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

**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 knowledge 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 Island 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 litigation 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."<sup>1</sup> Federal District Court Judge Mark Wolf began the landmark decision *U.S. v. Salemme*<sup>2</sup> 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.

### **III. Joseph Barboza and the Deegan Murder Prosecution: An Extraordinary Failure to Serve the Ends of Justice**

What happened in New England over a forty year period is, without doubt, one of the greatest failures in federal law enforcement history. It began with the development of Jimmy and Stephen Flemmi as federal criminal informants, and with the prosecution of six individuals for the murder of Edward "Teddy" Deegan. Evidence obtained by the Committee leads to the conclusion that the death penalty was sought against innocent men regardless of compelling evidence of an injustice. In all probability, this happened because informants were being protected and some members of the FBI adopted an "ends justifies the means" approach to law enforcement.

#### **A. Barboza, the Flemmis, and the Deegan Murder Prosecution**

The two greatest challenges facing law enforcement in New England in the mid-1960s were organized crime and a gang war between supporters of feuding local criminals. It is not surprising, therefore, that heavy reliance was placed on developing informants to provide both advance notice of criminal activity and after-the-fact intelligence. The need to develop informants was particularly great in the area of organized crime. For decades, FBI Director J. Edgar Hoover publicly maintained that there was no such thing as organized crime. As Hoover's long-time aide Cartha "Deke" DeLoach pointed out:

Despite this now-familiar history of the mob in America, it surprises most people to learn that from the early 1930s until 1957, J. Edgar Hoover had insisted that there was no such thing as La Cosa Nostra – that is, a network of interrelated mobs that coordinated activities and maintained a kind of corporate discipline. . . . His profound contempt of the criminal mind, combined with his enormous faith in the agency he created, persuaded him that no such complex national criminal organization could exist without him knowing about it. He didn't know about it; ergo it did not exist.<sup>3</sup>

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

<sup>2</sup> *U.S. v. Salemme*, 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).

<sup>3</sup> CARTHA "DEKE" DELOACH, HOOVER'S FBI: THE INSIDE STORY BY HOOVER'S TRUSTED LIEUTENANT 302-03 (Regnery Publishing, Inc. 1995).



In retrospect, it is difficult to believe that federal law enforcement failed to recognize decades of significant national, interstate criminal activity. Nevertheless, the Justice Department did not make organized crime a priority until the 1960s.

An important part of the initiative against organized crime began with a decision in 1962 to commence a program of microphone surveillance of major suspected crime figures. In New England, this began with the installation of a listening device in the headquarters of organized crime leader Raymond Patriarca. According to a memorandum drafted in 1967 to recommend the prosecution of Patriarca:

Raymond Patriarca was the subject of an F.B.I. electronic surveillance by means of an electronic eavesdropping device installed by trespass at his place of business, 168 Atwells Avenue, Providence, Rhode Island, during the period March 6, 1962 to July 12, 1965.<sup>4</sup>

The fact that such listening devices were installed “by trespass” proved to be of significance because it meant that information received from the listening device could not be used during prosecutions unless obtained by independent means. This proved to be of consequence for a number of reasons. First, microphone surveillance of Raymond Patriarca provided significant information critical to one of the most important capital murder prosecutions in Massachusetts’ history. Second, the microphone surveillance provided important insights into the conduct of government informants and cooperating witnesses.

The use of the Flemmi brothers as informants over three decades, and Joseph Barboza’s testimony as a cooperating witness in the 1968 Teddy Deegan murder prosecution, appear to have commenced a pattern of unfortunate, and sometimes illegal, conduct that will have ramifications for federal law enforcement for years to come. The following sections discuss events from nearly forty years ago that began with the murder of Teddy Deegan and continue today with the filing of over two billion dollars of civil claims against the federal government.

### **1. Joseph “The Animal” Barboza**

Joseph “The Animal” Barboza was described by the FBI as “the most vicious criminal in New England”<sup>5</sup> and “a professional assassin responsible for numerous homicides and acknowledged by the professional law enforcement representatives in this area to be the most

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<sup>4</sup> Memorandum from Walter T. Barnes and Edward F. Harrington, Assistant U.S. Attorney, to Henry Petersen, Chief, Organized Crime and Racketeering Section (June 6, 1967) (document is retained by the Justice Department); *see also* Memorandum from J. Edgar Hoover, Director, FBI, to Acting Attorney General, U.S. Dept. of Justice (Dec. 22, 1966) (Exhibit 127) (“The installation of the eavesdropping device placed in Jay’s Lounge was made under the general authority of Attorney General Robert F. Kennedy. By memorandum of May 12, 1965, Attorney General Katzenbach was advised that the device had been in operation since January 9, 1963, and he authorized its continuance. It was discontinued on July 12, 1965.”) (Exhibit numbers are derived from an investigative chronology. The exhibits referred to in this Report are published at the end of this Report in increasing numerical order).

<sup>5</sup> Memorandum from J. B. Adams to Mr. Callahan (Apr. 29, 1968) (Exhibit 226).

dangerous individual known.”<sup>6</sup> In addition to the Deegan murder, the FBI had considerable information that he committed a large number of particularly brutal homicides. An example of Barboza’s extreme disregard for life is found in a memorandum addressed to FBI Director Hoover which discusses information obtained by microphone surveillance:

Joe Barboza requests permission from Patriarca to kill some unknown person. This person lives in a three-story house but Barboza has never been able to line him up to kill him. Barboza told Raymond that he plans to pour gasoline in the basement part of the house and set it afire and thus either kill the individual by smoke inhalation or fire, or in the event he starts to climb out a window, Barboza would have two or three individuals there with rifles to kill him as he started to step out a window or door. Upon questioning by Patriarca, Barboza said that he had planned to cut the telephone wires so that the individual could not call for assistance and also to ring false alarms in other sections of the city so that the engines could not respond quickly. He also explained that the third floor apartment was vacant but the first floor apartment was apparently occupied by the intended victim’s mother. This apparently caused no concern to Barboza who stated it was not his fault that the mother would be present, and he would not care whether the mother died or not. Patriarca told him that he did not think it was a good idea to effect the killing in the above manner and attempted to dissuade Barboza from this type of killing as innocent people would probably be killed. It was not clear to the informant whether Barboza accepted Patriarca’s objections, but Patriarca indicated very strongly against this type of killing.<sup>7</sup>

Another description of Barboza’s cold-blooded nature was provided by mafia informant Vincent Teresa:

Barboza went into the club [searching for a member of the McLaughlin mob named Ray DiStasio] and caught DiStasio cold. The trouble was, a poor slob named John B. O’Neil, who had a bunch of kids, walked in to get a pack of cigarettes. Barboza killed them both because he didn’t want any witnesses. DiStasio got two in the back of the head and O’Neil got three. It was a shame. I mean, this O’Neil was a family man – he had nothing to do with the mob. Barboza should have waited. That’s why he was so dangerous. He was unpredictable. When he tasted blood, everyone in his way got it.<sup>8</sup>

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<sup>6</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

<sup>7</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (May 18, 1965) (Exhibit 98).

<sup>8</sup> VINCENT TERESA, MY LIFE IN THE MAFIA 167 (Doubleday & Company, Inc. 1973).

Barboza was reputed to have killed more than twenty people,<sup>9</sup> and he killed at least one person while part of the federal Witness Protection Program.<sup>10</sup>

In 1966, Barboza was arrested on a weapons charge.<sup>11</sup> Due to a large number of previous convictions, he faced an extremely lengthy prison sentence for the charges brought against him. Perhaps because of this, he began cooperating with law enforcement personnel the following year and received a relatively light four to five year sentence.<sup>12</sup> At this time, FBI Special Agents H. Paul Rico and Dennis Condon began to work with Barboza to turn him into a cooperating witness.<sup>13</sup> Apparently, Barboza initially declined to cooperate.<sup>14</sup> However, Rico and Condon were able to use Stephen Flemmi, the brother of Barboza's best friend and partner Jimmy Flemmi, to obtain his cooperation.<sup>15</sup> In fact, one high level FBI memorandum indicates that Rico and Condon "developed" Stephen Flemmi to obtain Barboza's cooperation.<sup>16</sup> It is unclear from the records whether the FBI's knowledge of Jimmy Flemmi's participation in the Deegan murder – or any other murder – was used to convince Stephen Flemmi or Joseph Barboza to cooperate with federal law enforcement.

Barboza eventually testified in three trials as a cooperating witness.<sup>17</sup> He is generally acknowledged to be the first participant in the federal Witness Protection Program.<sup>18</sup> After being relocated to California, he was considered as a possible Top Echelon informant by the FBI.<sup>19</sup> According to testimony provided by Barboza, he also returned to Massachusetts at the behest of the FBI on a number of occasions to assist them on a case involving the theft of a \$500,000 painting.<sup>20</sup> If true, this would have meant that federal law enforcement actively encouraged Barboza to break the terms of his parole. Barboza later committed at least one additional homicide and was incarcerated, a subject which is discussed extensively later in this report. Barboza was murdered on February 11, 1976.<sup>21</sup>

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<sup>9</sup> Alan Jehlen, *Two Say Grieco [sic] Innocent of Deegan Murder*, PEABODY TIMES, June 9, 1971 (Exhibit 402).

<sup>10</sup> Interview with Joseph Williams, former Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board (June 29, 2001).

<sup>11</sup> James Southwood, *A Letter from Barboza, Why I Decided to Tell All*, BOSTON HERALD, July 9, 1967 (Exhibit 148).

<sup>12</sup> U.S. Dept. of Justice Identification Record (Mar. 2, 1976) (Exhibit 129).

<sup>13</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Memorandum from J. H. Gale to Cartha DeLoach (June 23, 1967) (Exhibit 144).

<sup>17</sup> See Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 2, 1968) (Exhibit 243); *Patriarca v. U.S.*, 402 F. 2d 314 (D. Mass. 1968), *cert. denied*, 89 S. Ct. 633 (Jan. 20, 1969); and the murder trial of Rocco DiSeglio.

<sup>18</sup> See "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 170 (Feb. 14, 2002) (testimony of Judge Edward Harrington).

<sup>19</sup> Memorandum to J. Edgar Hoover, Director, FBI (Apr. 14, 1969) (Exhibit 272). Dennis Condon's name is written on this document. Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 150 (Feb. 21, 2002).

<sup>20</sup> Robert Walsh, *Baron Returning to Walpole for Week on Parole Violation*, BOSTON GLOBE, August 28, 1970 (Exhibit 332).

<sup>21</sup> *Killer Barboza Slain*, BOSTON HERALD, Feb. 12, 1976 (Exhibit 636).

## 2. The Murder of Edward “Teddy” Deegan

Edward “Teddy” Deegan was, by all accounts, a peripheral figure in the Boston underworld of the 1960s. In late 1964, the FBI learned from an informant that Jimmy Flemmi wanted to kill Deegan.<sup>22</sup> Two days later, on October 20, 1964, Deegan was called and warned that Flemmi was looking for him and that Flemmi intended to kill him.<sup>23</sup> Five months later, between March 5 and March 7, 1965, Jimmy Flemmi met with Raymond Patriarca and asked for permission to kill Deegan.<sup>24</sup> This request was renewed a couple of days later on March 9, 1965, when Flemmi and Joseph Barboza visited Patriarca and “explained that they are having a problem with Teddy Deegan and desired to get the ‘OK’ to kill him. . . . Flemmi stated that Deegan is an arrogant, nasty sneak and should be killed.”<sup>25</sup> An FBI agent who prepared a memorandum about the microphone surveillance noted that Flemmi and Barboza requested permission to kill Deegan. He also stated that mob boss Raymond “Patriarca ultimately furnished this ‘OK.’”<sup>26</sup> Perhaps as important, handwritten notes prepared by an FBI Special Agent who was monitoring the conversation between Flemmi, Barboza and Patriarca indicate that Flemmi’s motive for killing Deegan was tied to the McLean-McLaughlin gang war, and that Flemmi was particularly concerned that “Deegan fills Peter Limone’s head with all kinds of stories.”<sup>27</sup> Reporting on his contacts of the following day, FBI Special Agent H. Paul Rico wrote a memorandum explaining that an informant told him that he had just heard from Jimmy Flemmi and that Patriarca had put out the word that Deegan was to be “hit.”<sup>28</sup> On March 12, 1965, Deegan was murdered.

Recording his contacts on the day after the murder, Special Agent Rico wrote a memorandum based on information obtained from an informant. The memorandum describes the Deegan murder in detail, including information Jimmy Flemmi personally provided to an

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<sup>22</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Oct. 19, 1964) (Exhibit 56); Airtel from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Oct. 19, 1964) (Exhibit 56).

<sup>23</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Oct. 20, 1964) (Exhibit 57).

