclosed to the defendant Flemmi or any of his codefendants on constitutional grounds." Id.



around the Boston Police is that a cop by the name of Cox is wired up on other cops." Ex. 229. Flemmi did not, however, provide this information to Connolly. Flemmi Aug. 20, 1998 Tr. at 71-72, Aug. 28, 1998 Tr. at 105-09. Rather, the court concludes that this insert is another document containing false information in an effort to make it more difficult to discern and demonstrate improper conduct by Connolly.

Soon after the encounter between Cox and Flemmi, Jordan, Moody, and their investigation were transferred to the White Collar Crime squad in an effort to distribute the "good investigations" more equally. Ring June 15, 1998 Tr. at 12, June 19, 1998 Tr. at 157-58, Sept. 18, 1998 Tr. at 132; Morris Apr. 23, 1998 Tr. at 62, Apr. 29, 1998 Tr. at 73-74. Morris was then the supervisor of the White Collar Crime squad. Morris Apr. 22, 1998 Tr. at 97-101.

As the investigation evolved, it came to focus on John Bahorian, a bookmaker believed to be making payments to Flemmi. Morris Apr. 22, 1998 Tr. at 101, Apr. 29, 1998 Tr. at 69-70. In the spring of 1988, Moody and Jordan were preparing an application for electronic surveillance of Bahorian, which targeted Flemmi as well. Morris Apr. 22, 1998 Tr. at 101-02.

Morris was afraid that the electronic surveillance would lead to Flemmi's arrest and indictment. Morris Apr. 29, 1998 Tr. at 68, 70. Morris was concerned that if that occurred, the nature of his relationship with Bulger and Flemmi would be revealed. Id. Thus, Morris asked Connolly to tell Flemmi and Bulger to stay away from Bahorian. Id. at 67, Apr. 22, 1998 Tr. at 120-21. Morris also asked Connolly to tell Bulger and Flemmi not to do anything to Bahorian because Morris "did not want another Halloran." Morris Apr. 22, 1998 Tr. at 121-22. Morris believed that Bulger and Flemmi had been involved in the Halloran murder. Id. His directions to Connolly in 1988 were both a reminder and performance of his 1985 promise that Bulger and Flemmi would be protected as long as they did not murder anyone. Id.

Connolly delivered Morris' message to Bulger and Flemmi. Id. He later reported to Morris that they wanted to meet with him to discuss the Bahorian matter. Id. at 103, 121.

Thus, in the spring of 1988, prior to the inception of the electronic surveillance of Bahorian, Bulger, Flemmi, and Connolly met with Morris at his home. Id. at 103, 105, 109, 121; Flemmi Aug. 20, 1998 Tr. at 76, Aug. 28, 1998 Tr. at 115. Morris told Bulger and Flemmi about the planned electronic surveillance and warned them to stay away from Bahorian. Id. at 103-04. Morris also said that he could keep Flemmi out of any indictment arising out of the Bahorian electronic surveillance. Flemmi Aug. 20, 1998 Tr. at 78.

As in the past, neither Bulger nor Flemmi claimed that he had immunity and could not properly be investigated or prosecuted. Nor did Morris believe that they were immune from prosecution. Rather, Morris felt that by warning Bulger and Flemmi he was engaging in an illegal obstruction of justice. Id. at 104, Apr. 30, 1998 Tr. at 102.

Bahorian's telephone was wiretapped from June 22 to September 25, 1988. Apr. 29, 1998 Tr. at 113. Flemmi was named as a target in the application for that electronic surveillance. Morris Apr. 22, 1998 Tr. at 102. The wiretap produced evidence that led to the indictment of Bahorian and others. Id. at 101-02, 109. Because he was warned, however, Flemmi was neither intercepted nor charged. Id.

27. The Leak and the Threat to The Boston Globe

After telling Flemmi and Bulger about the imminent Bahorian wiretap, Morris was "very upset." Morris Apr. 29, 1998 Tr. at 123. He felt "completely compromised" and vulnerable. Id. at 67. As described earlier, Morris was afraid that if Flemmi or Bulger were prosecuted, the nature of his relationship with them would be revealed. Id. at 68, 70. Morris decided that he was "going to do whatever [he] could to stop Bulger and Flemmi short of admitting [his] crimes." Id. at 125.

Morris had previously told Ring that Bulger had "outlived [his] usefulness," but he had not been closed as an informant. Morris Apr. 29, 1999 Tr. at 66, Apr. 30, 1999 Tr. at 91. Now Morris wanted to "destroy the relationship between the FBI and [Bulger and Flemmi]" himself. Morris Apr. 29, 1998 Tr. at 124. Thus, Morris took an extraordinary step calculated to terminate the threat that Bulger and Flemmi presented to him in a manner that minimized the risk that his role in doing so would be exposed. In essence, he attempted to provoke "another

Halloran."

More specifically, in about June 1988, Morris spoke to Gerard O'Neill, a reporter for The Boston Globe's investigative unit, the "Spotlight Team." Ex. 85; Morris Apr. 28, 1998 Tr. at 74-76. Morris understood that as a responsible journalist, O'Neill would protect the confidentiality of Morris as his source. Morris told O'Neill that Bulger was an FBI informant. Morris Apr. 27, 1998 Tr. at 154-57, Apr. 28, 1998 Tr. at 31, 74-75, Apr. 29, 1998 Tr. at 74-75, 80-81. Morris also indicated that Flemmi was an FBI informant. Morris Apr. 28, 1998 Tr. at 74-75. Morris did not say that the conversation was "off the record" and understood that The Boston Globe would likely publish at least that Bulger was an FBI informant. Morris Apr. 29, 1998 Tr. at 78, 80-81.

Morris was well aware that an article reporting that Bulger was an informant could cause him to be killed by the LCN, among others. Morris Apr. 28, 1998 Tr. at 77-78. More specifically, as Morris later put in an affidavit in which he falsely swore under oath that he had not deliberately told O'Neill that Bulger was an informant:

[T]he consequences of individuals being identified as informants, regardless of the accuracy of the information, could be serious. . . . a human life [is] a human life, be that person criminal, informant, or both. . . . the criminal element would not need proof or documentation to take action, so, such statements as inferences could be deadly.

Ex. 85; Morris Apr. 28, 1998 Tr. at 76-77, Apr. 30, 1998 Tr. at 93.

Morris also knew that public disclosure that Bulger was an informant could be fatal to Flemmi. As Morris testified concerning the possible closure by the FBI of Bulger as an informant, it "would have been the end of Flemmi too . . . [b]ecause they were so closely tied together." Morris Apr. 28, 1998 Tr. at 79.

