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EVERYTHING SECRET DEGENERATES: THE FBI'S USE OF MURDERERS AS INFORMANTS

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Reform submitted the following

THIRD REPORT

On November 20, 2003, the Committee on Government Reform approved and adopted a report entitled, "Everything Secret Degenerates: The FBI's Use of Murderers as Informants." The chairman was directed to transmit a copy to the Speaker of the House.

I. EXECUTIVE SUMMARY

Federal law enforcement officials made a decision to use murderers as informants beginning in the 1960s. Known killers were protected from the consequences of their crimes and purposefully kept on the streets. This report discusses some of the disastrous consequences of the use of murderers as informants in New England.

Beginning in the mid-1960s, the Federal Bureau of Investigation ("FBI" or "Bureau") began a course of conduct in New England that must be considered one of the greatest failures in the history of federal law enforcement. This Committee report focuses on only a small segment of what happened. It discusses primarily the 1965 murder of Edward "Teddy" Deegan, the subsequent prosecution of six defendants for that murder, and the actions of federal law enforcement officials to protect cooperating witness Joseph "The Animal" Barboza and government informants Jimmy "The Bear" Flemmi and Stephen "The Rifleman" Flemmi.

In order to understand the FBI's misuse of informants in New England, it is essential to examine the Deegan murder prosecution. The story of this trial and subsequent events provides a foundation to assess what happened during the 1970s, 1980s, and 1990s, when Stephen Flemmi and James "Whitey" Bulger allegedly murdered at

least 19 individuals while serving as government informants. It is now clear that FBI Special Agent John Connolly developed an improper relationship with Whitey Bulger and others who served as government informants. Connolly now stands convicted of obstruction of justice for his role in helping Whitey Bulger escape by tipping him off to his impending indictment. Stephen Flemmi, as part of his plea agreement, has also implicated Connolly in providing information that resulted in the murder of others.

The results of the Committee's investigation make clear that the FBI must improve management of its informant programs to ensure that agents are not corrupted. The Committee will examine the current FBI's management, security, and discipline to prevent similar events in the future.

This report finds that:

- Federal law enforcement personnel appear to have tolerated, and perhaps encouraged, false testimony in a state death penalty prosecution. When Joseph Barboza testified in the 1968 trial of six men for the murder of Teddy Deegan, his testimony was contradicted by a compelling body of evidence collected by federal law enforcement. Most of this evidence was kept from defendants and prosecutors. In all probability, this happened because informants were being protected and some officials at the FBI adopted an "ends justifies the means" approach to law enforcement. To date, there have been no adverse consequences for those who permitted the false testimony.
- As a result of Barboza's false testimony, four men were sentenced to death and two men were sentenced to life in prison. Evidence provided to the Committee indicates that four of these individuals did not commit the crime for which they were convicted. Two died in prison and the other two spent in excess of thirty years in prison. Furthermore, federal officials appear to have taken affirmative steps to ensure that the individuals convicted would not obtain post-conviction relief and that they would die in prison.
- Raymond Patriarca was one of the most significant organized crime figures in the United States in the 1960s. He was one of the Justice Department's top targets for prosecution. According to documents provided to the Committee, the Justice Department had microphone surveillance information indicating that Patriarca sanctioned the murder of Teddy Deegan, and that Vincent James Flemmi ("Jimmy Flemmi") and Joseph Barboza committed the crime a few days after Patriarca gave his assent to the murder. When asked if Patriarca would have been complicit in the Deegan murder, Judge Edward Harrington, then a top federal prosecutor intimately involved with cooperating witness Joseph Barboza, stated, "No doubt about it." Later, federal prosecutors were able to obtain the cooperation of Joseph Barboza. Two unanswered questions arise from these facts. First, was Patriarca not prosecuted for his involvement in the Deegan murder because Joseph Barboza would not tell the true story about the Deegan murder, thereby implicating Jimmy Flemmi? Second, did federal officials refrain from indicting Patriarca for the applicable federal crimes relating to the

Deegan murder because the federal government would have been compelled to provide all defendants with evidence from the microphone surveillance of Patriarca that would have undermined Barboza's testimony?