<sup>24</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 68). Due to Justice Department redactions, it is impossible to determine when this request to kill Deegan actually took place. However, because the entry regarding Deegan is made in a series of chronological entries after a March 5, 1965, entry, and before a March 8, 1965, entry, a reasonable reading of the document seems to indicate that the request took place between March 5 and 7, 1965. This would distinguish this request from a very clear request to kill Deegan made by Jimmy Flemmi and Joseph Barboza on March 9, 1965.

<sup>25</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami FBI Field Offices (Mar. 12, 1965) (Exhibit 70).

<sup>26</sup> FBI Report by Charles A. Reppucci, Special Agent, Boston FBI Field Office (July 20, 1965) (Exhibit 69).

<sup>27</sup> Handwritten Notes of Microphone Surveillance of Raymond L. S. Patriarca, March 9, 1965) (Exhibit 967).

<sup>28</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 72). This information has been characterized as believable and coming from a credible source in a position clearly to have heard what was communicated. Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002). There is, however, some confusion on the point of whether Patriarca provided his assent on March 9, 1965, and at least one FBI document states that Barboza and Flemmi were told to check with Gennaro Angiulo before taking any action.

informant.<sup>29</sup> Flemmi admitted that he was one of the men who killed Deegan.<sup>30</sup> This is a matter of great importance because the previous day – the day that Deegan was murdered – Jimmy Flemmi was assigned to Special Agent Rico to be developed as an informant.<sup>31</sup> Over the course of the next few weeks, at least nine descriptions of the Deegan murder were prepared by federal and state law enforcement officials. Each of these descriptions provides details of the murder substantially different than the uncorroborated testimony provided three years later by Joseph Barboza when the matter finally went to trial.<sup>32</sup> Unfortunately for the defendants at that trial, relevant information was covered up when the government failed to disclose to all defendants that exculpatory information had been captured by the FBI’s microphone surveillance of Raymond Patriarca. Perhaps more unfortunate, federal officials failed to step in and prevent Joseph Barboza from committing perjury, notwithstanding the fact that it was a death penalty case.<sup>33</sup> Four men received the death penalty, and two men received a sentence of life in prison.<sup>34</sup>

### **3. Developing the Flemmi Brothers as Informants**

It is difficult to assess the Deegan murder and prosecution without an understanding of how federal law enforcement was attempting to develop Jimmy and Stephen Flemmi as criminal informants.<sup>35</sup> The following is a brief chronological description of efforts known to the Committee to obtain the services of the Flemmi brothers as informants during the 1960s:

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<sup>29</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 77).

<sup>30</sup> *Id.* The informant was Flemmi’s associate.

<sup>31</sup> Memorandum from H.E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).

<sup>32</sup> For a more complete review of contradictory information, refer to Statement of Captain Joseph Kozlowski (March 12, 1965) (Exhibit 76); Boston Police Department Report (Mar. 14, 1965) (Exhibit 79); Statement by Thomas F. Evans, Lieutenant, Chelsea Police Department (Mar. 14, 1965) (Exhibit 80); Massachusetts State Police Report by Richard J. Cass, Detective Lieutenant Inspector, to Daniel I. Murphy, Captain of Detectives (Mar. 15, 1965) (Exhibit 81); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 19, 1965) (Exhibit 84); Memorandum from [Redacted], Special Agent, to Special Agent in Charge, Boston FBI Field Office (Apr. 6, 1965)(Exhibit 85); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 24, 1965) (Exhibit 86); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, New Haven, New York, and Washington FBI Field Offices (May 7, 1965) (Exhibit 96); Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 9, 1965) (Exhibit 102)(On April 25, 2002, the Department of Justice released an unredacted version of this document to the Committee. That document revealed that “ BS-919-PC [Jimmy Flemmi] has murdered Frank Benjamin, John Murray, George Ashe, Joseph Francione, Edward ‘Teddy’ Deegan, and ‘Iggy’ Lowry[.]” The document further divulged that Flemmi feels that the McLaughlin group will try to kill him.); Memorandum from Helen Hatch, Correlator, to Special Agent in Charge, Boston FBI Field Office (June 14, 1965) (Exhibit 104).

<sup>33</sup> There is some evidence that a small subset of this information was made available to two lawyers who represented defendants in the Deegan case. It is fair to say, however, that no one was exposed to the cumulative weight of all of the different pieces of evidence. More important, it is certain that attorneys for at least four defendants were not permitted to review any information obtained by microphone surveillance of Raymond Patriarca. Thus, witness Joseph Barboza could not be effectively impeached, nor could alternative theories of the murder be properly explored.

<sup>34</sup> Those convicted were: Henry Tameleo (death), Louis Greco (death), Ronald Cassesso (death), Peter Limone (death), Joseph Salvati (life), and Roy French (life).

<sup>35</sup> On December 2, 2002, it became clear that the Committee had not been furnished the informant file of Stephen Flemmi. This seemed to come as a surprise to Justice Department Task Force Supervisor John Durham. Justice Department officials pointed out at this meeting that the file was sealed by Judge Wolf in *U.S. v. Salemme*. This

November 1964 Stephen Flemmi was first targeted as an informant for the FBI's Boston office's bank robbery squad.<sup>36</sup>

March 9, 1965 FBI Director Hoover was informed by memorandum that Jimmy Flemmi was targeted to be a Top Echelon informant.<sup>37</sup> He was also told that Flemmi had murdered three individuals, one of whom was an FBI informant.<sup>38</sup> This was the same day that Flemmi and Barboza asked Raymond Patriarca for permission to kill Teddy Deegan.

March 12, 1965 Jimmy Flemmi was assigned to Special Agent Rico to be developed as an informant by Special Agent Rico.<sup>39</sup>

March 12, 1965 Teddy Deegan was murdered.

April 5, 1965 Jimmy Flemmi gave Rico information.<sup>40</sup>

June 4, 1965 Director Hoover made an inquiry about Jimmy Flemmi.<sup>41</sup>

June 8, 1965 Rico talked to Jimmy Flemmi about financial payments.<sup>42</sup>

June 9, 1965 Director Hoover's office was informed by memorandum that Jimmy Flemmi had committed seven murders, including the Deegan murder, "he is going to continue to commit murder[.]" but "the informant's potential outweighs the risk involved."<sup>43</sup>

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observation ignored Judge Wolf's request that the Justice Department work with the Committee to permit the Committee access to documents important to its investigation. Letter from the Honorable Mark L. Wolf, District Judge, United States District Court for the District of Massachusetts, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Jan. 11, 2002) (Appendix I).

<sup>36</sup> FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) (Exhibit 58).

<sup>37</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 9, 1965) (Exhibit 71).

<sup>38</sup> *Id.*

<sup>39</sup> Memorandum from H. E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).

<sup>40</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Apr. 9, 1965) (Exhibit 90); Letter from John H. Durham, Special Attorney, and Donald K. Stern, U.S. Attorney, District of Massachusetts, U.S. Dept. of Justice, to John Cavicchi, Attorney (Dec. 19, 2000) (Exhibit 928). Flemmi was contacted at least four additional times as an informant by Special Agent Rico. *Id.* Those dates of contact were May 10, 1965, June 4, 1965, July 22, 1965, and July 27, 1965. *Id.*

<sup>41</sup> Memorandum from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office (June 4, 1965) (Exhibit 100).

<sup>42</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (June 8, 1965) (Exhibit 101).

<sup>43</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 9, 1965) (Exhibit 102).

- June 10, 1965      Memorandum indicating that Jimmy Flemmi was assigned to Rico on March 12, 1965.<sup>44</sup>
- September 15, 1965      Jimmy Flemmi was closed as an informant due to a crime.<sup>45</sup>
- November 3, 1965      FBI Director Hoover's office was informed by memorandum that Stephen Flemmi was targeted as an informant.<sup>46</sup>
- February 7, 1967      Stephen Flemmi began to work for the FBI as a Top Echelon Criminal Informant.<sup>47</sup>
- February 14, 1967      Stephen Flemmi was approved as a Top Echelon informant.<sup>48</sup>
- Early 1967      Stephen Flemmi was used to convince Barboza to testify.<sup>49</sup>
- June 20, 1967      FBI Director Hoover's office was informed by memorandum that Stephen Flemmi was developed by Rico and Condon and used in interviews with Joseph Barboza.<sup>50</sup>
- June 23, 1967      FBI senior official Cartha DeLoach was told that Special Agents Rico and Condon developed Stephen Flemmi.<sup>51</sup>
- March 29, 1968      FBI Director Hoover's office was informed by memorandum that Special Agent Rico used Stephen Flemmi to develop Barboza.<sup>52</sup>
- May 27, 1968      The Deegan murder trial began.<sup>53</sup>

As this chronology makes clear, the effort to develop both Jimmy and Stephen Flemmi began either before or at the time of the Deegan murder. Moreover, despite the fact that the FBI knew that Jimmy Flemmi had committed seven murders – including the Deegan murder – and was “going to continue to commit murder,” Director Hoover and his staff decided to use Flemmi as

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<sup>44</sup> Memorandum from H. E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).

<sup>45</sup> Letter from John H. Durham, Special Attorney, and Donald K. Stern, U.S. Attorney, District of Massachusetts, U.S. Dept. of Justice, to John Cavicchi, Attorney (Dec. 19, 2000) (Exhibit 928).

<sup>46</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Nov. 3, 1965) (Exhibit 111).

<sup>47</sup> Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002).

<sup>48</sup> FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) (Exhibit 130).

<sup>49</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

<sup>50</sup> *Id.*

<sup>51</sup> FBI Memorandum from J. H. Gale to Cartha DeLoach (June 23, 1967) (Exhibit 144).

<sup>52</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 29, 1968) (Exhibit 213).

<sup>53</sup> Docket Sheet, *Commonwealth v. French* (Suffolk County Super. Ct. May 27, 1968) (Exhibit 235).

an informant. On this point there was no ambiguity: just three days before Jimmy Flemmi was assigned to Special Agent Rico to be developed as an informant, Director Hoover's office was notified that Flemmi was a murderer.<sup>54</sup> Indeed, Jimmy Flemmi's proclivity to commit serious crimes was not in doubt. One memorandum from the head of the FBI's Boston office to Director Hoover discusses how Flemmi had been paid \$1,500 for disposing of the body of a girl.<sup>55</sup> The following month, on May 5, 1965, microphone surveillance of Raymond Patriarca showed that Flemmi, and Joseph Barboza and Ronald Cassesso, asked Raymond Patriarca for permission to murder a man named Sammy Linden.<sup>56</sup> The fact that Flemmi was a murderer, and planned to commit additional murders, went unremarked. Apparently, the decision had already been made to take on murderers as informants. Flemmi was eventually closed as an informant not because of concerns that he would commit additional homicides. Rather, in September of 1965, he was charged by state authorities with "Assault with a Dangerous Weapon with Intent to Murder" after he had shot another person. The FBI decided to close him as an informant "[i]n view of the fact that informant is presently a local fugitive" and "any contacts with him might prove to be difficult and embarrassing."<sup>57</sup>

By the time of the Deegan murder prosecution, both Jimmy and Stephen Flemmi had been active federal law enforcement informants, and both men were known to have been involved in a number of homicides. This fact is important when assessing the efforts to develop Joseph Barboza as a cooperating witness in 1967 and 1968. Jimmy Flemmi had been closed because he might become embarrassing. It would take another three decades for Stephen Flemmi to become one of the greatest embarrassments in FBI history.

#### 4. The Deegan Murder Prosecution

Teddy Deegan was murdered on March 12, 1965. Two and a half years later, Joseph "The Animal" Barboza testified about the Deegan murder before a Suffolk County grand jury.<sup>58</sup> Immediately afterwards, a number of individuals were arrested.<sup>59</sup> The following year, on May 27, 1968, the Commonwealth of Massachusetts began the prosecution of six individuals implicated by Joseph Barboza for the murder of Teddy Deegan.<sup>60</sup> Barboza testified about the details of the conspiracy to murder Deegan, how the homicide was carried out,<sup>61</sup> and about

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<sup>54</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 9, 1965) (Exhibit 71).

<sup>55</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agent in Charge, New York FBI Field Office (Apr. 13, 1965) (Exhibit 89).

<sup>56</sup> FBI Report by Charles A. Reppucci, Special Agent, Boston FBI Field Office (July 20, 1965) (Exhibit 94).

<sup>57</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Sept. 15, 1965) (Exhibit 109).

<sup>58</sup> Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171).

<sup>59</sup> Memorandum from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Oct. 25, 1967) (Exhibit 172).