Morris' call prompted The Boston Globe Spotlight Team to plan to write a series of articles that would address, among other things, the events and information indicating that Bulger was a source for the FBI, who was being protected from investigation and prosecution. Among the matters of interest to the Spotlight Team were the race-fix case in which Bulger was not indicted, the Lancaster Street Garage investigation, and the 1984-85 investigation led by the DEA. As part of its research, a member of the Spotlight Team, Richard Lehr, directed a letter to Ciulla, the "star witness" in the race-fix case, who was then being protected by the government. Cullen Oct. 15, 1998 Tr. at 38, 47.

On July 19, 1988, Daly, who was the lead FBI agent on the race-fix case, called Kevin Cullen, another member of the Spotlight Team. Id. at 131. Daly and Cullen had talked several times before, but were not friends. Id. at 44-45. Daly indicated that he knew about the letter to Ciulla and expressed regret that Cullen had not called him first. Id. at 47.

Cullen told Daly that the Spotlight Team was preparing an article that would report that Bulger was an FBI source and, as a result, had been protected by the FBI in the race-fix case, among others. Id. at 133-55, 159. Daly denied that Bulger was an informant. Id. at 104-07, 133-35. He also denied that Bulger was protected from prosecution in the race-fix case because he was an FBI source. Id. at 50-51. As described previously, both of these assertions were false.

Daly proceeded to tell Cullen that as Ciulla had purportedly told Daly, Bulger was a very dangerous man who would think nothing of "clipping" anyone who wrote the sort of story Cullen described. Id. at 48, 50, 160; Ex. 242. Daly emphasized that, in his opinion, Cullen was especially vulnerable because it was well-known that he lived in South Boston. Cullen Oct. 15, 1998 Tr. at 50, 164.

Cullen believed that Bulger was a violent person and, indeed, a killer. Id. at 65-67. Cullen also believed that Daly's comments constituted a threat intended to discourage The Boston Globe from publishing the story it was planning. Id. at 52, 74, 75, 138-39, 146-47; Ex. 242. Cullen was correct. Daly made no written record of his call to Cullen, as he would have if it had been intended as an official warning by the FBI to a potential victim of violence. Cullen Oct. 15, 1998 Tr. at 178.[48]

The SAC, Ahearn, subsequently spoke on the record to the Spotlight Team, which reported that:

James F. Ahearn, special agent in charge of the FBI in Boston, was unequivocal when asked last month if Bulger had

relations with the FBI that have left him free of its scrutiny.

"That is absolutely untrue," said Ahearn. "We have not developed anything of an evidentiary nature that would warrant it and, if we ever do develop anything of an evidentiary nature, we will pursue it. We specifically deny that there has been any special treatment of this individual."

Ex. 243. Whether he knew it or not, Ahearn's statement was utterly incorrect.

In any event, Cullen discussed Daly's call with his colleagues. Cullen Oct. 15, 1998 Tr. at 52-53, 119. They too interpreted Daly's comments as a threat intended to intimidate them from publishing the series of articles that they were planning. Id.; Morris Apr. 30, 1998 Tr. at 178. Nevertheless, the reporters and The Boston Globe were undeterred.

The Boston Globe did, however, take the threat to Cullen seriously. Prior to publication of the article concerning Bulger, the newspaper paid to have Cullen and his wife relocated. Id. at 57-58, 123. Although still uneasy, after about a week Cullen returned to his home in South Boston. Id. at 123.

On September 20, 1988, The Boston Globe published its article on Whitey Bulger. Id. at 131; Ex. 243. The article reported that the FBI had "for years had a special relationship with Bulger" and reviewed the events suggesting that the FBI was protecting him, including the race-fix case, the Lancaster Street Garage investigation, and the investigation led by the DEA in 1984-85. Id.

At Ahearn's request, the FBI conducted an administrative inquiry focusing primarily on whether Morris had leaked the fact that Bulger was an informant and other confidential information to The Boston Globe.[49] Ex. 134. Morris repeatedly lied under oath during the course of that investigation by suggesting that he may have, at most, perhaps inadvertently confirmed that Bulger was a source. Morris Apr. 28, 1998 Tr. at 64-73, Apr. 30, 1998 Tr. at 93; Exs. 84, 85. Morris refused to take a polygraph test. Ex. 84. His deception succeeded. Morris emerged from the investigation with a censure and fourteen days of unpaid leave. Morris Apr. 28, 1998 Tr. at 72. These sanctions did not prevent Morris from progressing through the hierarchy of the FBI until 1995, when he became Chief of the Training and Administrative Section at the FBI Academy in Quantico, Virginia.

28. Flemmi and Salemme

The Boston Globe article was upsetting to Bulger and Flemmi, who felt betrayed and endangered. Flemmi Aug. 21, 1998 Tr. at 96-99; Ex. 159. On or about October 6, 1988, several weeks after the article was published, they met with Connolly and Morris, who was still the alternate agent for handling Flemmi. Ex. 42; Flemmi Aug. 20, 1998 Tr. at 78, Aug. 28, 1998 Tr. at 115-19. This was the last meeting or discussion that Flemmi had with Morris. Flemmi Aug. 21, 1998 Tr. at 86, 103, Aug. 28, 1998 Tr. at 115-16.

Connolly told Bulger and Flemmi that because of the articles, others in the FBI wanted to distance themselves from them. Flemmi Aug. 21, 1998 Tr. at 78-79, Aug. 28, 1998 Tr. at 116-18. Flemmi sensed that Connolly might be under some pressure to terminate their relationship. Flemmi Aug. 28, 1998 Tr. at 118. Connolly, however, disagreed and urged Bulger and Flemmi to "hang in." Flemmi Aug. 20, 1998 Tr. at 97, Aug. 28, 1998 Tr. at 116-18.

Among other things, Connolly said he was very concerned about Salemme, who had completed his sentence for the Fitzgerald bombing and been released from prison in the past year. Flemmi Aug. 20, 1998 Tr. at 97; Ex. 237 (209 dated 1/24/98). Salemme had reestablished contact with Flemmi. Ex. 237 (209 dated 1/24/98). Connolly had asked Flemmi to report to him on Salemme's activity and Flemmi had been doing so. Flemmi Aug. 20, 1998 Tr. at 98; Ex. 237 (209s dated 1/24/88 and 7/15/88). Ultimately, after Bulger had spoken again to Connolly, he and Flemmi agreed to follow Connolly's advice and continue their alliance. Flemmi Aug. 21, 1998 Tr. at 102-03, Aug. 28, 1998 Tr. at 116-18.

who was working for World Jai Lai when Wheeler was murdered, and Morris had finished testifying. The FBI agent who had discovered the documents, however, had previously given the documents to the FBI's Special Agent in Charge ("SAC") in Boston, Barry Mawn, and the Assistant Special Agent in Charge ("ASAC"), Mike Wolf, because the information that they contained "was obviously highly singular and sensitive." §§ II.13. Similarly, there was delayed disclosure of documents relating to John McIntyre which impeded defendants' ability to question relevant witnesses. §§§§ II.14, II.22, II.23.