- The FBI had microphone surveillance that Joseph Barboza and Jimmy Flemmi intended to murder Teddy Deegan, and that Raymond Patriarca was involved in the conspiracy to commit this murder. Nevertheless, little appears to have been done to prevent Deegan from being killed. On the same day that the murder occurred, Jimmy Flemmi was assigned to be developed as an informant by FBI Special Agent H. Paul Rico. Unfortunately, many documents that might shed light on whether false testimony in the Deegan murder trial was tolerated to develop Jimmy Flemmi as an informant have been redacted by the Justice Department, and the Committee has been unable to do a thorough investigation of this matter. Furthermore, the Justice Department has withheld potentially significant information pertaining to informants, which has created additional investigative hurdles.
- Microphone surveillance of Raymond Patriarca indicated Jimmy Flemmi's motive for killing Teddy Deegan. This motive clearly contradicted Joseph Barboza's testimony that Deegan was killed because Patriarca wanted revenge for a burglary and for the murder of Rico Sacrimone. In fact, Flemmi indicated that his interest in killing Deegan was based on matters pertaining to the McLean-McLaughlin gang war. The FBI was aware of this discrepancy, but allowed Barboza to provide a false rationale for the Deegan murder.
- Compelling evidence indicates that Jimmy Flemmi did participate in the murder of Teddy Deegan. Nevertheless, he was not prosecuted for the murder. This leads to three areas of particular concern. First, was Flemmi spared prosecution for murder because of his role as a government informant? Second, was Joseph Barboza permitted to leave Flemmi out of his testimony in exchange for testimony against others? Third, was Jimmy Flemmi spared prosecution for murder because the federal government was using his brother, Stephen "The Rifleman" Flemmi, as a "Top Echelon" informant? Unfortunately, it is difficult to provide a definitive answer to these questions because the Committee has been denied access to potentially relevant evidence.
- When FBI Special Agents H. Paul Rico and Dennis Condon developed Joseph Barboza as a cooperating witness, Barboza told them that he would not provide information that would allow Jimmy Flemmi to "fry," which should have alerted federal officials that Barboza would not provide accurate testimony as part of the Deegan murder prosecution. There is no evidence that any affirmative steps were taken to prevent Barboza from committing perjury in the Deegan capital murder trial, or to communicate to prosecutors or the court that Barboza had previously told the FBI he would not provide information about Jimmy Flemmi. Furthermore, it appears that the FBI's knowl-

edge regarding Jimmy Flemmi's motive for killing Deegan was withheld until March of 2003. The failure to press Barboza regarding Flemmi's involvement in the Deegan murder appears to support the conclusion that Barboza's false testimony was acceptable to some law enforcement officials.

- The lead prosecutor in the Deegan case testified that if he had the information available to the FBI, he not only would have refrained from seeking the death penalty, he never would have indicted the defendants. He said:

I must tell you this, that I was outraged—outraged—at the fact that if [the exculpatory documents] had ever been shown to me, we wouldn't be sitting here . . . I certainly would never have allowed myself to prosecute this case having that knowledge. No way. . . . That information should have been in my hands. It should have been in the hands of the defense attorneys. It is outrageous, it's terrible, and that trial shouldn't have gone forward.

He further testified that he now believes that Barboza's FBI handlers "knew from the beginning that Joe Barboza was lying. . . . They have a witness that they knew was lying to me, and they never told me he was lying." He concluded: "[The FBI] figured, well, let's flip Joe, and let Joe know that we're not going to push him on his friend Jimmy Flemmi. So they let Joe go on and tell the story, leaving out Jimmy Flemmi; and then Jimmy Flemmi is allowed to go on and be their informer."

- On January 5, 2001, Judge Margaret Hinkle of the Suffolk County Superior Court stated, in granting defendant Peter Limone a new trial:

[T]he jury would likely have reached a different conclusion by this previously undisclosed evidence for two principal reasons. First, the new evidence [previously undisclosed FBI documents] casts serious doubt on Barboza's credibility in his account of Limone's role. Second, the new evidence reveals that Vincent James Flemmi, a participant of some sort in the Deegan murder, was an FBI informant around the time of the murder.