<sup>60</sup> Docket Sheet, *Commonwealth v. French* (Suffolk County Super. Ct. May 27, 1968) (Exhibit 235). The six individuals tried for the murder of Deegan were: Wilfred "Roy" French, Peter Limone, Henry Tameleo, Ronald Cassesso, Louis Greco, and Joseph Salvati.

<sup>61</sup> Judge Margaret Hinkle provides a concise summary of the testimony:

Barboza testified at trial that about January 20, 1965, Limone saw Barboza and offered him a "contract" to kill Deegan for \$7,500, and told Barboza that this had been approved by the "office." Barboza spoke with Tameleo a few days



promises or inducements offered to him by the federal government.<sup>62</sup> After a two month trial, all six defendants were convicted: four men received the death penalty and two individuals were sentenced to life in prison.<sup>63</sup>

Any assessment of the Deegan murder prosecution must focus on five areas. First, did Barboza's pretrial dealings with federal law enforcement officials inspire confidence that he was telling the truth?<sup>64</sup> Second, was his grand jury testimony consistent with facts known to law enforcement personnel. Third, did the story told at trial by Joseph Barboza bear any relationship to information in possession of federal and state law enforcement officials about who really killed Deegan? Fourth, did law enforcement personnel obtain false testimony from Anthony Stathopoulos, who had accompanied Deegan to the location where Deegan was ultimately murdered. Fifth, did those who provided testimony give an accurate summary of what Barboza had been promised in exchange for his testimony. Each of these areas raises significant questions, and now that evidence withheld from defendants at the time of trial has been obtained by the Committee, it appears that Barboza's story was so different from information known to federal officials that he should never have been permitted to testify. At the very least, contemporaneous FBI interviews should have reflected a vigorous effort to determine why Barboza's story differed from what was already known to federal law enforcement. This is particularly important because, just after the Deegan murder, FBI Director Hoover or his staff thought that the information contained in the logs of microphone surveillance of Raymond Patriarca was significant.<sup>65</sup> Nevertheless, the FBI interviews obtained by the Committee show

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later to confirm that the "office" approved of the murder. Tameleo agreed to it. Some weeks later, after securing the assistance of others, some of whom would become Limone's codefendants at trial, Barboza reported to Limone that the murder would occur soon but that Stathopoulos would be involved. According to Barboza, Limone agreed to add \$2,500 if Stathopoulos were also killed. Barboza confirmed with Tameleo that it was okay to kill Stathopoulos as well. According to the evidence presented at trial, the murder of Deegan was carried out by Barboza, Cassesso, Salvati, French, Grieco [sic] and others, not including Limone. Stathopoulos escaped. Some time later, Barboza testified, he met with Limone, who paid him for the Deegan murder.

*Commonwealth v. Limone*, Cr. No. 32367, 32369, 32370, slip op. at \*3 (Suffolk County Sup. Ct., Jan. 5, 2001)) (Exhibit 931). If this testimony were true, there would have been no need for Flemmi and Barboza to travel to Providence to seek permission to kill Deegan in March of 1965.

<sup>62</sup> Barboza told the Deegan jury that he was "hoping for a break," that he was hoping that his testimony "would be taken into consideration," and "the only promise that has been made in regards to [his testimony] is that the FBI will bring it to the attention of the Judge." Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 2, 1968) at 4456, 4460 (Exhibit 243). He also said his wife and child would be protected. *Id.* at 4652. When asked if "they made more promises than what you've told us about," Barboza answered, "No, sir." *Id.* at 4653. Thus testimony, which does not appear to be accurate, will be discussed later in this report.

<sup>63</sup> *Deegan Trial: 4 Get Chair, 2 Life; Judge Hails Jury*, BOSTON GLOBE, Aug. 1, 1968 (Exhibit 247). The death penalty sentences were later changed to life in prison after the Supreme Court determined that the death penalty was unconstitutional in *Furman v. Georgia*, 408 U.S. 238 (1972).

<sup>64</sup> The FBI had opened a file on Edward Deegan in 1965. Thus, at the time that Joseph Barboza was beginning to cooperate with federal officials, those officials had available to them information collected at the time of the Deegan murder. In addition, federal prosecutors had been furnished with information that contradicted the version of events provided by Barboza in 1967 and 1968. See FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (January 14, 1966).

<sup>65</sup> Document is retained by the Justice Department.

that no effort was made to compare what Barboza was prepared to say about the Deegan murder with information already in the FBI's possession. As Jack Zalkind, the prosecutor in the Deegan case, told the Committee:

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.<sup>66</sup>

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[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. . . . [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.<sup>67</sup>

The evidence is overwhelming that Barboza should not have been permitted to testify in the Deegan murder prosecution. Nevertheless, it was his uncorroborated testimony that was used in the Deegan prosecution that led to four men being sentenced to death and two others receiving life sentences.

#### **i. Barboza's Pretrial Dealings with Federal Officials**

Prior to the Deegan trial, Barboza, in effect, told federal law enforcement that he was not going to tell the truth about the Deegan murder and that at least some federal officials were unconcerned that he would commit perjury in a death penalty case. Nevertheless, federal law enforcement officials continued to supply him with money and protection. Incredibly, federal officials even considered using him in California as a Top Echelon informant,<sup>68</sup> and he may have been encouraged by federal law enforcement personnel to violate the terms of his state parole by returning to Massachusetts.<sup>69</sup>

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<sup>66</sup> "Investigations of Allegations of Law Enforcement Misconduct in New England," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 21, 34 (May 11, 2002) (testimony of Jack Zalkind).

<sup>67</sup> *Id.* at 52, 68-69, 76.

<sup>68</sup> Memorandum from [Redacted] to J. Edgar Hoover, Director, FBI (Apr. 14, 1969) (Exhibit 272). The FBI historically categorized its informants according to their potential productivity. The most potentially productive informants were designated as Top Echelon informants. *See generally* RALPH RANALLI, DEADLY ALLIANCE (HarperTorch 2001) (provides an analysis of the FBI's informant program).

<sup>69</sup> Robert Walsh, *Baron Returning to Walpole for Week on Parole Violation*, BOSTON GLOBE, August 28, 1970 (Exhibit 332).

The first recorded meeting between Barboza and FBI Special Agents Rico and Condon, which took place on March 8, 1967, was probably the most significant.<sup>70</sup> Barboza informed the agents that he would consider providing information about murders committed in the Boston area, but that “he would never provide information that would allow James Vincent Flemmi [sic] to ‘fry[.]’”<sup>71</sup> Barboza was true to his word. Shortly thereafter, he did begin providing information. Two questions are of particular concern to the Committee: (1) why did Barboza provide information? and (2) how did he succeed in keeping his friend and confederate Jimmy Flemmi out of his story about the Deegan murder? Part of the answer can be found in a document that recommends a pay increase for Special Agents H. Paul Rico and Dennis Condon. Approximately three months after Rico and Condon began working to develop Barboza’s testimony, the head of the FBI’s Boston office sent the following “Recommendation for Quality Salary Increase” to Washington:

Realizing the potential that [redacted name] might one day be victim of a homicide, SAs Condon and Rico have continued vigorous attempts to obtain additional high quality LCN sources. Accordingly, BS 955 C-TE [Stephen Flemmi] was developed by these agents and via imaginative direction and professional ingenuity utilized said source in connections with interviews of JOSEPH [BARBOZA], a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in this area to be the most dangerous individual known. SAs Rico and Condon contacted [Barboza] in an effort to convince him he should testify against the LCN. [Barboza] initially declined to testify but through utilization of BS 955 C-TE, the agents were able to convey to [Barboza] that his present incarceration and potential for continues incarceration for the rest of his life, was wholly attributable to LCN efforts directed by Gennaro J. Angiulo, LCN Boston head. As a result of this information received by [Barboza] from BS 955 C-TE, said individual said he would testify against the LCN members.<sup>72</sup>

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<sup>70</sup> In a memorandum to Attorney General Elliot L. Richardson, H. Paul Rico, Dennis Condon, and Edward Harrington were praised for developing Joseph Barboza as a successful witness. Memorandum from Henry E. Petersen, Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, to Elliot L. Richardson, Attorney General, U.S. Dept. of Justice (July 24, 1973) (Exhibit 576).

<sup>71</sup> FBI Interview Report by Dennis M. Condon and H. Paul Rico, Special Agents, Boston FBI Field Office (Mar. 8, 1967) (Exhibit 131). When asked about Barboza’s statement, Condon said: “I don’t have any recollection of the conversation; but reading what I have in front of me, I think it’s an accurate portrayal of what he said.” Condon further indicated that the interview summary of Barboza’s comment that he would not provide information that would allow Jimmy Flemmi to “fry” was “prepared by both of us [Rico and Condon], contemporaneously. Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 81-82 (February 21, 2002). When asked whether the plain meaning of Barboza’s statement was that Barboza would not provide information that would put Flemmi “in a situation where he would face a capital murder charge,” Condon replied “I would have to say that that looks like a true statement.” *Id.* at 83.

<sup>72</sup> Memorandum from SAC, Boston, to Director, FBI (June 20, 1967).

This memorandum appears to contradict testimony to the Committee provided by former Special Agent Dennis Condon who, when asked whether he used a particular informant, either human or electronic, to help obtain Barboza's testimony, replied "No, I didn't."<sup>73</sup>

Thus, at the time Special Agents H. Paul Rico and Dennis Condon first began to develop Barboza's testimony, two facts were critical. First, Barboza said that he would not provide information that would allow Jimmy Flemmi to "fry." Second, Stephen Flemmi, Jimmy Flemmi's brother, was used by Rico and Condon to convince Barboza to testify.<sup>74</sup> It is highly unlikely that Stephen Flemmi would have allowed himself to be used by the FBI if his efforts led his brother to the electric chair. With all these facts in mind, it is almost inconceivable that at least Special Agents Rico and Condon were not aware that Barboza was going to commit perjury at the Deegan trial.<sup>75</sup> Furthermore, Rico and Condon were aware that Barboza had consulted with Jimmy Flemmi between the FBI's first and second interviews of Barboza. Barboza had gone so far as to tell Flemmi that he was thinking of having one of his gang members corroborate his testimony. Flemmi told Barboza that he thought obtaining corroboration was an excellent idea.<sup>76</sup> This was of particular importance at the time because the head of the FBI's Boston office informed Washington that "[t]his office is aware of the distinct possibility that [Barboza], in order to save himself from a long prison sentence, may try to intimidate [Patrick] Fabiano into testifying to something that he may not be a witness to."<sup>77</sup> It is not explained how the FBI had come to this conclusion. Nevertheless, the consultation between Barboza and Flemmi, and Barboza's exploration of having someone corroborate his testimony, provide additional reasons for concern with his testimony.

It is also particularly revealing that in the many thousands of pages of documents produced to the Committee by the Justice Department, no one appears to have confronted Barboza with the obvious question: given the convincing information that Flemmi committed the Deegan murder and that Barboza told the FBI he would not give the government information about Flemmi that would allow Flemmi to "fry," why should the FBI not conclude that you are going to commit perjury when you testify.

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<sup>73</sup> Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 8 (February 21, 2002). Condon was asked whether he knew the identity of "BS 955 C-TE" and he stated that he did not. *Id.*

<sup>74</sup> It is worth noting that, the previous year, Dennis Condon was "involved in a substantive error write-up case when a review of an informant file disclosed an instance of failure to properly disseminate information obtained from the informant." Memorandum from S.R. Burns to Mr. Walsh (Oct. 22, 1975) at 19 (Exhibit 123). Nevertheless, a few weeks after Condon and Rico first interviewed Barboza, Condon's participation in the informant program was considered outstanding. *Id.* (Exhibit 135). When testifying in *U.S. v. Salemme*, former Special Agent Condon insisted that at the time Frank Salemme was apprehended in New York in November 1972, he had no idea Stephen Flemmi was an informant. Given the personnel records indicating that Rico and Condon used Flemmi to obtain Joseph Barboza's testimony, this does not seem credible.

<sup>75</sup> Critical information about the Deegan murder had also been provided to a number of federal prosecutors. *See, e.g.,* FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116); Memorandum from Walter T. Barnes and Edward F. Harrington, Assistant U.S. Attorney, to Henry Petersen, Chief, Organized Crime and Racketeering Section (June 6, 1967) (document retained by the Justice Department). Therefore, it is not implausible that federal prosecutors also realized that Barboza would not tell the truth at the Deegan murder trial.

<sup>76</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 28, 1967) (Exhibit 134).

<sup>77</sup> *Id.*

When former FBI Special Agent Dennis Condon testified, he made it clear that he did not remember anyone asking the critical questions about Jimmy Flemmi and his participation in the Deegan murder:

Rep. LaTourette: The question I have is, if you follow this time line – and the time line is Rico receives confidential information that Barboza and Flemmi want to kill Deegan [and the Patriarca bug confirms a] confidential conversation where they overhear a conversation that Barboza and Flemmi say they actually go down and say they want to take out Teddy. The Department has that. Were you aware of that in 1965 or 1966?