4. About a month after Halloran's murder, Morris solicited and received through Connolly $1000 from Bulger and Flemmi. Morris used the money to buy an airplane ticket for his secretary, with whom he was romantically involved, so she could visit him in Georgia, where Morris was receiving advanced training. §§ II.13.

5. By the time Morris told Flemmi and Bulger of the Bahorian investigation he had taken an additional $6000 from Bulger and Flemmi and felt "completely compromised" and vulnerable. §§§§ II.17, II.18, II.27. Morris feared that if Flemmi or Bulger were prosecuted, the nature of his relationship with them would be revealed. Therefore, Morris decided to try to eliminate Bulger and Flemmi as a threat to him. §§ II.27.

To accomplish this, Morris told Gerard O'Neill, a reporter for The Boston Globe, that Bulger was an FBI informant. Morris expected that the newspaper would publish this fact, while protecting Morris as its source. Morris also calculated that such a story would prompt the LCN to murder Bulger and probably prove fatal to Flemmi as well. Id.

When the FBI learned of the proposed article, Daly, who had been the lead agent in the race-fix case, called Kevin Cullen, a reporter working with O'Neill. Daly falsely denied that Bulger was an informant and that he had been protected in the race-fix case because he was an FBI source. Daly attempted to intimidate Cullen and his colleagues from reporting that Bulger was an informant by indicating that Bulger was a very dangerous person, who would not hesitate to kill anyone who wrote such a story. Daly noted that Cullen would be at particular risk because it was well known that he, like Bulger, lived in South Boston. Id.

The Boston Globe took the threat seriously, but was undeterred. On September 20, 1988, it published an article reporting that Bulger had a special relationship with the FBI, which had provided him protection in many investigations. Perhaps unwittingly, James Ahearn, the SAC in Boston, denied that Bulger was being protected by the FBI. Id.

The FBI subsequently investigated whether Morris had leaked the fact that Bulger was an informant. Morris repeatedly lied under oath in that investigation. He remained with the Bureau until 1995, when he retired as Chief of the Training and Administrative Section at the FBI Academy in Quantico, Virginia, following a menacing telephone call that he received from Bulger, who was then a fugitive. §§§§ II.27, II.33.

6. The protection Bulger and Flemmi received from their FBI handlers was not unique. Like Flemmi and Bulger, Mercurio was alerted to his imminent indictment and, as expected, became a fugitive. §§ II.30. While he was a fugitive, Mercurio stayed in contact with Connolly. When Edward Quinn, the Supervisor of the Organized Crime squad, learned on July 5, 1991 that Mercurio was known by the FBI to be in Boston, was expected to be on a boat on Rowes Wharf on July 7, 1991, and was also understood by Salemme to have assisted the FBI in bugging the LCN induction ceremony, Quinn secretly asked Connolly, who had retired, to get a warning to Mercurio of the dangers to him. Connolly did so. As a result, Mercurio promptly fled Boston again and was not at Rowes Wharf when FBI agents went to apprehend him on July 7, 1991. §§ II.31.

ALL-STATE LEGAL EXHIBIT 5

978 F.Supp. 379
(Cite as: 978 F.Supp. 379)

H

United States District Court,
D. Massachusetts.

UNITED STATES of America
v.
Francis P. SALEMME, et al.

Cr. No. 94-10287-MLW.

June 19, 1997.

After defendants moved to suppress electronic surveillance evidence, the District Court allowed defendants' motions for evidentiary hearings concerning suppression motions and ordered Government to disclose whether individuals were informants. After Government filed affidavit in response to order and one individual testified that he cooperated with Government, the Court, Wolf, J., held that Government would be permitted another opportunity to confirm or deny second individual's status as informant.

So ordered.

West Headnotes

[1] Criminal Law ⚷627.10(1)
110k627.10(1) Most Cited Cases

It is generally not in interests of administration of justice, or of the individuals involved, for government to confirm or deny a person's status as an informant; however, those generally valid considerations are trumped when court, properly balancing particular circumstances of case, decides that disclosure of informer's identity, or contents of his communication, is relevant and helpful to defense of accused, or is essential to fair determination of cause.

[2] Criminal Law ⚷627.10(7.1)
110k627.10(7.1) Most Cited Cases

Government would be permitted another opportunity to confirm or deny individual's status as informant, before district court decided how to proceed in matter arising from defendants' motions to suppress electronic surveillance evidence and allowance of *Franks* hearings, where Government indicated in affidavit that it would consider revising position if there were changed circumstances, and second individual who was also subject to confirmation order subsequently testified that he cooperated with Government. 28 C.F.R. § 16.26.

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Kenneth J. Fishman, Bailey, Fishman & Leonard, Boston, MA, Richard M. Egbert, Boston, MA, for Stephen J. Flemmi.

Michael C. Bourbeau, Boston, MA, Robert A. George, Boston, MA, for James M. Martorano.

Martin G. Weinberg, Oteri, Weinberg & Lawson, Boston, MA, Anthony M. Cardinale, for John V. Martorano.

Fred M. Wyshak, Jr., U.s. Attorney's Office, Boston, MA, for U.S.

MEMORANDUM AND ORDER

WOLF, District Judge.

For the reasons described in prior Memoranda and Orders the defendants in this case have made the substantial preliminary showing required by *Franks v. Delaware*, 438 U.S. 154, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978), that is necessary to obtain an evidentiary hearing on their motion to suppress the intercepted La Cosa Nostra ("LCN") induction ceremony conducted at 34 Guild Street, Medford, Massachusetts on October 29, 1989. Indeed, the government now concedes that there is a proper basis for a *Franks* hearing with regard to that interception. *See* June 3, 1997 Government's Motion to Reconsider at 2; June 3, 1997 Transcript ("Tr.") at 41.