Thus, the court system responsible for the Deegan trial now recognizes that evidence in the hands of federal officials was indispensable to the administration of justice in the Deegan murder prosecution.

- Senior staff close to FBI Director J. Edgar Hoover were kept personally informed of steps taken to develop Joseph Barboza as a cooperating witness. Hoover or other senior law enforcement officials were in possession of information that could have led them to the conclusion that Barboza was committing perjury in a capital murder case. If Barboza had not been permitted to lie at trial, those indicted would not have been convicted. Furthermore, when Barboza was part of the Witness Protection Program, affirmative steps were taken to help him escape the consequences of a murder he committed in California. Director Hoover's office was aware of these initiatives.

- Senior FBI staff—and possibly FBI Director J. Edgar Hoover—appear to have been personally involved in decisions relating to the development of Jimmy Flemmi as an informant. Notwithstanding the fact that those officials had received reports by memorandum that Flemmi wanted “to become recognized as the No. One ‘hit man’ in this area as a contract killer” and that Flemmi had committed seven murders, “and, from all indications, he is going to continue to commit murder[,]” the FBI continued its efforts to develop and keep Flemmi as a Top Echelon criminal informant. There was no evidence that anyone expressed concern that Jimmy Flemmi would kill people while serving as a government informant. This is consistent with what happened later when agents in the FBI’s Boston office used Stephen Flemmi and James Bulger—who appear to have been involved in at least nineteen homicides—as informants for nearly a quarter of a century.
- Numerous murders—well in excess of 20—were allegedly committed by government informants Jimmy Flemmi, Stephen Flemmi, and James Bulger. Evidence obtained by the Committee leaves no doubt that at least some law enforcement personnel, including officials in FBI Director Hoover’s office, were well aware that federal informants were committing murders.
- The Committee received testimony and other evidence that major homicide and criminal investigations in a number of states—including Massachusetts, Connecticut, Oklahoma, California, Nevada, Florida and Rhode Island—were frustrated or compromised by federal law enforcement officials intent on protecting informants. It appears that federal law enforcement actively worked to prevent homicide cases from being resolved.
- When the FBI Office of Professional Responsibility conducted an investigation of the activities of New England law enforcement, it concluded in 1997: “There is no evidence that prosecutorial discretion was exercised on behalf of [James] Bulger and/or [Stephen] Flemmi.” This is untrue. Former U.S. Attorney Jeremiah O’Sullivan was asked at the December 5, 2002 Committee hearing whether prosecutorial discretion had been exercised on behalf of Bulger and Flemmi, and he said that it had. A review of documents in the possession of the Justice Department also confirms this to be true. Had the Committee permitted an assertion of executive privilege by the President to go unchallenged, this information would never have been known. That the Justice Department concluded that prosecutorial discretion had not benefited Bulger or Flemmi—while at the same time fighting to keep Congress from obtaining information proving this statement to be untrue—is extremely troubling.
- Although the Committee’s investigation focused on the Deegan murder, a few observations must be made regarding James Bulger and Stephen Flemmi:
 - Former U.S. Attorney Jeremiah O’Sullivan testified that he was aware Bulger and Flemmi were murderers, but that they were not indicted in a race-fixing case because they were minor players and their role was confined to receiving

ill-gotten gains from the illegal scheme. When confronted at a hearing with his own memorandum indicating that Bulger and Flemmi had a substantial role in every part of the criminal enterprise, O'Sullivan testified "[Y]ou got me[.]"