Mr. Condon: Not to my knowledge.

Rep. LaTourette: But when this prosecution memo that you have in front of you was written, apparently the Assistant United States Attorneys are able to ferret that out. Was that disclosed to you?

Mr. Condon: That's correct.

Rep. LaTourette: I think the difficulty I had is this, and it came about when Mr. Wilson was asking questions before. When Mr. Barboza is being prepared as a witness in the Deegan trial, which we now know was testimony that wasn't right in terms of who he fingered, were you ever in a meeting with Mr. Rico or the representatives of the state prosecuting authority when somebody asked him or confronted him about the discrepancies in versions that the Department had information on, both the Rico documents and also these tapes from Patriarca's place of business?

Mr. Condon: Not to my memory, no.

Rep. LaTourette: Were you ever in a meeting where anybody asked him, where was Jimmy Flemmi?

Mr. Condon: I don't remember ever being in such a meeting.<sup>78</sup>

## ii. Barboza's Grand Jury Testimony

Joseph Barboza testified before a Suffolk County grand jury on October 25, 1967.<sup>79</sup> The information he provided was contradicted by information already known to federal officials, which rendered Barboza's testimony suspect. It is inconceivable that federal law enforcement officials did not know what Barboza was going to tell the grand jury and what he did tell the grand jury. Therefore, it is very likely that at least some federal officials understood that

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<sup>78</sup> Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (February 21, 2002).

<sup>79</sup> Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171).

Barboza had committed perjury before the Suffolk County grand jury and that he was prepared to provide testimony at trial that was not true.<sup>80</sup>

Barboza did not provide any information to the grand jury about Jimmy Flemmi and Flemmi's involvement in the Deegan murder. More important, however, he explained that he and Ronald Cassesso planned to take credit for the murder, and that the only person besides himself who knew that "the Office" was involved in the prospective murder was Ronald Cassesso.<sup>81</sup> Barboza was asked "So the only one at this time that knew you were doing this for the Office was Ronnie Cassesso?" Barboza replied: "Yes."<sup>82</sup> This testimony completely avoids the fact that Barboza and Flemmi had visited Raymond Patriarca three days before the murder to seek his permission to kill Deegan.<sup>83</sup> It also avoids the fact, known to the FBI and memorialized in an FBI memorandum authored by H. Paul Rico, that Jimmy Flemmi had told an informant that "Raymond Patriarca has put out the word that Edward 'Teddy' Deegan is to be 'hit' and that a dry run has already been made and that a close associate of Deegan's has agreed to set him up."<sup>84</sup> Thus, Barboza's story about how he and Cassesso were the only two who knew that Patriarca had been consulted was obviously false to anyone who had knowledge of the FBI's microphone surveillance of Patriarca and who had access to the informant to whom Jimmy Flemmi had confided. This information was not provided to the Suffolk County District Attorney's Office, and consequently it was not available at a time when Barboza's credibility was being assessed.

The chronology of events provided by Barboza to the grand jury also makes it plain that he was committing perjury. Barboza stated that Peter Limone first approached him in February of 1965 to hire Barboza to kill Deegan.<sup>85</sup> And yet when Barboza and Flemmi approached Patriarca in March to seek Patriarca's permission for the Deegan murder, all indications are that this was the first time the subject had come up. Furthermore, the microphone surveillance captured no discussion about Limone's involvement. Indeed, one FBI memorandum suggests that Patriarca told Barboza and Flemmi to consult with Gennaro Angiulo about their intention to kill Deegan. It is highly unlikely that if Limone had already offered money to have Deegan killed, that either Barboza or Flemmi would have asked Patriarca for permission to kill Deegan and failed to have told him that they had already been contracted to kill Deegan.

It is also curious that Barboza testified that Peter Limone had offered money for Barboza to kill Deegan. According to documents provided by the Justice Department to the Committee, Limone and Deegan appeared to be on good terms. A few months before Limone allegedly hired

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<sup>80</sup> Barboza was in federal custody, his interviews were conducted in the presence of federal law enforcement officials, he was the subject of intense interest at the highest levels of the Justice Department, he was a witness in a federal trial, and his testimony in one case would undoubtedly have ramifications for other cases. In order for Barboza to be a federal witness, and to merit protection by the federal government, federal officials would have had to have known what his testimony would have been regarding the various matters about which he was prepared to testify. They would also have had to know the details of his testimony in order to develop their own cases and investigations. Moreover, federal officials had information that Raymond Patriarca was involved in the Deegan murder, and it is inconceivable that this would not have been the subject of intense interest.

<sup>81</sup> Suffolk County Grand Jury Testimony of Joseph Barboza 115 (Oct. 25, 1967) (Exhibit 171).

<sup>82</sup> *Id.*

<sup>83</sup> FBI Report by Charles A. Reppucci, Special Agent, Boston FBI Field Office (July 20, 1965) (Exhibit 69).

<sup>84</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 72).

<sup>85</sup> Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171).

Barboza to kill Deegan, Limone gave Deegan two guns.<sup>86</sup> The following month, after hearing that Jimmy Flemmi wanted to murder Deegan, Limone warned Deegan about the murder threat.<sup>87</sup> More important, three days before Deegan was killed, Flemmi told Raymond Patriarca that “Deegan fills Limone’s head with all kinds of stories.”<sup>88</sup> Thus, Flemmi seemed to be indicating to Patriarca that one reason to kill Deegan was that he was close to Limone and that he was the source of “all kinds of stories.”

Barboza also provided information that makes it appear that his testimony was coached. He stated that before Deegan was murdered he was at a bar called the Ebb Tide. He noted that the bar was very crowded, and he states that when he left the Ebb Tide with the people that he implicated in the Deegan murder, others also left the bar at the same time.<sup>89</sup> He recalled that the others who left at the same time he did were men named Femia, Chiampa and Imbruglia. It is difficult to believe that Barboza would be able to recall, more than two and a half years after the fact, the precise names of those who coincidentally left the bar at the same time that he did. More to the point, however, was the existence of various reports and informant descriptions of how Femia, Chiampa and Imbruglia were involved in the Deegan murder and had actually been part of the conspiracy to kill Deegan. Thus, when Barboza was falsely describing how one set of people was involved in the Deegan murder, he also attempted to provide an explanation that diminished the importance of information known to a number of federal and state law enforcement officials. Thus, if any police reports about the Deegan murder had been admitted into evidence at trial, Barboza would have had an explanation regarding those who left the Ebb Tide at the same time that he did and, coincidentally, whose names appeared in contemporaneous police reports about who participated in the Deegan murder. It appears that Barboza’s testimony about how Femia, Chiampa and Imbruglia coincidentally left the Ebb Tide at the same time that he did could only have been given if police reports and informant information had been shared with Barboza prior to his testimony.

There can be no doubt that if federal officials were privy to Barboza’s grand jury testimony they would have known that he had lied, and that he was preparing to commit perjury in the Deegan capital murder prosecution. Furthermore, the fact that federal officials remained with Barboza when he spoke to local prosecutors indicates that they were aware of what he was preparing to tell the grand jury.

### **iii. Barboza’s Testimony Compared to Preexisting Information**

Even before Teddy Deegan was murdered, the FBI had information that could have led to the conclusion that there would soon be a murder and that Jimmy Flemmi would be involved.

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<sup>86</sup> Memorandum from SAC, Boston, to Director, FBI and SAC, New Haven (September 17, 1964) (Exhibit 52).

<sup>87</sup> Memorandum from H. Paul Rico to Redacted Name (October 18, 1964) (Exhibit 56) (stating “Flemmi advised that Deegan owes Flemmi’s brother, Stevie, some money, and that he told him once to get the money up. He has not gotten the money up, and Flemmi wants to kill Deegan and wanted the informant to go with him on the “hit.”); Memorandum from SAC, Boston, to Director, FBI (October 20, 1964) (Exhibit 57) (stating “Immediately after [Jimmy] Flemmi left, he [Limone] called Deegan and told him that Flemmi was looking for him, allegedly for a \$300.00 loan which Deegan owes Flemmi. Deegan denied any such loan. Therefore, they were of the opinion that Flemmi was out to kill Deegan.”)

<sup>88</sup> Handwritten Notes of Raymond Patriarca Microphone Surveillance (March 9, 1965) (Exhibit 967)

<sup>89</sup> Suffolk County Grand Jury Testimony of Joseph Barboza 119 (Oct. 25, 1967) (Exhibit 171).

As early as October 18, 1964, the head of the FBI office in Boston was told by Special Agent H. Paul Rico that Jimmy Flemmi wanted to kill Deegan.<sup>90</sup> Four months earlier, FBI Director Hoover or his staff was given specific information by the Boston FBI office that “[Jimmy] Flemmi is suspected of a number of gangland murders and has told the informant of his plans to become recognized as the No. One ‘hit man’ in this area as a contract killer.”<sup>91</sup> Just days before this memorandum to FBI Director Hoover, Special Agent Condon wrote a memorandum stating: “Flemmi told him [an informant] that all he wants to do now is kill people, and that it is better than hitting banks. . . . Informant said, Flemmi said that he feels he can now be the best hit man in this area and intends to be.”<sup>92</sup> Later in the year, Flemmi killed an FBI informant by stabbing him fifty times and then, in a surfeit of enthusiasm, shooting him.<sup>93</sup>

In the days before Deegan was murdered, the FBI was aware of a great deal of activity relating to Deegan. Between March 5 and March 7, 1965, Jimmy Flemmi appears to have met with Raymond Patriarca to obtain permission to kill Deegan.<sup>94</sup> A couple of days later, on March 9, 1965, Jimmy Flemmi and Joseph Barboza asked Raymond Patriarca for permission to kill Deegan because “Deegan is a nasty sneak and should be killed.”<sup>95</sup> According to one summary of microphone surveillance, Patriarca gave his permission for Deegan to be murdered.<sup>96</sup> The following day, according to a memorandum by Special Agent Rico, an “[i]nformant advised that he had just heard from ‘Jimmy’ Flemmi that Flemmi told the informant that Raymond Patriarca has put out the word that Edward ‘Teddy’ Deegan is to be ‘hit’ and that a dry run has already been made[.]”<sup>97</sup> That same day, Director Hoover or his staff was informed that “Flemmi came to Providence to contact [Patriarca] . . . to get the ‘OK’ to kill Eddie Deegan[.]”<sup>98</sup> Two days later, Barboza, Flemmi and others murdered Teddy Deegan. Earlier that day, Jimmy Flemmi had been assigned to be developed by Special Agent Rico as an informant.<sup>99</sup>

When Barboza did testify at the Deegan murder trial, he explained that he was approached by Peter Limone on approximately January 20, 1965, and that Limone offered him

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<sup>90</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Oct. 19, 1964) (Exhibit 56).

<sup>91</sup> Memorandum from the Boston FBI Field Office to J. Edgar Hoover, Director, FBI (June 4, 1964) (Exhibit 50).

<sup>92</sup> Memorandum from Dennis Condon, Special Agent, Boston FBI Field Office (May 25, 1964) (Exhibit 48).

<sup>93</sup> See Letter from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Jan. 8, 1965) (Exhibit 60).

<sup>94</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 68).

<sup>95</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami FBI Field Offices (Mar. 12, 1965) (Exhibit 70); Memorandum from Helen Hatch, Correlator, to Special Agent in Charge, Boston FBI Field Office (June 14, 1965) (Exhibit 104).

<sup>96</sup> *Id.*

<sup>97</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 72). The identity of this informant was not provided to Congress. However, according to the Justice Department, the information is described as “believable.” It also came from a clearly credible source who was in a position to have heard what was happening at the time. Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002).

<sup>98</sup> Airtel from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 73).

<sup>99</sup> Memorandum from H. E. Campbell, Inspector, to James L. Handley, Special Agent in Charge, Boston FBI Field Office (June 10, 1965) (Exhibit 74).



\$7,500 to kill Teddy Deegan.<sup>100</sup> Barboza also testified that “the Office” had approved the murder, that Henry Tameleo was involved in the murder conspiracy, and that Tameleo was involved as early as January of 1965.<sup>101</sup> The FBI’s microphone surveillance did not provide evidence of a January approach to Barboza, but it did provide evidence that Barboza and Jimmy Flemmi approached Patriarca in March of 1965 to seek his permission to kill Deegan. Thus, the dates do not match, and Barboza’s story that he was approached with an offer of money for a contract assassination is diametrically opposed to the reality – captured on tape – that Barboza and Flemmi sought permission to murder Deegan because he was an “arrogant, nasty sneak and should be killed.”<sup>102</sup> Federal law enforcement officials, the only individuals with access to this microphone surveillance information, appear to have purposefully kept this information from the prosecutors who tried the case and sought the death penalty for the six defendants.