For the reasons described in detail in prior Memoranda and Orders, the defendants also made a substantial preliminary showing that Angelo "Sonny" Mercurio and Robert Donati were, during the relevant period, government informants and that, if true, disclosure of these facts, and the contents of at least some of their communications with the government, is important to a fair determination of the motion to suppress the intercepted LCN induction ceremony and related questions concerning whether there has been a pattern of government misconduct which may justify the dismissal of this case. May 22, 1997 Memorandum and Order Unsealed and

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Partially Unredacted June 6, 1997 ("May 22, 1997 Memorandum and Order") at 24-25; June 6, 1997 Memorandum and Order at 5, 7-8 & n. 2, 23; June 13, 1997 Memorandum and Order at 5. Thus, the court has found that in the circumstances of this case the defendants' right to prepare and present their defense outweighs the general public interest in maintaining confidentiality concerning possible informants. *Id.* Accordingly, the court exercised its discretion, *see United States v. Batista-Polanco,* 927 F.2d 14, 19 (1st Cir.1991), and ordered the Acting Deputy Attorney General ("ADAG") Seth A. Waxman to disclose to defendants whether Mercurio and/or Donati were informants. [FN1]

FN1. As explained in footnote 9 on page 32, which was redacted from the version of the May 22, 1997 Memorandum and Order provided to the parties and unsealed on June 6, 1997, prior to Mercurio's agreement to plead guilty, on July 31, 1995, the government informed Magistrate Judge Lawrence Cohen, who was handling pretrial discovery matters, that Mercurio had served as a Federal Bureau of Investigation ("FBI") informant and requested authority to disclose certain statements previously made by Mercurio to him directly rather than through his lawyers. July 31, 1995 Government's Ex Parte Motion for Protective Order. The Magistrate Judge granted this request and impounded the motion and Order. Neither the Magistrate Judge nor the government informed this court of these matters or of Mercurio's status as an informant. This court discovered the documents disclosing Mercurio's status long after it had sentenced him, when defendants, in support of the present motion to suppress, pointed out that the filing of documents under seal was reflected on the docket.
This court's Orders requiring disclosure concerning Mercurio's status to defendants and Donati's status to defendants and the court were issued in connection with comparable Orders directing disclosure of whether James "Whitey" Bulger, Kenneth Guarino and/or Anthony St. Laurant were also informants. The government has confirmed that Bulger was an informant. The ADAG has, however, declined to comply with the court's Orders regarding Guarino and St. Laurant, which are relevant to the possible suppression of conversations intercepted on December 11, 1991 at the Hilton Hotel in Boston, Massachusetts. The government has a pending motion for reconsideration regarding the Orders concerning Guarino and St. Laurant which the court will again consider seriously, but decide separately. As set forth in this Memorandum, the court recognizes that there are distinctions between Donati on one hand and Guarino and St. Laurant on the other and that those distinctions might affect the ADAG's decision whether to disclose their respective statuses.

***381** The ADAG has declined to comply with these Orders, most recently in an affidavit filed on June 11, 1997. Thus, the defendants and the court have been deprived of information that, as described in previous Memoranda, is important to resolving on the merits the question whether the intercepted LCN induction ceremony should be suppressed and other matters, including the question whether this case should be dismissed because of an alleged persistent pattern of government misconduct that makes this prosecution fundamentally unfair and must be deterred. May 22, 1997 Memorandum at 24-25; June 6, 1997 Memorandum and Order at 5, 7-8 & n. 2, 23; June 13, 1997 Memorandum and Order at 5.

In his June 16, 1997 Affidavit, the ADAG suggested, however, that his refusal to obey the court's Orders regarding Mercurio, Donati, Guarino and St. Laurant may not be final and might be revised if circumstances changed. More specifically, the ADAG stated that:

> 1. As a sanction for noncompliance with this Court's Order of June 6, 1997, the government presently intends: (i) to accept the exclusion of specified electronic surveillance evidence rather than confirm or deny whether Angelo Mercurio, Robert Donati, Kenneth Guarino, or Anthony St. Laurant were informants; and (ii) to appeal any suppression order entered by the Court.
> 2. If the Court of Appeals affirms such a suppression order, the government may reassess its decision neither to confirm nor deny whether the aforementioned individuals were informants, in light of: (i) the consequences of the Court of Appeals' opinion for the government's informant program in general and for this case; (ii) a contemporaneous assessment of the danger that disclosure would pose to any person; and (iii) *any other changed circumstances.*

(emphasis added). On June 18, 1997, there was a significant change in the circumstances concerning

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the motion to suppress the LCN induction ceremony. This evolution of events causes the court to pause in these proceedings in order to permit, and indeed require, the ADAG to reevaluate his decision not to confirm or deny whether Donati was an informant.

On June 17 and 18, 1997, the court adopted an approach with regard to Mercurio that the government had suggested concerning St. Laurant and Guarino, *see* June 3, 1997 Motion to Reconsider at 6, and called Mercurio as a witness. In connection with this the government represented that if Mercurio testified and lied about whether he was cooperating with the government with regard to the October 29, 1989 LCN induction ceremony, it would provide the court and the defendants accurate information--thus confirming or denying Mercurio's status as an informant as the court had ordered. After consulting counsel and reflecting upon his options, on June 18, 1997 Mercurio testified that he was cooperating with the government in connection with the October 29, 1989 LCN induction ceremony. As a result, the government has stated that Mercurio was the informant that it had previously agreed to stipulate was present at the ceremony. *See* June 3, 1997 Government Motion to Reconsider at 10, and Attachment A. The government has also acknowledged that the defendants are entitled to appropriate discovery concerning Mercurio's cooperation, although the parameters of that discovery remain in dispute.

Accordingly, the immediate remaining issue regarding the *Franks* hearing concerning the intercepted LCN induction ceremony is ***382** whether Donati was also an informant. May 22, 1997 Memorandum and Order at 32-35; June 6, 1997 Memorandum and Order at 8-9. As stated at the June 18, 1997 hearing, this court has a strong preference for deciding the motion to suppress the LCN induction ceremony on the merits, rather than as a sanction for the ADAG's recalcitrance. This preference is based, in part, on the fact that it is in the interest of the administration of justice in this case, and in the many other LCN cases potentially affected, that reliable evidence of serious crimes not be excluded unless the standards of *Franks* are met, and in part on the fact that if suppression of the LCN induction ceremony is ordered without a full and fair hearing of the merits of defendants' claims, possible serious government misconduct may be covered-up.

The court notes that in contrast to a court order directing disclosure of classified information and certain other things, the applicable federal regulation gives the ADAG the discretion to comply with a court order requiring the disclosure of an informant. *See* 28 C.F.R. § 16.26. In exercising this discretion, and deciding whether to comply or accept a sanction for noncompliance, the ADAG must consider:

(1) The seriousness of the violation or crime involved.
(2) The past history or criminal record of the violator or accused.
(3) The importance of the relief sought.
(4) The importance of the legal issues presented.
(5) Other matters brought to the attention of the [ADAG].

Id.

In this case, the Fourth Superseding Indictment plainly charges that very serious crimes were committed by defendants with significant criminal histories, who allegedly remain dangerous to the public. The refusal of the ADAG to comply with the court's Order concerning Donati not only invites suppression of the LCN induction ceremony, but also all evidence derived from it. *See* 18 U.S.C. § 2518(10)(a). Such evidence may include the December 11, 1991 interceptions at the Hilton Hotel that is now also at issue because the intercepted LCN ceremony was referenced and relied upon in the affidavit in support of the application for authority to conduct that electronic surveillance. October 27, 1989 Affidavit of Walter J. Steffens ¶ 9, Bate Stamp 8856.