- Former U.S. Attorney Jeremiah O'Sullivan testified that there were fundamental problems between federal prosecutors and FBI investigators. O'Sullivan stated, for example, "[I]f you go against [the FBI], they will try to get you. They will wage war on you. They will cause major administrative problems for me as a prosecutor." O'Sullivan also testified that it "would have precipitated World War III if I tried to get inside the FBI to deal with informants. That was the holy of holies, inner sanctum. They wouldn't have allowed me to do anything about that[.]" O'Sullivan had so little confidence in the FBI that he recommended that federal agencies other than the FBI participate in a state investigation of Bulger and Flemmi. Upon learning that O'Sullivan circumvented the FBI, the head of the Boston FBI office berated O'Sullivan for targeting Bureau informants for investigation.
- The use of James "Whitey" Bulger as an informant specifically undermined public confidence in the integrity of state government by raising serious questions about whether the FBI used its authority to protect former Massachusetts State Senate President William Bulger from scrutiny by law enforcement or to advance his political career and whether he, in turn, used his authority improperly and with impunity to punish those who investigated his brother.
- Former State Senate President and now former University of Massachusetts President William M. Bulger's exercise of his Fifth Amendment rights before the Committee in December 2002 delayed Congress's receipt of his testimony regarding Bulger's possible knowledge of the favors done by FBI agents for James Bulger, his knowledge of whether FBI personnel assisted his own political career, his relationship with convicted former FBI Agent John Connolly, whether state government actions discouraged investigations of James Bulger, and other information pertinent to the Committee's investigation.
- The evidence before the Committee was insufficient to substantiate that William Bulger was complicit in any effort by federal law enforcement to advance his career or that he took any action to punish those who investigated his brother. William Bulger's testimony before the Committee, however, with respect to the FBI's efforts to contact him regarding his brother's whereabouts appeared to be inconsistent with a former Special Agent's recollection and his contemporaneous report of his efforts to contact William Bulger. Nor could the Committee substantiate William Bulger's testimony that he informed his lawyer who informed law enforcement of a telephone call with James "Whitey" Bulger after he fled.

- Evidence regarding the relationship of former FBI agent John Connolly and other FBI officials with James “Whitey” Bulger and other informants remains the subject of ongoing law enforcement efforts. The plea agreement of Stephen Flemmi has implicated John Connolly in other murders and resulted in the arrest of former FBI agent H. Paul Rico for the 1981 murder of Oklahoma businessman Roger Wheeler. Evidence related to these ongoing law enforcement efforts, including the testimony of John Connolly, has not been available to the Committee to date.
- The Justice Department made it very difficult for this Committee to conduct timely and effective oversight. Commenting specifically on the situation of Joseph Salvati, former FBI Director Louis Freeh stated that the case is “obviously a great travesty, a great failure, disgraceful to the extent that my agency or any other law enforcement agency contributed to that.” Nevertheless, notwithstanding the certainty that a terrible injustice occurred, a number of steps were taken that were a major impediment to the Committee’s investigation:
 - Executive privilege was claimed over documents important to the Committee’s investigation. Although the Committee eventually obtained access to the documents sought, months of investigative time was lost.
 - Disregarding a Committee document request made on June 5, 2001, the Justice Department failed to make adequate effort to provide the Committee with important FBI 209 interview summaries that purportedly document former FBI Special Agent H. Paul Rico’s use of Stephen Flemmi in efforts to obtain Joseph Barboza’s testimony in the Deegan murder case.
 - Many documents received by the Committee were unnecessarily redacted, making it difficult to understand the substance and context of the factual information communicated.
 - The Justice Department claimed that it was unable to locate significant information sought by the Committee. For example, four months after its April 16, 2002 request for documents related to a key witness, Robert Daddeico, who was also well known to the FBI and the Justice Department, the Justice Department claimed it needed more information to be able to identify “Robert Daddeico” in Justice Department files.
 - The Justice Department failed to produce to the Committee a document until December 16, 2002 prepared for the U.S. Attorney’s Office in Boston in 1966 which indicates contemporaneous knowledge of who committed the Deegan murder.
 - Another extremely disturbing document production failure pertains to a June 5, 2001, request to the Justice Department to produce “all audiotape recordings, telephone wiretaps, other audio interceptions and transcripts relating to Raymond Patriarca from January 1, 1962, to December 31, 1968.” Because Barboza and Flemmi traveled to Rhode Is-

land to get Patriarca's permission to kill Teddy Deegan, and because there was microphone surveillance capturing conversations, documents pertaining to this request were of paramount importance to the Committee. Indeed, the Justice Department was aware of the importance attributed by the Committee to these records. A few months after the initial request, the Justice Department indicated that the Committee had received all documents relevant to the Patriarca microphone surveillance. However, on December 2, 2002, one and a half years after the Committee's initial request, Task Force supervisor John Durham indicated that contemporaneous handwritten logs had been prepared by FBI Special Agents as conversations picked up by the microphone surveillance were monitored. These logs were not produced to the Committee until late December of 2002. Many of the most important sections of these documents were illegible. When the Committee was finally able to review legible copies of these documents in March of 2003, the Committee was able to ascertain that there was unique and significant information in these documents. For example, one is able to discern a motive for Jimmy Flemmi's wanting to murder Deegan in these documents. This motive contradicts the motive offered by Joseph Barboza at trial and would have had a significant bearing on the outcome of the Deegan case. This information would have also been a significant element in a number of Committee hearings and interviews.