Perhaps more important, however, is the fact that the motive for the murder advanced by Barboza was different from the motive captured by the FBI’s microphone surveillance. Barboza testified that Peter Limone offered \$7,500 for him to murder Deegan because of a burglary that Deegan had committed:

[T]he Popoulo [sic] home was broken into and from eighty to eighty-two thousand dollars was taken out of the house, and Harold Hannon, Wilfred Delaney and Teddy Deegan were supposed to be in on the score. Peter Limone said they would pay any amount of money to get these three people killed. I think it was before that that Hannon and Delaney were found floating in the river. He said they wanted to get Deegan for that and said that Deegan had killed Sacremone [sic] from Everett[.]<sup>103</sup>

Over two years earlier, however, the FBI’s microphone surveillance of Raymond Patriarca captured the following exchange:

Jimmie [Flemmi] tells Raymond they are having a problem with Teddy Deegan (ph). Teddy did what he did to press some other people. Jimmie says that the kid [Rico Sacrimone] did not have to be

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<sup>100</sup> If Barboza had been telling the truth, nearly two months of planning went into the Deegan murder conspiracy. It is interesting to note that when former FBI Special Agent Dennis Condon was asked about the disguise that Barboza testified was worn by Joseph Salvati, Condon stated: “I’m not of the opinion that they think that far ahead into those matters. I just don’t think so. I don’t think there’s that much advance planning.” Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 209 (Feb. 21, 2002).

<sup>101</sup> Trial Transcript, *Commonwealth v. French*, (Suffolk County Super. Ct. 1968); *Commonwealth v. Limone*, Cr. No. 32367, 32370, slip op. at \*3 (Suffolk County Sup. Ct., Jan. 5, 2001)(Exhibit 931).

<sup>102</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami FBI Field Offices (Mar. 12, 1965) (Exhibit 70).

<sup>103</sup> Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) (Exhibit 171). In 1966, the FBI prepared a memorandum for federal prosecutors that described the deaths of Harold Hannon and Wilfred Delaney. It stated that Hannon “was tortured by Edwad Bennett, the Flemmi brothers – Jimmy and Stevie Flemmi – in an effort to ascertain where the proceeds of the \$30,000 burglary was [sic] that he and Delaney committed on Carmen Puopolo, a bookmaker from Everett, Massachusetts. During the torturing, Hannon was apparently killed, as the medical report reflected that he had died by suffocating.” FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116).

killed. . . . Bobby Donati is friendly with Rico Sacrimone and Deegan is looking for an excuse to whack Donati. . . . Deegan thinks Donati is trying to set him up for Buddy McLean. Jimmie says Deegan is an arrogant, nasty sneak. Deegan fills Peter Limone's head with all kinds of stories.<sup>104</sup>

These two rationales for the Deegan murder are fundamentally incompatible. The fact that Jimmy Flemmi was being protected, and the fact that Barboza's testimony bore no relationship to evidence in the hands of the FBI at the time of the Deegan trial are clear indications that federal law enforcement was aware that Barboza's story about the Deegan murder was false.

In the days following the Deegan murder, a great deal of information about the crime was developed. The following is a brief description of the information in the hands of federal and state law enforcement officials after Deegan was murdered. Every piece of information contradicted Barboza's ultimate trial testimony.<sup>105</sup> Indeed, the defendants filed a motion requesting police reports<sup>106</sup> and this motion was denied,<sup>107</sup> presumably with the concurrence of the prosecution. The Committee recognizes that discovery requirements were very different in 1965 than today and that state prosecutors were involved in responding to the motion. Nevertheless, this was a death penalty case and prosecutors should have disclosed this information to the defendants.

The following information existed at the time of the Deegan murder prosecution:

- On March 12, 1965, Captain Joseph Kozlowski prepared a statement indicating, among other things, that "the man in the back [of the car used to take people to the Deegan murder scene] had dark hair with a bald spot in center of head."<sup>108</sup>
- On March 13, 1965, Special Agent Rico reported that an informant told him who killed Deegan and how he was killed.<sup>109</sup> Rico filed a report and said, among other things, that

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<sup>104</sup> Handwritten Notes of Microphone Surveillance of Raymond L. S. Patriarca, March 9, 1965) (Exhibit 967).

<sup>105</sup> The Justice Department has not made its position officially known on this point. There is an indication that two defense attorneys in the Deegan case may have been provided some information from the microphone surveillance of Raymond Patriarca during the course of another trial involving the prosecution of Raymond Patriarca for conspiracy to murder Willie Marfeo. However, the Justice Department has not furnished the Committee with the information provided to the two defense attorneys. In any event, there is no indication that defense counsel for defendants Joseph Salvati, Peter Limone, or Louis Greco were ever provided information from the Patriarca microphone surveillance prior to the Deegan trial.

<sup>106</sup> Motion of the Defendant for the Production of Police Department Reports, *Commonwealth v. Salvati* (Suffolk Super. Ct.) (Exhibit 184). The defendants also requested information regarding "promises, rewards and inducements." It appears from the record before the Committee that the jury was not given an accurate indication of what Barboza had been promised and what he had been given.

<sup>107</sup> Docket Sheet, *Commonwealth v. French* (Suffolk County Super. Ct. Apr. 18, 1968) (Exhibit 220).

<sup>108</sup> Statement of Captain Joseph Kozlowski (Mar. 12, 1965) (Exhibit 76).

<sup>109</sup> Memorandum from H. Paul Rico, Special Agent, Boston FBI Field Office, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 77). This information was provided by an associate of Jimmy Flemmi's. Interview with John Durham, Special Attorney, District of Massachusetts, U.S. Dept. of Justice, and Gary Bald, Special Agent in Charge, Baltimore FBI Field Office (Dec. 2, 2002).

Jimmy Flemmi was involved in the murder. This information contradicts Barboza's trial testimony.

- On March 14, 1965, a Boston Police Department report was filed.<sup>110</sup> The information recorded contradicts Barboza's trial testimony. This report is of particular interest because nine years later Joseph Barboza told federal officials that Romeo Martin was murdered because he was an informant in the Deegan case and provided the information that was the basis of the March 14, 1965, Boston Police Department report.<sup>111</sup> An FBI document which describes the Martin homicide is heavily redacted and it is not possible to ascertain what was known to the FBI.<sup>112</sup> Nevertheless, it appears that Barboza himself committed the Romeo Martin murder,<sup>113</sup> thereby killing one of the eyewitnesses to the Deegan murder.
- A report, which indicates that Jimmy Flemmi was involved in the Deegan murder, was filed by the Chelsea Police a couple of days after the murder.<sup>114</sup> The information recorded contradicts Barboza's trial testimony.
- On March 15, 1965, a report was filed with the Massachusetts State Police.<sup>115</sup> Again, the report indicated that Jimmy Flemmi was involved in the murder. The information recorded contradicts Barboza's trial testimony.
- On March 19, 1965, FBI Director Hoover or his staff was provided information about the Deegan murder.<sup>116</sup> Hoover was told that Jimmy Flemmi was involved in the murder. The information recorded contradicts Barboza's trial testimony.
- On March 23, 1965, an informant advised the FBI that "Barbosa [sic] claims that he had shot Teddy Deegan with a .45 gun."<sup>117</sup> The information recorded contradicts Barboza's trial testimony.
- On March 24, 1965, Director Hoover or his staff was provided more information about the Deegan murder.<sup>118</sup> Again, the information provided contradicts Barboza's trial testimony.

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<sup>110</sup> Boston Police Department Report (Mar. 14, 1965) (Exhibit 79).

<sup>111</sup> Memorandum from SAC, Butte, Montana, to Director, FBI, (February 1, 1974) (Exhibit 596).

<sup>112</sup> See, e.g., FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116) (Barboza admits to a role in the Martin homicide); see also VINCENT TERESA, MY LIFE IN THE MAFIA 248 (Doubleday & Company, Inc. 1973).

<sup>113</sup> Memorandum from SAC, Butte, Montana, to Director, FBI, (February 1, 1974) (Exhibit 596)

<sup>114</sup> Statement by Thomas F. Evans, Lieutenant, Chelsea Police Department (Mar. 14, 1965) (Exhibit 80).

<sup>115</sup> Massachusetts State Police Report by Richard J. Cass, Detective Lieutenant Inspector, to Daniel I. Murphy, Captain of Detectives (Mar. 15, 1965) (Exhibit 81).

<sup>116</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 19, 1965) (Exhibit 84).

<sup>117</sup> Memorandum from [Redacted], Special Agent, to Special Agent in Charge, Boston FBI Field Office (Apr. 6, 1965) (Exhibit 85).

<sup>118</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 24, 1965) (Exhibit 86).

- On May 7, 1965, Director Hoover or his staff was told that microphone surveillance of Raymond Patriarca captured the following: “information had been put out to the effect that Barboza was with Flemmi when they killed Edward Deegan.”<sup>119</sup> This contradicts Barboza’s trial testimony.
- On June 9, 1965, FBI Director Hoover or his staff was told that Jimmy Flemmi had killed Teddy Deegan.<sup>120</sup>
- On January 14, 1966, the Boston FBI Office prepared a memorandum for the U.S. Attorney in Boston. It described gangland murders and provided information about the Deegan homicide that contradicted Barboza’s trial testimony.<sup>121</sup>

Notwithstanding the information developed by law enforcement about the Deegan murder, nothing happened for over two years. The break in the case came when Joseph Barboza was arrested in late 1966 for a weapons offense.<sup>122</sup> Facing a lengthy prison sentence, he began to cooperate with law enforcement officials. On January 25, 1967, Barboza received a relatively light sentence for the weapons offenses.<sup>123</sup> The following month, Stephen Flemmi was taken into the federal Top Echelon informant program,<sup>124</sup> and on March 8, 1967, he began to work with FBI Special Agents H. Paul Rico and Dennis Condon in an effort to develop Barboza to testify.<sup>125</sup>

In the period between Barboza’s first recorded meeting with FBI Agents Rico and Condon and his testimony in the Suffolk County prosecution for the Deegan murder, Barboza met with either Rico, Condon, or Edward Harrington at least 41 times.<sup>126</sup> When Barboza finally did testify at the Deegan trial between July 2 and July 11, 1968, there were a number of discrepancies between information available to law enforcement at the time of the Deegan murder and Barboza’s testimony. The three most significant involve the absence of Jimmy Flemmi, the chronology and origin of the murder plot, and the use of a .45 caliber weapon to kill Deegan.

It is particularly significant that the documents produced to the Committee by the Justice Department do not show a single instance of Barboza being confronted with the discrepancies between the record compiled by law enforcement and his proposed testimony. When Dennis

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<sup>119</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, New Haven, New York, and Washington FBI Field Offices (May 7, 1965) (Exhibit 96).

<sup>120</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 9, 1965) (Exhibit 102).

<sup>121</sup> FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116).

<sup>122</sup> James Southwood, *A Letter from Barboza: Why I Decided to Tell All*, BOSTON HERALD TRAVELER (Exhibit 122).

<sup>123</sup> U.S. Dept. of Justice Identification Record (Mar. 2, 1976) (Exhibit 129); Cornelius Moynihan, *Two Others Convicted*, BOSTON GLOBE, Jan. 26, 1967 (Exhibit 129).

<sup>124</sup> FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) (Exhibit 130). Flemmi was first targeted as an informant in November of 1964. *Id.*

<sup>125</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141).

<sup>126</sup> See Exhibits 131 – 134, 138, 140, 141, 144, and 146 (dated between March 8, 1967, and July 2, 1968). Rico and Condon also were present for meetings between Joseph Barboza and state investigators and prosecutors.

Condon was asked why he did not question Barboza about the discrepancies in his story, Condon offered no explanation, stating, "I can't answer that. I can't answer that."<sup>127</sup> The majority of significant evidence, however, was in the possession of federal authorities. For example, FBI officials were aware of microphone surveillance information, and state officials were not aware of relevant microphone surveillance evidence.