As described in detail in previous Memoranda and Orders, this court recognizes that there is generally a public interest in maintaining the confidentiality of informants and, at times, meaningful concerns regarding their safety. However, even in cases involving alleged members of the LCN, the government has not always declined to identify an informant. For example, in *United States v. Johnson*, 801 F.2d 597, 598 (2d Cir.1986), the Court of Appeals for the Second Circuit explained that:

> *This appeal arises out of a criminal prosecution brought against Johnson and nine others on two counts of racketeering, in violation of 18 U.S.C. § 1962(c) and (d) (1982), for their alleged participation in the affairs of the Gambino crime family. After the indictment, the government identified Johnson as an informant for the Federal Bureau of Investigation* ("FBI") and moved to have him detained on the ground that he was likely to flee. At the detention hearing Johnson voluntarily testified, denying that he had ever been a government informant. The district court found to the contrary, however, and ordered him detained. *During pretrial discovery, portions of Johnson's*

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informant file were disclosed to his codefendants. They then filed joint pretrial motions to exclude from evidence all hearsay statements made by Johnson that the government intended to offer as statements by a coconspirator under Fed.R.Evid. 801(d)(2)(E).

(emphasis added).

Similarly, in the instant case the government complied with this court's Order and confirmed that James "Whitey" Bulger was an informant. [FN2] Thus, complying with the ***383** court's pending Orders regarding Donati would not be unprecedented.

FN2. In disclosing that Bulger was an informant the government explained that his current status as a defendant, on charges that he committed serious crimes while an informant, and the fact that he is now a fugitive indicated that he had forfeited any reasonable expectation that his previous informant status would remain confidential. Affidavit of Paul E. Coffey, Esq., filed June 3, 1997, under seal. The government characterized Bulger's circumstances as "rare and unique." *Id.* As the court noted at the June 17, 1997 hearing, however, Mercurio was in many respects similarly situated to Bulger, but the government refused to confirm his status formally, while virtually doing so by proposing to stipulate that it had an informant at the October 29, 1989 LCN induction ceremony. *See* June 3, 1997 Government Motion to Reconsider at 10, and Attachment A.

In his June 16, 1997 affidavit, the ADAG indicated that if there were changed circumstances, he would, in deciding whether to revise his position, consider, among other things, "a contemporaneous assessment of the danger that disclosure would pose to any person." In contrast to Mercurio, St. Laurant, and Guarino, Donati is deceased. The court is not aware that anyone close to Donati is now perceived to be in danger because of Donati's possible status as an informant, but such danger, if any, has existed since Donati's death in 1991, [FN3] and if it is believed to be a serious threat, appropriate measures could and should have been taken to protect against it by now.

FN3. *See* David Liscio, *Revere Man Murdered for Helping FBI Probe,* Lynn Item, October 1, 1991, at 1 (reporting that Donati was murdered because he was believed to be an informant).

Moreover, in contrast to Mercurio, Guarino and St. Laurant, who could each be asked by the court about their status, only the government can confirm or deny whether Donati was an informant. In response to questioning, the government has not suggested any alternative to address the issues relating to Donati other than reliance upon its representation that no misconduct occurred. The history of the government's conduct in the litigation since 1991 regarding the intercepted LCN induction ceremony, [FN4] and the substantial preliminary showing defendants have made that the government failed in its statutory duty to make full and complete disclosures regarding certain matters to the court in obtaining the other orders authorizing electronic surveillance now at issue, render the government's proffered representations unacceptable.

FN4. As this court found previously, in 1991 the government initially attempted to mislead the court and the defendants in *United States v. Ferrara* concerning the existence of the question of whether the government had failed to provide the issuing judge all of the legally required information with regard to whether roving electronic surveillance should be authorized. *See* 771 F.Supp. 1266, 1308 & n. 16 (D.Mass.1991). Questions concerning the reliability of the government's representations in connection with this matter persist. In 1991 this court relied upon the testimony of an Assistant United States Attorney in finding that she did not "fail to mention 34 Guild Street to [the issuing judge] to protect the identity of any informant." *Id.* at 1279. In the May 22, 1997 Memorandum and Order, page 30, the court noted this finding. On June 3, 1997, the government disclosed to the court and the defendants in this case an October 25, 1989 memorandum from the Boston office of the FBI to its headquarters concerning the then proposed application for a roving warrant. That memorandum states, in part, that "[roving] authorization will also help to protect the identity of any confidential sources, who otherwise might be revealed if singular information (in this case, the location of sensitive LCN meeting) provided by the source was incorporated into the

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affidavit of a traditional Title III application." Attachment to June 3, 1997 letter from Assistant United States Attorney Fred M. Wyshak. This statement is inconsistent with the position that the government took in 1991 regarding its reasons for seeking roving authority. The court recognizes the possibility that different representatives of the government may have had different motives in seeking roving authorization. This is an issue that may be explored at the *Franks* hearing that has been ordered. As the government acknowledged at the June 3, 1997 hearing, however, the October 25, 1989 FBI memorandum should have been disclosed in 1991. June 3, 1997 Tr. at 10.

As indicated earlier, the refusal of the ADAG to comply with the court's Orders regarding Donati invites the court to, at a minimum, exclude from the trial of this case the intercepted LCN induction ceremony and any evidence derived from it. However, imposition of exclusion as a sanction, and/or the refusal of the government to disclose whether Donati was an informant, also have the potential to impede the hearings necessary to determine whether members of the Department of Justice engaged in serious misconduct and, if so, whether this case should be dismissed. *See* June 13, 1997 Memorandum and Order at 4-5 (citing ***384***United States v. Morrison*, 449 U.S. 361, 366 n. 2, 101 S.Ct. 665, 669 n. 2, 66 L.Ed.2d 564 (1981), and *Bank of Nova Scotia v. United States*, 487 U.S. 250, 259, 108 S.Ct. 2369, 2375-76, 101 L.Ed.2d 228 (1988)).