These are but a few of the many examples that have led to concern with the Justice Department's performance in assisting the Committee with its investigation.

- The FBI's Boston office continued to exhibit insensitivity to the evidence of impropriety in the Deegan case. In early 2001, the Special Agent in Charge of the Boston Office stated: "The FBI was forthcoming. We didn't conceal the information. We didn't attempt to frame anyone." This supervisor was presumably referring to one document which indicates some information was provided, by means of an anonymous tip, to the Chelsea Police Department right after the Deegan murder. However, three years later when the Deegan trial began, the FBI was in possession of considerable and reliable exculpatory evidence—including knowledge that Joseph Barboza would not provide accurate information at trial—and this information was withheld from state prosecutors. Moreover, those who received the information provided in 1965 did not know it came from microphone surveillance and thus had a high degree of reliability. More significant, however, is the contrast between the FBI's representation that information was not concealed and the Deegan prosecutor's observation that if the relevant information had been shown to him "we wouldn't be sitting here . . . I certainly would never have allowed myself to prosecute this case[.]"
- In excess of two billion dollars in civil lawsuits were filed as the direct result of federal law enforcement decisions to use Jimmy Flemmi, Stephen Flemmi, and James Bulger as criminal informants. From the outset, the Department of Justice has used liti-

gation tactics to defeat these lawsuits that, at best, can be characterized as contrary to respect for the rule of law.

- The use of murderers as government informants created problems that were, and continue to be, extremely harmful to the administration of justice.
- Incalculable damage to the public's respect for the rule of law has been done by the actions of federal law enforcement personnel in Boston from 1965 until the present.

II. WHY THE COMMITTEE INVESTIGATED THESE MATTERS

Edmund Burke said: "The only thing necessary for the triumph of evil is for good men to do nothing." No truer words could have been written about federal law enforcement in Boston from the 1960s until the mid-1990s. While it is undoubtedly true that some things done by federal law enforcement in Boston can be cited with justifiable pride, it is also true that there was an undercurrent of failure and corrupt practices. Unfortunately, that undercurrent traveled to Washington and through the highest levels of the FBI. It also had significant negative consequences for many states.

Perhaps the greatest tragedy of the Boston debacle is the doubt cast on the integrity of the men and women who work for the Justice Department and, particularly, the Federal Bureau of Investigation. The United States Department of Justice is, without a doubt, the finest federal law enforcement organization in the world. The men and women of the Justice Department are dedicated, professional public servants. The integrity of the vast majority of these men and women is beyond reproach. Nevertheless, what happened in New England over a forty year period raises doubts that can be dispelled only by an obvious dedication to full disclosure of the truth. It is the greatest strength of our democratic system that the mistakes of the government can be assessed and placed before the American people. This report attempts to serve this end, not only for the purpose of informing, but also as a preamble to future legislative action.

At a time when the United States is faced by threats from international terrorism, and a number of law enforcement tools are being justifiably strengthened, it is particularly important to remember that Lord Acton's words are true: "Every thing secret degenerates, even the administration of justice."¹ Federal District Court Judge Mark Wolf began the landmark decision *U.S. v. Salemm*² with Lord Acton's words, and it is fitting that they be repeated here because Judge Wolf began the oversight process that led to this Committee's investigation. He is owed a significant debt of gratitude by everyone devoted to law enforcement in a democratic society.

¹ JOHN EMERICH EDWARD DALBERG ACTON, LORD ACTON AND HIS CIRCLE 166 (Abbot Gasquet ed., 1968).

² *U.S. v. Salemm*, 91 F. Supp. 2d 141, 148 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).