The absence of Jimmy Flemmi from Barboza's testimony is the single greatest indication that Barboza was not telling the truth. Perhaps as important, however, was the addition of Joseph Salvati to the fact pattern as described by Barboza at trial.<sup>128</sup> Salvati's introduction to the list of defendants is significant because just before the crime was committed an eyewitness – who also happened to be a police officer – saw some of the men who killed Deegan in the vicinity of the crime.<sup>129</sup> The eyewitness described a man who had an appearance similar to Jimmy Flemmi's. Thus, Barboza was confronted with a dilemma: minutes before Deegan was murdered, someone saw a man with Barboza who looked like Jimmy Flemmi near the scene of the crime. Perhaps more important, this was recorded in a police report.<sup>130</sup> Jimmy Flemmi was Barboza's best friend and was a frequent accomplice in criminal endeavors. Thus, it would not have been unusual for Flemmi to have been with Barboza. Barboza solved this dilemma by adding Joseph Salvati to his story and then testifying that Salvati was wearing a disguise which included, among other things, a wig that made him appear bald.<sup>131</sup> As described by Barboza, the disguise made Joe Salvati – who in real life looked nothing like Jimmy Flemmi<sup>132</sup> – resemble Flemmi. For the jury, of course, this might have been believable, but only because the jury had received no evidence that Jimmy Flemmi was involved in the crime or that Flemmi had a motive to kill Deegan. For the federal law enforcement officers who had access to the contemporaneous evidence that Flemmi was part of the Deegan homicide, however, this story should have indicated that Barboza was not telling the truth.<sup>133</sup>

Barboza was also aware that he had been observed leaving a popular night club with a number of individuals just before Deegan was killed. In all of the written reports compiled by law enforcement at the time of the Deegan murder, no one had placed Salvati in the night club and no one indicated he left with Barboza. Barboza solved this inconsistency by testifying that

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<sup>127</sup> Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 117-118 (Feb. 21, 2002).

<sup>128</sup> At the time of the Deegan murder prosecution, Joseph Salvati owed a debt of money to Joseph Barboza. Barboza, who was a professional loanshark, had loaned Salvati \$400. At the time of Barboza's arrest in 1966, he sent two associates to collect outstanding debts in order that he would have sufficient money to meet bail requirements. Salvati was unable to pay. Barboza sent his associates back a second time, an altercation resulted, and Salvati said he would not repay the money owed to Barboza. The following year, Barboza retaliated by putting Salvati into the Deegan murder conspiracy. Interview with Joseph Salvati (March 27, 2001); Alan Jehlen, *Two Say Grieco [sic] Innocent of Deegan Murder*, PEABODY TIMES, June 9, 1971 (Exhibit 402).

<sup>129</sup> Massachusetts State Police Report by Richard J. Cass, Detective Lieutenant Inspector, to Daniel I. Murphy, Captain of Detectives (Mar. 15, 1965) (Exhibit 81).

<sup>130</sup> Statement of Captain Joseph Kozlowski (March 12, 1965) (Exhibit 76).

<sup>131</sup> Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 2, 1968) at 3367 (Exhibit 243).

<sup>132</sup> Flemmi was balding, and Salvati had thick, dark hair styled in such a way that it was noticeable.

<sup>133</sup> It is worth noting that Joseph Salvati's attorney for the Deegan murder trial told the Committee that Al Farese, the partner of Joseph Barboza's attorney, told him that Jimmy Flemmi was the bald man at the Deegan murder, not Joseph Salvati. This is important because Farese's partner was John Fitzgerald, who represented Joseph Barboza. Farese also learned about Deegan being in trouble on March 12, 1965, before the Chelsea Police Department, which suggests an important familiarity with key participants. Interview with Chester Paris, attorney for Joseph Salvati during the Deegan trial (Aug. 6, 2002).

Salvati was not with him because he had instructed Salvati to warm up the car. However, his testimony had him sending Salvati to warm the car up over ninety minutes before he left the night club. Again, the jury might well have believed this story in the absence of the withheld exculpatory evidence. Had all evidence been provided to the defendants, however, Barboza's testimony would have been far less credible.

Another significant discrepancy between information available to federal law enforcement and Barboza's trial testimony is whether Barboza actually shot Deegan. Less than two weeks after Deegan was murdered, an informant told the FBI that "Barbosa [sic] claims that he had shot Teddy Deegan with a .45 caliber gun."<sup>134</sup> Two years later, on March 21, 1967, Barboza was interviewed by Special Agents Rico and Condon.<sup>135</sup> Although the documents provided to the Committee are heavily redacted, a significant focus of this interview was the Deegan murder and Joseph Barboza's knowledge about the Deegan murder.

On the same day that Barboza was interviewed, March 21, 1967, a Boston newspaper indicated that Barboza appeared before a federal grand jury.<sup>136</sup> Responding to this activity, a memorandum drafted in the name of the FBI Director states the following:

A review of the Bureau records reveals that no investigation of [Barboza] has ever been conducted by your office. In view of the current circumstances, the Bureau should be cognizant of all background information. Therefore, you should submit to the Bureau an investigative report per instructions set out under the Criminal Intelligence Program containing all background and identifying data available.<sup>137</sup>

The Boston office complied with the instructions from Washington when Thomas Sullivan transmitted a memorandum to Washington which summarizes information about Joseph Barboza. In this memorandum, the Boston office re-states the information from two years earlier: "[An informant states that] Barboza claims that he shot Teddy Deegan with a .45 caliber gun. Barboza indicated that Roy French was with Deegan and another individual when Deegan was shot by Barboza and two other individuals, one of whom the informant believes was Romeo Martin."<sup>138</sup>

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<sup>134</sup> Memorandum from [Redacted], Special Agent, to Special Agent in Charge, Boston FBI Field Office (Apr. 6, 1965) (Exhibit 85).

<sup>135</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 28, 1967) (Exhibit 132).

<sup>136</sup> Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Mar. 21, 1967) (Exhibit 133).

<sup>137</sup> Airtel from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office (May 24, 1967) (Exhibit 140).

<sup>138</sup> FBI Report by Thomas Sullivan, Special Agent, Boston FBI Field Office (July 18, 1967) (Exhibit 149). When Barboza met with Anthony Stathopoulos at Barnstable County Jail on September 8, 1967, Barboza told him that on the night on March 12, 1965, he had a .45 caliber gun. This statement was made in the presence of a number of law enforcement officials. Interview with Anthony Stathopoulos (February 21, 2003).

Barboza's grand jury testimony states not only that he did not shoot Deegan but also that he did not see who shot Deegan.<sup>139</sup> Obviously, this is a significant factual discrepancy that should have been lost on no one. Furthermore, it is telling that law enforcement permitted Barboza the luxury of saying that he neither pulled the trigger nor saw who did pull the trigger. It is also important to note that Barboza was important enough in Washington that a request was made to have information about him transmitted to headquarters. This appears to contradict individuals who have told this Committee that federal prosecutors and investigators were interested only in the murder of Willie Marfeo and the resulting federal prosecution.<sup>140</sup>

iv. **Anthony Stathopoulos and the Deegan Murder Prosecution**

At the time of his death, Teddy Deegan was attempting to commit a robbery. He was accompanied to the intended site of the crime by Wilfred "Roy" French and Anthony Stathopoulos.<sup>141</sup> After Deegan and French walked into an alley, Stathopoulos saw flashes and heard shots. Shortly thereafter, Stathopoulos, who was sitting in an automobile, saw French and another man exit the alley. At the same time he also heard someone still in the alley say "get him too." Stathopoulos immediately drove away and, after a short delay, went to the home of attorney Al Farese. Shortly thereafter, Farese called the Chelsea Police Department. Later that night, Stathopoulos and Farese went to the site of Deegan's murder and Stathopoulos identified the body.

The day following Deegan's murder, Stathopoulos – this time accompanied by attorney John Fitzgerald – went to the Chelsea Police Department. He was shown photographs of Roy French, Joseph Barboza, Jimmy Flemmi, and Ronald Cassessa.<sup>142</sup> The police also mentioned an individual named Freddie Chiampa. Stathopoulos asked how the police were able to know the identities of those who committed the Deegan murder and he was told that an informant had provided the information. Stathopoulos was also told that the individuals whose pictures had been provided were the ones that he had to watch out for.

Prior to the Deegan murder trial, Joseph Barboza told Stathopoulos on two occasions that he would protect Jimmy Flemmi. The more significant of the two times was on September 8, 1967, when Stathopoulos was taken by law enforcement officials to meet with Joseph Barboza in Barnstable County Jail. When Stathopoulos arrived at the jail, he was met by FBI Special Agents H. Paul Rico and Dennis Condon. During the course of the meeting between Barboza and Stathopoulos, which was conducted in the presence of law enforcement officials including

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<sup>139</sup> Suffolk County Grand Jury Testimony of Joseph Barboza (Oct. 25, 1967) at 123-25 (Exhibit 171).

<sup>140</sup> See Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (Feb. 21, 2002); "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001); "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. (Dec. 5, 2002) (testimony of Paul Markham).

<sup>141</sup> Interview with Anthony Stathopoulos (February 21, 2003). Unless there is a citation to the contrary, the information provided in this section is derived from this interview.

<sup>142</sup> Stathopoulos does not recall whether he was shown a photograph of Romeo Martin.

Rico and Condon, Barboza explained that he was keeping Jimmy Flemmi out of the Deegan murder because Flemmi had been good to him in the past.

Stathopoulos testified for the prosecution in the Deegan murder trial. Prior to his testimony, Stathopoulos was asked to identify Louis Greco as one of the men at the scene of the Deegan murder. According to Stathopoulos, prosecutor Jack Zalkind pressed him to testify that Louis Greco was the other man who came out of the alley with Roy French. Stathopoulos told Zalkind that he was not able to identify the second man. Zalkind then informed Stathopoulos that he did not have to be 100% certain, but that 99% certainty was sufficient. Stathopoulos was aware that the individual who came out of the alley was carrying a gun in his right hand, and that he did not have a limp. Later, Stathopoulos was told that Greco was left-handed, and that he did have a limp. When Stathopoulos asked Zalkind how he would be able to identify Greco in court he was provided the order of seating for the defendants. In Stathopoulos's opinion, both Jack Zalkind and Detective John Doyle knew that Louis Greco was not at the scene of the Deegan murder, but "they wanted him bad."

Stathopoulos did testify that he saw Greco come out of the alley. He knew at the time that this was not truthful testimony; nevertheless, he had been led to believe by law enforcement officials that Greco would kill him if he were not locked up. Perhaps more important, Stathopoulos thought it prudent simply to do what he had been asked to do.<sup>143</sup>

#### v. Federal Involvement in the Deegan Prosecution

The Deegan murder prosecution was conducted by the office of the Suffolk County District Attorney. Thus, it was not a federal criminal prosecution. During the course of its investigation, the Committee received testimony that federal personnel had little to do with the two Suffolk County murder prosecutions.<sup>144</sup> Documents produced to this Committee, however, suggest that FBI agents collaborated with local authorities as part of the prosecution. For example, on August 9, 1967, the head of the FBI's Boston office sent the following urgent teletype regarding the DiSeglio murder prosecution to FBI Director Hoover:

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<sup>143</sup>Stathopoulos's description of his Deegan murder trial testimony is similar to a description provided by John "Red" Kelly about his testimony in a murder trial which involved former Special Agent H. Paul Rico. "Red" Kelly testified that he was asked to commit perjury by Special Agent Rico in a Rhode Island murder trial. He testified that he did commit perjury, and Special Agent Rico was also found to have committed perjury in that trial. When asked why he committed perjury, Kelly stated "Well, my life was in their hands." Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763). Thus, Kelly and Stathopoulos provided similar explanations for the perjury that was committed in two different trials.

<sup>144</sup> See Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (February 21, 2002); "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001); "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. (Dec. 5, 2002) (testimony of Paul Markham); "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 220-21 (May 3, 2001) (testimony of H. Paul Rico).



In statement to press, District Attorney Byrne stated that this tremendous penetration into the La Cosa Nostra and the hoodlum element was effected through the outstanding investigative efforts of the FBI and his office. As a matter of information, this entire case which was presented to the grand jury by DA Byrne was developed through the efforts and able handling of Barboza by SA H. Paul Rico and Dennis M. Condon of the Boston office. They also cooperated fully with DA Byrne in the preparation of this matter for the grand jury. I know that this indictment would not have been possible in any sense of the word if it were not for the efforts of these agents and the FBI at Boston. . . . I further recommend that Supervisor John F. Kehoe who supervised this entire program and was involved deeply in the developments and the planning relative to Barboza and the matters attendant to this indictment be strongly commended for his excellent supervision.<sup>145</sup>

As this document makes clear, Special Agents Rico and Condon were so involved in the state case that they participated in the state grand jury preparation. Thirty-five years later, the FBI has redacted information pertaining to grand jury appearances. Nevertheless, it appears that the FBI Director himself or his staff was being kept informed of state grand jury developments in this case.<sup>146</sup>

It is worth noting that federal law enforcement officials closely involved with Barboza – H. Paul Rico, Dennis Condon, Paul Markham, and Edward Harrington – told the Committee that they did not pay close attention to the Deegan trial.<sup>147</sup> Given the extraordinary importance of the Deegan trial – it was a death penalty case involving the alleged right hand men of New England organized crime bosses Raymond Patriarca and Gennaro Angiulo – it is hard to believe that federal officials failed to pay attention to Barboza’s testimony. Moreover, FBI Director Hoover’s office was notified of the Deegan murder trial result on the same day the verdict was returned.<sup>148</sup> A claim of disinterest in the Deegan murder trial could have the effect of distancing federal law enforcement officials from Barboza and his perjurious testimony.