The issues of possible government misconduct now presented in this case may include, but not be limited to, the following: (1) whether the government persistently failed to meet its statutory obligations to make the "full and complete statement[s]" concerning the necessity for electronic surveillance and the need for roving orders required by 18 U.S.C. § § 2518(1)(c) and (11)(a)(ii), *see* May 22, 1997 Memorandum and Order at 9-13; June 6, 1997 Memorandum and Order at 11-12; [FN5] (2) whether the court was deliberately misled when informed in 1991 that the government was not motivated to seek a roving order, rather than a warrant to bug 34 Guild Street, by a desire to protect the identity of any informant, *see* n. 4, *supra;* (3) whether Donati and/or Mercurio improperly attended or reported to the government concerning meetings between counsel and any defendant in this case either before or after his indictment, *see, e.g., Weatherford v. Bursey*, 429 U.S. 545, 554, 97 S.Ct. 837, 843, 51 L.Ed.2d 30 (1977)(listing factors that indicate when presence of informant at attorney-client meeting may violate defendant's Sixth Amendment rights); *United States v. Mastroianni*, 749 F.2d 900, 905-908 (1st Cir.1984)(explaining *Weatherford* and delineating burden of proof for such a Sixth Amendment claim); (4) whether, while an informant, Mercurio participated in the attempted murder of defendant Francis Salemme and, if so, whether the government abetted or tacitly approved that crime, *see* May 22, 1997 Memorandum and Order at 35-36; June 13, 1997 Memorandum and Order at 5-6; and (5) whether any employee of the government participated in harboring Mercurio while he was a fugitive.

FN5. A full and complete statement regarding the availability of other techniques, including the use of informants, is required so that the issuing judge can make the findings as to necessity of electronic surveillance required by Title III. *United States v. Cole*, 807 F.2d 262, 267 (1st Cir.1986)(noting the importance of judicial scrutiny of wiretap applications to the necessity prong of Title III), *cert. denied*, 481 U.S. 1069, 107 S.Ct. 2461, 95 L.Ed.2d 870 (1987); *United States v. Abou-Saada*, 785 F.2d 1, 11 (1st Cir.)(stressing that "the district court must satisfy itself" that electronic surveillance is necessary)(Breyer, C.J.), *cert. denied*, 477 U.S. 908, 106 S.Ct. 3283, 91 L.Ed.2d 572 (1986); *United States v. Scibelli*, 549 F.2d 222, 226 (1st Cir.) (observing that issuing judge must consider "all the facts and circumstances")(quoting S.Rep. No. 1097, 90th Cong., 2d Sess. (1968), *reprinted in* 1968 U.S.C.C.A.N. 2112, 2190), *cert. denied*, 431 U.S. 960, 97 S.Ct. 2687, 53 L.Ed.2d 278 (1977). The full and complete statement must pertain to the specific facts of the case. *United States v. Simpson*, 813 F.2d 1462, 1471 (9th Cir.)(wiretap " 'affidavit must show with specificity why in *this particular investigation* ordinary means of investigation will fail' ")(quoting *United States v. Robinson*, 698 F.2d 448, 453 (D.C.Cir.1983)(emphasis in original)), *cert. denied*, 484 U.S. 898, 108 S.Ct. 233, 98 L.Ed.2d 192 (1987).
Where the government is employing one or more confidential informants, it is

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> particularly important to disclose enough information in the affidavit to permit the issuing judge to perform the statutorily required review. *See, e.g., United States v. Falls,* 34 F.3d 674, 682 (8th Cir.1994)("expressly disapprov[ing] the government's failure to inform the issuing judge" that the confidential informant was actually one of the named suspects in the application); *United States v. Brooklier,* 685 F.2d 1208, 1221 (9th Cir.1982)(noting that government's doubts as to whether or not a confidential informant would "fully" cooperate "did not relieve it of the obligation to set forth those facts" to the issuing judge), *cert. denied,* 459 U.S. 1206, 103 S.Ct. 1195, 75 L.Ed.2d 439 (1983).
>
> If a pattern of misconduct is proven with regard to the applications for electronic surveillance relating to this case, the question may be presented in other matters whether the Department of Justice, which must review and approve all applications for electronic surveillance, 18 U.S.C. § 2516, had a national practice that was legally deficient.

Thus, issues of possible serious government misconduct have been presented. The court's ability to resolve the merits of those issues will be impeded, and possibly frustrated, if the ADAG continues to decline to disclose whether Donati was an informant despite Mercurio's recent revelation regarding his status. It is appropriate to reiterate, however, that while defendants have properly presented many serious issues concerning possible government misconduct, those issues have not been decided. *See* May 22, 1997 Memorandum and Order at 48. Rather, the court has determined only that the defendants are entitled to evidentiary hearings ***385** concerning some, but not necessarily all, of the issues presented and that certain disclosures are required to permit those hearings to be conducted properly. Similarly, the court notes that even if some misconduct is ultimately proven, it does not necessarily follow that any evidence will be suppressed or that this case must be dismissed. *See, e.g., Ferrara,* 771 F.Supp. at 1311 (holding failure to satisfy 18 U.S.C. § 2518(11)(a)(ii) did not, on facts found, justify suppression because omission was inadvertent and omitted information was not material); *United States v. Isgro,* 974 F.2d 1091, 1098 (9th Cir.1992)(holding that while there was justification to sanction proven government misconduct, dismissal was unwarranted), *cert. denied,* 507 U.S. 985, 113 S.Ct. 1581, 123 L.Ed.2d 148 (1993).

[1] Once again, this court fully appreciates that it is generally not in the interests of the administration of justice, or the individuals involved, for the government to confirm or deny an individual's status as an informant. *See generally Roviaro v. United States,* 353 U.S. 53, 77 S.Ct. 623, 1 L.Ed.2d 639 (1957). However, those generally valid considerations are trumped when a court, properly balancing the particular circumstances of the case, decides that "the disclosure of an informer's identity, or the contents of his communication, is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause." *Id. See also United States v.. Formanczyk,* 949 F.2d 526, 529 (1st Cir.1991). After ten hearings, for the reasons now addressed in four Memoranda and Orders, the court continues to find with regard to Donati's status that this is such a case.

[2] As described earlier, Mercurio's confirmation that he was an informant is a changed circumstance that the ADAG did not have the opportunity to consider in deciding previously not to comply with this court's Orders regarding Donati. The court believes that the ADAG should, therefore, have another opportunity to decide if he will confirm or deny Donati's status before this court decides how to proceed. In doing so, the court expects that the ADAG will consider the factors described in 28 C.F.R. § 16.26 and the potential adverse effects that a refusal to comply may have on the administration of justice. These potential adverse effects include, but may not be limited to: the exclusion of the intercepted LCN induction ceremony and any evidence derived from it at the possible trial of this case; the fact that such exclusion will strengthen defendants' contention that this case should be dismissed because of a persistent pattern of government misconduct; the fact that suppression of the LCN induction ceremony in this case will foreseeably prompt petitions, pursuant to 28 U.S.C. § 2255, to vacate sentences imposed in other LCN cases in which the intercepted induction ceremony has been introduced as evidence or used to prompt a guilty plea; and the fact that because a properly informed decision by the court of the pending charges of past government misconduct will be at least impeded by the ADAG's refusal to disclose whether Donati was an informant, public confidence in the present administration of the Department of Justice may be injured.

Accordingly, as orally ordered on June 18, 1997, it is

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hereby ORDERED that:

1. The ADAG shall, by June 20, 1997 at 2:00 p.m., file an affidavit stating (a) that he has read this court's Memoranda and Orders which relate to the disclosure of Robert Donati's status, including this Memorandum and Order and the June 13, 1997 Memorandum and Order; (b) whether, in view of the changed circumstances, he will now comply with this court's Orders regarding Donati; and (c) if so, whether Donati was, at any time after 1967, a confidential source of information (however internally designated) for any agency or agent or attorney, within the United States Department of Justice, including but not limited to the Federal Bureau of Investigation. If the ADAG has not reached a decision by 2:00 p.m. on June 20, 1997 and wishes to consider this matter further, the court will, if requested, extend the time for his response to this Order to 9:00 a.m. on June 23, 1997.

2. Hearings will resume on June 23, 1997 at 9:30 a.m. to address the Donati matter, among other things.

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Date of transcription 1/9/95

Massachusetts Senate President WILLIAM M. BULGER was interviewed. He responded by telephone to a request for interview made by the interviewing Agent. He advised as follows:

He has had no recent contact with his brother, and did not wish to be interviewed by the FBI, nor answer any questions posed to him by the interviewing Agent. In response, the interviewing Agent advised BULGER that should he be in contact with his brother JAMES, he might suggest to JAMES that he contact the interviewing Agent to discuss a time at which he could give himself up. He was further advised that his brother was the subject of a Federal fugitive investigation that would not end until he was captured. BULGER responded that he would keep this in mind.

The interviewing Agent advised him that should he receive information about his brother JAMES' location, or know of other persons who might be helpful in locating him, he should contact the interviewing Agent immediately. BULGER responded that he would consider the interviewing Agent's suggestions.

(telephonically)

Investigation on 1/9/95 at BOSTON, MA File # 281A-BS-53647-FUG -4

by SA JOHN E. GAMEL JEG/ Date dictated 1/9/95

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EXHIBIT 981

TOTAL P.02

MINORITY VIEWS OF HON. HENRY A. WAXMAN, HON. TOM LANTOS, HON. MAJOR R. OWENS, HON. BERNARD SANDERS, HON. ELIJAH E. CUMMINGS, HON. DENNIS J. KUCINICH, HON. DIANE E. WATSON, HON. STEPHEN F. LYNCH, AND HON. ELEANOR HOLMES NORTON

With the reservations set forth below, the minority concurs with the report's findings of serious misconduct by agents of the Federal Bureau of Investigation. The report concludes, among other things, that FBI agents tolerated or encouraged false testimony in a Massachusetts death penalty prosecution, protected informants and cooperating witnesses known to have committed murders and other violent crimes, and hindered state law enforcement investigations of organized crime. The report also justifiably criticizes the Bush Administration's Justice Department for actions such as the unwarranted assertion of executive privilege that made it difficult for the Committee to conduct its investigation.

A. THE COMMITTEE'S REPORT CONTRIBUTES TO A GROWING RECORD OF FBI MISCONDUCT IN NEW ENGLAND

This report adds to a vast public record of FBI misconduct in New England. Evidence of this wrongdoing first surfaced in 1995 as part of a federal racketeering prosecution against Francis P. Salemme and others. One of the defendants in that criminal case, Stephen J. Flemmi, filed pretrial motions disclosing that he and alleged organized crime leader James Bulger had been long-time FBI informants and alleging that the FBI had promised them protection from prosecution in exchange for their continued assistance.

Mr. Flemmi's pretrial motions led to a year of highly publicized evidentiary hearings in 1998 before United States District Judge Mark L. Wolf. Judge Wolf later issued a 661-page opinion concluding that FBI agents had engaged in serious criminal misconduct.[1] He found that Boston FBI agents protected organized crime figures who committed murders and other violent crimes; leaked information that resulted in the murders of witnesses cooperating with law enforcement agencies; intimidated citizens from pursuing criminal complaints; warned suspected criminals of investigations and electronic surveillance, impeding the efforts of other law enforcement agencies; warned suspected criminals of impending indictments, enabling them to flee; placed false information in the file of an informant to divert attention from possible crimes; solicited and accepted illegal gifts from informants; and lied under oath.

In January 1999, Attorney General Janet Reno established the Justice Task Force (JTF) to investigate the interaction of organized crime informants with current and former FBI employees from 1960 through 1991. In December 1999, JTF obtained racketeering

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

indictments against James Bulger, Mr. Flemmi, and former FBI Special Agent John Connolly. In May 2002, Special Agent Connolly was convicted of racketeering and obstruction of justice charges and later sentenced to ten years imprisonment. In October 2003, Mr. Flemmi pleaded guilty to racketeering charges involving ten murders. As part of a plea agreement, he implicated another FBI agent, H. Paul Rico, in the murder of Oklahoma businessman Roger Wheeler. Mr. Rico is currently facing state murder and murder conspiracy charges in Oklahoma.

B. RESERVATIONS CONCERNING UNILATERAL MAJORITY INTERVIEWS

The Committee's investigation was largely nonpartisan, and this report reflects the involvement of minority and majority members of the Committee. Rep. John F. Tierney, Rep. Stephen F. Lynch, and minority members who are not on this Committee played a leading role throughout the process. Minority members gave necessary votes for grants of immunity and actively participated in every hearing and field hearing.

Despite the consistent support of the investigation by minority members, the staff of the previous chairman conducted dozens of interviews without notice to the minority or an opportunity to participate. This practice was unnecessary and unfortunately prevents the minority from supporting significant portions of the final report.

In particular, the following sections rely extensively on unilateral majority interviews, which the minority cannot verify as accurate: (1) section III(A)(4)(iv) entitled "Anthony Stathopoulos and the Deegan Murder Prosecution,"[2] (2) section III(A)(7)(ii) entitled "Peter Limone,"[3] (3) section III(B)(2) entitled "Nevada,"[4] (4) section III(B)(4) entitled "Florida,"[5] (5) section III(B)(5) entitled "Massachusetts,"[6] and (6) section III(B)(7) entitled "Rhode Island."[7] Section III(A)(8) entitled "Efforts to Protect Stephen Flemmi After the Deegan Murder Trial" relies primarily on public records, but it also cites several interviews that the minority cannot verify as accurate.[8] The remaining sections of the report are supported by

[2] The minority did not participate in the February 21, 2003, interview with Anthony Stathopoulos, on which this section is based.