At the time of the Deegan murder prosecution, Special Agent Condon testified under oath that he was not a major figure in developing Barboza’s testimony regarding the Deegan murder:

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<sup>145</sup> Teletype from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Aug. 9, 1967) (Exhibit 151).

<sup>146</sup> The date of this document indicates that it refers to the DiSeglio murder prosecution.

<sup>147</sup> See Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (Feb. 21, 2002); “The California Murder Trial of Joe ‘The Animal’ Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001); “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. (Dec. 5, 2002) (testimony of Paul Markham); “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 220-21 (May 3, 2001) (testimony of H. Paul Rico).

<sup>148</sup> Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (July 31, 1968) (Exhibit 248).

Mr. Balliro: And is it fair to say that you and Agent Rico have been major figures, so to speak, with regard to the investigations surrounding the information furnished by Mr. [Barboza]?

Mr. Condon: No, sir.

Mr. Balliro: It is not?

Mr. Condon: No, sir.

Mr. Balliro: Well, you have been participating in it, is that correct?

Mr. Condon: As it pertains to Federal matters, yes.

Mr. Balliro: But not as it pertains to State matters?

Mr. Condon: We have not been the principal figures, no, sir.

Mr. Balliro: I see. But you have been part of it, is that correct?

Mr. Condon: Yes, sir.<sup>149</sup>

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Mr. Balliro: All right. Since Mr. [Barboza] has been testifying on State matters rather than Federal matters, do you say that you have no longer been concerned about the purity of testimony that he might give in a State court, a Federal court or any kind of court?

Mr. Condon: I am always concerned about the purity of testimony on the part of any witness involving any matter that I am concerned with.<sup>150</sup>

When the Committee interviewed Mr. Condon, he suggested that local prosecutors developed the Deegan case, and that the FBI did not take credit for developing the Deegan prosecution:

Mr. Wilson: Is it fair for us to characterize the FBI as having taken a great deal of credit for the Deegan prosecution?

Mr. Condon: No, I don't believe so. I don't believe so.<sup>151</sup>

These answers, however, conflict with the FBI's own internal documents, where the FBI not only took credit for playing a role in developing Barboza's testimony, but also awarded bonuses and commendations for the successful effort to develop the Deegan case. For example, on

<sup>149</sup> Trial Transcript, *Commonwealth v. French* (Suffolk County Super. Ct. July 19, 1968) at 5810-11 (Exhibit 244).

<sup>150</sup> *Id.*

<sup>151</sup> Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 210 (Feb. 21, 2002).

August 5, 1968, just five days after the Deegan defendants were convicted, FBI Director J. Edgar Hoover sent the following note to Dennis Condon:

In recognition of the excellent fashion in which you performed in the investigation of a local murder case involving Roy French and others, I am pleased to commend you. You were highly instrumental in the development of principal witnesses and, through your effective testimony at the trial, all the subjects were successfully prosecuted. I do not want the occasion to pass without conveying my appreciation to you.<sup>152</sup>

Condon was commended for his work both in the Deegan murder investigation and for his trial testimony, and there can be little doubt that the dozens of times Special Agents Rico and Condon visited Joseph Barboza resulted in a great deal of discussion about the Deegan case.<sup>153</sup> Indeed, Barboza himself testified that he discussed the Deegan case with law enforcement, including the FBI, eight or nine times before he told the entire story about the Deegan killing.<sup>154</sup>

It is particularly important to compare Condon's testimony before the Committee with the teletype to FBI Director Hoover that explains how Special Agents Rico and Condon worked so closely with the local prosecutors that they "cooperated fully with DA Byrne in the preparation of this matter [presumably the DiSeglio case] for the grand jury."<sup>155</sup> There appears to be no doubt whatsoever that the FBI played the pivotal role in the state's case. There is no indication that FBI personnel did not play as significant a role in assisting the state in the Deegan case. Indeed, a letter from federal prosecutor Edward Harrington to Gerald Schur, who ran the Justice Department's Witness Protection Program from Washington, D.C., indicates just how involved federal law enforcement was in the Deegan case and its aftermath:

It is requested that employment be procured for Lawrence P. Hughes. Mr. Lawrence P. Hughes . . . has been kept in protective custody by the Suffolk County District Attorney's Office as a potential witness for the last two months. Hughes furnished information relative to a meeting in the woods in the Freetown, Massachusetts area between Joseph [Barboza] Baron and Frank Davis, an associate of Raymond L.S. Patriarca, relative to negotiations for a change of testimony on the part of Baron to release the organized crime figures that he had testified against. Hughes also was

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<sup>152</sup> Letter from J. Edgar Hoover, Director, FBI, to Dennis Condon, Special Agent, Boston FBI Field Office (Aug. 5, 1968) (Exhibit 251).

<sup>153</sup> See, e.g., Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (July 31, 1968) (Exhibit 248); Letter from J. Edgar Hoover, Director, FBI, to H. Paul Rico, Special Agent, Boston FBI Field Office (Aug. 5, 1968) (Exhibit 251); Memorandum from S. R. Burns to Mr. Walsh (Oct. 22, 1975) (Exhibit 254); Special Investigative Division Note (Oct. 4, 1968) (Exhibit 255); see also Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 29, 1968) (Exhibit 213) ("SA Condon's ability to develop Joseph . . . Barboza described as the most vicious criminal in New England and one whom law enforcement generally felt could never be compromised, required months of labor, seven days weekly, coupled with intelligence, aggressiveness and foresight.")

<sup>154</sup> Trial Transcript, *Commonwealth v. French*, at 4655 (Suffolk County Super. Ct. July 2, 1968) (Exhibit 243).

<sup>155</sup> Teletype from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Aug. 9, 1967) (Exhibit 151).

present when F. Lee Bailey turned over \$800 to Baron and told him (Baron), 'The people would pay the \$500,000 but he would not be the intermediary.' Hughes will testify to this in a hearing relating to a motion for a new trial which has been filed by six Cosa Nostra members who had previously been convicted for the first-degree murder of Boston gangster Edward Deegan. The Deegan murder case, one of the most significant organized crime convictions in New England, resulted in four other defendants being sentenced to death and the two other defendants being sentenced to life imprisonment. Although tried in the state court, the conviction resulted from the joint cooperation of federal and state authorities in Massachusetts. . . . The Suffolk County District Attorney's Office, which has been extremely cooperative with the Strike Force, is requesting Strike Force assistance in obtaining employment for Hughes until this matter is resolved.<sup>156</sup>

As this request indicates, Harrington not only states that the Deegan trial convictions resulted from the joint cooperation of federal and state authorities in Massachusetts, but that federal officials were eager to help obtain a job for Lawrence Hughes at a time when it was anticipated that Hughes would testify in response to a motion for a new trial for the Deegan defendants. Support by federal officials would permit state officials to deny that they had provided Hughes any financial or job-related assistance in advance of his testimony.

In addition to the request regarding Hughes, there are also numerous indications that the FBI played the key role in preparing Joseph Barboza to testify in the Deegan case.<sup>157</sup> As one senior FBI supervisor wrote to Deputy Director Cartha DeLoach in referring to the "prosecutive achievement" in Boston: "[A]s a result of FBI investigation, in State court in Boston, Massachusetts, six more were convicted in the 1965 slaying of Edward Deegan. La Cosa Nostra members Henry Tameleo, Ronald Cassesso, Peter Limone, and Louis Greco were all sentenced to death while two confederates were given life sentences."<sup>158</sup> Two years later, senior FBI official Cartha DeLoach was provided additional information about the FBI's role in the Deegan murder prosecution:

With the murder conspiracy conviction of New England Mafia boss Raymond Patriarca and four other racket figures in Rhode Island on 3/27/70, it is believed appropriate to bring to your attention the truly remarkable record established by SA [Paul] Rico in organized crime investigations during recent years. The achievements in question primarily involve SA Rico's development of high-level organized crime

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<sup>156</sup> Memorandum from Edward F. Harrington, Attorney in Charge, Boston Field Office, Organized Crime and Racketeering Section, to Gerald Shur, Criminal Division, U. S. Department of Justice (November 16, 1970) (Exhibit 366).

<sup>157</sup> *Id.*

<sup>158</sup> FBI Memorandum from J. H. Gale to Mr. DeLoach (Nov. 15, 1968) (Exhibit 262). This memorandum also points to the importance the FBI attached to favorable publicity. Discussing the creation of organized crime task forces, Gale states that the "principal objection [to the Task Force concept] is that the FBI's accomplishments would be submerged in the claiming of credit by the Task Force beyond its actual contribution, and they will wind up grabbing the lion's share of favorable publicity." *Id.*

informants and witnesses, a field in which he is most adept. SA Rico's development of Boston mobster Joseph Barboza, a vicious killer and organized crime leader in his own right, set off a chain of events which have seen the surfacing of a number of additional racket figures in New England as cooperative witnesses during the past few years. Making use of compromising information he had received from other top echelon informants he had previously turned, Rico brought Barboza to the point where he testified against Patriarca and two of his La Cosa Nostra (LCN) subordinates in a [ ] . . . [g]ambling case resulting in [the] conviction of all three in Boston Federal Court on 3/8/68. . . . SA Rico also induced Barboza to testify as the state's key witness in Massachusetts in the gang slaying of hoodlum Edward Deegan. In this case, Rico was additionally instrumental in developing a second witness, attorney John Fitzgerald, resulting in the 7/31/68 murder convictions of LCN members Henry Tameleo, Ronald Cassesso and Peter Lamone [sic], who were sentenced to death; one additional death sentence for another hoodlum, and life sentences for two others also convicted in this case.<sup>159</sup>

Prior to his becoming a cooperating witness, Barboza faced lengthy prison sentences for a variety of criminal offences. As this communication makes clear, however, it was information from other Top Echelon informants that convinced Barboza to testify. Specifically, it was Stephen Flemmi who was used to convince Barboza to testify. There is no doubt that before problems were discovered, the FBI claimed credit for the Deegan murder prosecution. Later, of course, when the Deegan prosecution became the subject of controversy, this approach changed.

It is worth noting that when Judge Harrington was approaching his Senate confirmation hearings, he told the Chairman of the Senate Judiciary Committee: "As a public prosecutor, I developed such significant accomplice witnesses as Joseph [Barboza], Vincent Teresa, 'Red' Kelley, William Masiello and many others whose use as witnesses I always made available to local prosecution authorities. Cooperation with local law enforcement was my hallmark."<sup>160</sup> Nine days later, Harrington again wrote to the Judiciary Committee Chairman: "I never used an accomplice witness unless I was convinced that he was telling the truth and his testimony had been corroborated to the fullest extent possible. Nor did I ever condone any wrongdoing on any witness' part."<sup>161</sup> These statements are subject to question. Barboza was made available to local authorities but, as the Deegan prosecutor testified before the Committee:

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

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<sup>159</sup> FBI Memorandum from J. H. Gale to Cartha DeLoach (March 31, 1970) (Exhibit 308).

<sup>160</sup> Letter from Edward F. Harrington, Of Counsel, Sheridan, Garrahan & Lander, to Senator Joseph R. Biden, Jr., Chairman, Committee on the Judiciary (Jan. 20, 1988) (Exhibit 813).