[3] The minority did not participate in the following interviews on which this section is based: Interview with Richard Luccio, Member, Massachusetts Parole Board (Sept. 23, 2002); Interview with James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office (Sept. 25, 2002); Interview with Kevin Burke, Member, Massachusetts Parole Board (May 30, 2001); Interview with Brian Callery, former Chairman, Massachusetts Parole Board (June 26, 2001); Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002); Interview with Jack Curran, former Chairman, Massachusetts Parole Board (June 28, 2001).

[4] The minority did not participate in the following interviews on which this section is based: Interview with Robert Daddeico (Oct. 17–18, 2001); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002); Interview with David Hatch, Detective, Las Vegas Metro Police Dept., Cold Case Review, Homicide Section (Apr. 4, 2002).

[5] The minority did not participate in the following interviews on which this section is based: Telephone Interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2002); Telephone Interview with Lewis Wilson, former Special Agent, Florida Department of Law Enforcement (Dec. 2, 2002).

[6] The minority did not participate in the interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

[7] The minority did not participate in the following interviews: Interview with Richard Israel, former Assistant Attorney General for Rhode Island (Sept. 26, 2001); Interview with David Leach, former Assistant Attorney General for Rhode Island (Sept. 25, 2001).

[8] The minority did not participate in the following interviews: Interview with Robert Daddeico (Oct. 17–18, 2001); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police

Continued

hearing testimony, Committee records, or public documents, though many also include citations to unilateral majority interviews.[9]

C. NEED FOR ADDITIONAL INVESTIGATION

During the course of the Committee's investigation, federal and state prosecutors requested that the Committee refrain from compelling the testimony of certain witnesses that would complicate pending criminal prosecutions. Out of deference to these prosecutors, and because important witnesses such as James Bulger remain fugitives, the Committee's fact finding focused mainly on the Deegan murder trial and other early events of the 1960s and 1970s.

As the report acknowledges, many questions remain about the FBI's handling of confidential informants and cooperating witnesses after this time period, and the inquiry remains substantially incomplete. At the earliest opportunity, the Justice Department should make a public accounting of its investigation into the allegedly corrupt relationship between Mr. Connolly and James Bulger. Finally, the committees of jurisdiction should continue to review the FBI's human source program and ensure that appropriate systems are in place to prevent similar abuses in the future.

HON. HENRY A. WAXMAN.
HON. TOM LANTOS.
HON. MAJOR R. OWENS.
HON. BERNARD SANDERS.
HON. ELIJAH E. CUMMINGS.
HON. DENNIS J. KUCINICH.
HON. DIANE E. WATSON.
HON. STEPHEN F. LYNCH.
HON. ELEANOR HOLMES NORTON.

Dept. (Apr. 4, 2002); Interview with Anthony Ciulla (Dec. 5, 2002); Interview with Bob Long, Sergeant, Massachusetts State Police (Apr. 17, 2001); Interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2001).

[9] The minority did not participate in the following interviews: Interview of Joseph Williams, former Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board June 29, 2001); Interview with Joseph Salvati (Mar. 27, 2001); Interview with Chester Paris, attorney for Joseph Salvati during the Deegan trial (Aug. 6, 2002); Interview with Edward Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dep't of Justice Field Office (Dec. 20, 2001); Interview with Dan Rea, investigative reporter (May 1, 2001); Interview with Joseph Williams, former Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board (June 29, 2001); Interview of Victor Garo, Attorney for Joseph Salvati (Mar. 26, 2001); Interview with James A. Ring, Supervisory Special Agent, Boston FBI Field Office (Sept. 25, 2002); Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001); Interview with Doug Ahlstrom, former Special Agent, Santa Rosa FBI field Office (Aug. 28, 2001); Interview with Bill Baseman, former Special Agent, Santa Rosa FBI Field Office (Sept. 25, 2001); Interview with James Southwood, former reporter, Boston Herald Traveler (Sept. 28, 2001); Interview with Tom Brown, former Detective Sergeant, Sonoma County Sheriff's Office (Aug. 30, 2001); Interview with Ron Fahey, former Chief Deputy District Attorney, Sonoma County (July 9, 2001); Interview of Marteen Miller, former Public Defender, Sonoma County (July 9, 2001); Interview of Bony Saludes, former reporter, Press Democrat (July 9, 2001); Interview of Ed Cameron, former Investigator, Sonoma County District Attorney's Office (July 10, 2001); Interview of Gary Bricker, former U.S. Marshal (July 9, 2001); Interview of Judge Joseph P. Murphy, Jr. (Aug. 29, 2001); and Interview of John Partington, former U.S. Marshal (Sept. 24, 2001).

ADDITIONAL MINORITY VIEWS BY HON. JOHN F. TIERNEY, HON. STEPHEN F. LYNCH, HON. ELIJAH E. CUMMINGS, AND HON. BERNARD SANDERS

This Committee's work is not done concerning any determination of facts relevant to the Federal Bureau of Investigation's (FBI's) conduct toward informants' testimony. The Justice Department has withheld potentially significant information, and several potentially significant witnesses have not been fully interrogated due to the assertion of on-going investigations or prosecutions, or because they, at least at this time, are unwilling to testify.

The Committee should, and we believe it has the obligation to, continue its work by pursuing as yet unavailable records and other information from the Department and by interviewing relevant witnesses once the Department's investigation and/or prosecutions are complete or if the circumstances occur that encourage heretofore unwilling witnesses to testify. We believe further important and helpful information could certainly be available, and it should be pursued.

More thorough inquiry should have been made on behalf of the Committee about the relationship between the FBI, informants, and members of the informants' families and whether those relationships impacted FBI investigations outside the scope of Patriarca, Barboza, Flemmi, or "Whitey" Bulger's activities. The Committee should consider whether further and more in-depth investigation would tend to inform the goals of its subject hearings or would instead serve only to gather information, however indicative of improper activity, outside the scope of purpose for this particular inquiry.

The Committee needs to conduct further efforts aimed at examining what, if any, Department and Bureau corrective actions have been undertaken since this scandal first came to light and the adequacy of same, as well as what actions must be taken legislatively, through regulation, by oversight activity, or some combination in order to prevent a continuation or recurrence of similar events in the future.

Finally, this Committee would be well served, and would serve Congress well, if it conducted follow-up hearings on the disgraceful conduct of the Justice Department in its lack of forthrightness and cooperation. If Congress is to assert its role as a co-equal branch of the government, and fulfill its responsibilities of oversight, it must be able to obtain honest, responsive, and timely information from Executive departments and agencies, barring some privilege justifying any failure to appropriately respond to Congress' requests.

The Committee's work should not be considered complete until the foregoing is accomplished.

HON. JOHN F. TIERNEY
HON. STEPHEN F. LYNCH.
HON. ELIJAH E. CUMMINGS.
HON. BERNARD SANDERS.

○