<sup>161</sup> Letter from Edward F. Harrington, Of Counsel, Sheridan, Garrahan & Lander, to Senator Joseph R. Biden, Jr., Chairman, Committee on the Judiciary (Jan. 29, 1988) (Exhibit 813).

been in the hands of the defense attorneys. It is outrageous, it's terrible, and that trial shouldn't have gone forward.<sup>162</sup>

Barboza was never directly confronted with his reluctance to provide information that would have Jimmy Flemmi "fry," the discrepancy between the information obtained by microphone surveillance and his assertion that he was approached in January of 1965 and offered a contract to kill Deegan, and his inexplicable failure to include Raymond Patriarca as a co-conspirator in the Deegan homicide. Deegan murder prosecutor Jack Zalkind told the Committee that: "[t]he information that Joe Barboza had told an FBI agent that he would not implicate Jimmy Flemmi in a murder case is the most exculpatory piece of evidence that anyone could have."<sup>163</sup> Also, singling out Red Kelley as a successful accomplice witness carried a certain danger in that the Rhode Island Supreme Court vacated a homicide conviction when it found that FBI Special Agent H. Paul Rico had suborned perjurious testimony from "Red" Kelley and had himself committed perjury in a Rhode Island murder trial.<sup>164</sup>

Barboza's testimony about promises made to him also presents an interesting window into the relationship between federal law enforcement personnel and Joseph Barboza. During the Deegan trial, Barboza told the jury that he was "hoping for a break," and that he was also hoping that his testimony "would be taken into consideration."<sup>165</sup> He further stated that "the only promise that has been made in regards to [his testimony] is that the FBI will bring it to the attention of the Judge."<sup>166</sup> He also said that his wife and child would be protected.<sup>167</sup> When asked if "they made more promises than what you've told us about," Barboza answered "No, sir."<sup>168</sup> This testimony appears to conflict with what senior Justice Department officials in Washington knew at the time. For example, one senior official, responding to a request for money to be given to Barboza communicated the following to another senior official two years after Barboza's testimony:

The memoranda submitted by Walter Barnes do not in my judgment support the expenditure of Nine Thousand Bucks. . . . The additional \$4,000 requested to make up the total of Nine, obviously has no support. I am bothered by the thought on this score that [Barboza], if my recollection

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<sup>162</sup> "Investigations of Allegations of Law Enforcement Misconduct in New England," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 25-26, 48 (May 11, 2002) (testimony of Jack Zalkind). Former Special Agent Dennis Condon was informed that the FBI maintained a file on the Deegan murder. He indicated that he had not seen any documents prepared by former Special Agent Rico about the Deegan murder. When asked "do you wish that you had been made aware of those documents[,]" Condon replied "I would prefer that I had been aware of them, yes." Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 212-214 (Feb. 21, 2002).

<sup>163</sup> *Id.* at 48.

<sup>164</sup> A more complete discussion of this matter can be found at Section II.B.7. It is worth noting that Judge Edward Harrington stated that he was not aware of the finding that former FBI Special Agent Rico had suborned perjury, and had himself committed perjury.

<sup>165</sup> *Id.* at 4456 (Exhibit 243).

<sup>166</sup> *Id.* at 4460.

<sup>167</sup> *Id.* at 4652.

<sup>168</sup> *Id.* at 4653.

is correct, expected a \$10,000 payment at the time his testimony was concluded.<sup>169</sup>

This communication indicates that Barboza did have an expectation of more than he testified to. Indeed, in a letter to Washington, two senior prosecutors in Boston state that they:

[T]hink it is fair to state that it was agreed by all in the Department of Justice that at the time [Joseph Barboza] was released from Government protection every effort would be made to provide his [sic] with a job and an unspecified sum of money. However, in the event it was impossible to obtain a job for him because of [his] extensive record (36 years old – 17 in prison) and inability to do anything, it was agreed that he would be provided additional money. *This position was made known to [Barboza].*<sup>170</sup>

While this communication does not record the amount of money Barboza expected the government to provide, it does show that there was an understanding that Barboza would receive money, and that he would perhaps need additional sums in the future.

In an interview conducted by the prosecutor who had tried the Deegan murder case, Barboza's former attorney, John Fitzgerald also confirmed that Barboza had an expectation that money would be paid to him by the federal government: "He felt that they had promised him plastic surgery, he felt that two, they had promised him a lump sum of money, he felt that three, they had promised him a job as a V. A. cook."<sup>171</sup>

When former Special Agent Dennis Condon was asked about promises or inducements made to Barboza, he indicated that officials in Boston would not necessarily have known about such matters. Condon was asked: "So, if the Justice Department had decided to do something specific for Barboza, you may not have known about that?" Condon replied: "True."<sup>172</sup> Condon appears to have been aware that officials in Washington might not inform him of efforts made for Barboza that would have permitted him to testify that he was unaware of those efforts. Law enforcement personnel in Washington were aware that Condon or Rico would testify, and the purpose of their testimony would be to discuss promises made to Barboza. For example, on May 23, 1968, a memorandum was directed to FBI Director Hoover about the Deegan case and the federal personnel who would testify: "Special Agents Condon and/or Rico regarding witness

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<sup>169</sup> Memorandum from Henry E. Peterson, Deputy Assistant Attorney General, Criminal Division, to William Lynch, Chief, Organized Crime and Racketeering Section, (March 3, 1970) (Exhibit 295).

<sup>170</sup> Memorandum from Walter T. Barnes and Edward F. Harrington, Attorneys, Organized Crime and Racketeering Section, Boston U. S. Department of Justice Field Office, to Henry E. Peterson, Deputy Assistant Attorney General, Criminal Division (June 6, 1967) (emphasis added) (Exhibit 292).

<sup>171</sup> Transcript of an interview conducted by Jack Zalkind and William J. Powers, Suffolk County District Attorneys Office, of John Fitzgerald (August 7, 1970) (Exhibit 324). During this interview, Fitzgerald also states that Barboza told him that federal law enforcement had agreed to pay for plastic surgery and promised him \$2500 "for recuperating." *Id.*

<sup>172</sup> Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 193 (February 21, 2002).

[Barboza] first mentioning Deegan murder to them, referral of matter to District Attorney's office, no promises made, etc."<sup>173</sup>

The Committee requested all documents that would provide a more complete understanding of the deal proposed by the federal government to Joseph Barboza. The Justice Department was unable to provide any such records, nor did it indicate that there were such records but that they would not be provided to Congress. Thus, it appears that the government has not kept any records of proposals regarding Barboza's post-testimony accommodations, nor do there appear to be any records of the amounts of money provided to Barboza. The failure to keep records regarding individuals placed in the Witness Protection Program is another disturbing fact uncovered by the Committee's investigation.

##### **5. The Failure to Prosecute Raymond Patriarca**

The FBI had clear information that Raymond Patriarca was complicit in the murder of Teddy Deegan.<sup>174</sup> At the time of the Deegan murder trial, federal prosecutors believed that Patriarca had played a part in the Deegan murder. As Judge Edward Harrington testified:

Judge Harrington: At least two references to the Deegan murder gleaned from the [Patriarca microphone surveillance] logs were cited in the prosecution memorandum to manifest [Barboza's] veracity as a witness, namely, that he had personal access to Patriarca and would received authorizations from him, as [Barboza] was asserting.<sup>175</sup>

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Judge Harrington: The fact that reference that Patriarca gave authority to [Barboza] to kill Deegan tended to corroborate his testimony in the federal Marfeo case because it showed two things. One, that Joseph [Barboza] had personal access to the boss of the New England Mafia. That was something that some people, including me, thought might not have been valid. The second reason why it tended to corroborate [Barboza's] testimony in the federal Patriarca case is it showed that he received authorizations to kill

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<sup>173</sup> Document on file at the Department of Justice.

<sup>174</sup> See Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI, and Special Agents in Charge, Albany, Buffalo, and Miami (Mar. 12, 1965) (Exhibit 70); Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 10, 1965) (Exhibit 73).

<sup>175</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 113 (Feb. 14, 2002) (testimony of Judge Edward Harrington).



from Patriarca. And that, again, substantiated his testimony in the federal Marfeo case.<sup>176</sup>

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Mr. Burton: Now Patriarca would have been guilty of complicity in a murder by giving permission to Barboza and Flemmi to kill Deegan.

Judge Harrington: No doubt about it.

Mr. Burton: There is no question about that.

Judge Harrington: No doubt about it.

Mr. Burton: [W]hy didn't you prosecute him for that case?

Judge Harrington: The reason why we would not prosecute him for that case is because it was a murder case. But the fact that I said nothing when I did not see Patriarca's name as a defendant in the Deegan murder case proves that at that time, 5 months later, I had no memory of the one reference in 3 years of logs that I had looked at 5 months earlier.<sup>177</sup>

Notwithstanding Patriarca's complicity in the Deegan murder, Patriarca was not prosecuted for this murder. Patriarca was the most important criminal target in New England, and one of the top criminal targets in the United States. Indeed as Judge Harrington testified, "I would have loved to have seen Patriarca charged with the murder case."<sup>178</sup> Despite Patriarca's importance as a target for criminal prosecution, no federal law enforcement personnel worked to convict Patriarca for the Deegan murder. Nor can these federal officials recall whether concerns were expressed about why Patriarca was not implicated by Barboza and why his failure to implicate Patriarca was not questioned.

Joseph Barboza did testify in one federal trial. When asked why a federal case was not brought for the Deegan murder, Judge Harrington replied:

Because the object of the conspiracy, the killing of Marfeo, was not completed at that time. He was killed sometime later as a result of another conspiracy. The Patriarca case and so-called Marfeo conspiracy was brought federally because the object was not attained, therefore we tried that as a travel act case in Massachusetts. Whereas in Deegan and in DeSeglio the murder

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<sup>176</sup> *Id.* at 131-32.

<sup>177</sup> *Id.* at 133.

<sup>178</sup> *Id.* at 157.

was accomplished, therefore at that time it had to be a State prosecution.<sup>179</sup>

The most surprising aspect of the failure to prosecute Patriarca for the Deegan murder is the absolute denials that the Deegan case was of interest to federal law enforcement. For example, Judge Harrington testified: "I discussed with Mr. Rico about Mr. Barboza, but with respect to the federal Patriarca case, not the state Deegan murder case. . . . I will say it again. I never discussed the Deegan murder case with Joseph Barboza or with Mr. Rico."<sup>180</sup>

It is difficult to believe that, as Barboza was being developed as a witness, it was not a matter of intense discussion and debate as to whether Patriarca would be brought to justice for his part in the Deegan murder. At a minimum, it is unlikely that there would have been no discussion of why Barboza was not prepared to testify about facts that federal prosecutors believed to be true, particularly when those facts would have put Raymond Patriarca into a death penalty situation. Microphone surveillance gave the FBI access to Raymond Patriarca's confidential conversations. Indeed, it was through their bug that federal personnel were able to learn that Patriarca was involved in the Deegan murder. Thus, it is difficult to understand why Joseph Barboza did not testify truthfully regarding his visit to obtain Patriarca's permission to kill Teddy Deegan. That testimony, however, would have implicated Jimmy Flemmi, which Barboza wanted to avoid. It defies any rational thought process to argue that federal personnel did not discuss, at length, why Barboza did not put Raymond Patriarca into what would potentially have been a death penalty situation.

## **6. Post-Conviction Indications That a Grave Miscarriage of Justice Had Occurred**

Guilty verdicts were returned against Joseph Salvati, Ronald Cassesso, Louis Greco, Henry Tameleo, Roy French, and Peter Limone on July 31, 1968.<sup>181</sup> Almost immediately, information began to emerge that cast doubt on the verdicts. Most of this information would not, in the normal course of events, have led to a reevaluation of the verdict without the government's direct intervention. Nevertheless, if federal or state officials were conducting themselves in good faith, particularly given the information in their possession that had been denied to the Deegan defendants, one would have thought some form of post-conviction relief might have been entertained or discussed.

The information obtained from microphone surveillance of Raymond Patriarca would have provided some indication that there were problems with the Deegan murder prosecution. On August 8, 1971, FBI Director J. Edgar Hoover informed the Attorney General that Boston Police Commissioner Edmund McNamara had requested that the Patriarca information be made available to his office.<sup>182</sup> Suffolk County District Attorney Garrett Byrne made the same

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<sup>179</sup> *Id.* at 187.

<sup>180</sup> *Id.* at 130-31.

<sup>181</sup> Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (July 31, 1968) (Exhibit 247); *Deegan Trial: 4 Get Chair, 2 Life; Judge Hails Jury*, BOSTON GLOBE, Aug. 1, 1968 (Exhibit 247).

<sup>182</sup> Memorandum from J. Edgar Hoover, Director, FBI, to Attorney General, U.S. Dept. of Justice (Aug. 2, 1971) (Exhibit 403).

request.<sup>183</sup> A few days later, those requests were rejected.<sup>184</sup> Although these requests did not target information relevant only to the Deegan prosecution, the information found in the logs would have shown that Barboza had not been forthcoming at trial.

The following is a brief summary of information indicating that the Deegan verdict might have been wrong:

- According to an FBI memorandum, a couple of days after the Deegan verdict, an informant advised that on July 31, 1968, Stephen Flemmi's crime partner, Francis "Frank" Salemme, told the informant that in regards to the Deegan trial, "the District Attorney's Office had lied, the witnesses in the trial had lied and also the Feds had lied and according to the informant, the only ones that did not lie were the defendants."<sup>185</sup>
- On May 4, 1970, *The Boston Globe* reported that Boston Police Detective William Stuart said that he believed Tameleo, Limone, and Greco were not involved in the Deegan murder.<sup>186</sup>
- Joseph Barboza submitted an affidavit on July 28, 1970, stating that he intended to recant his Deegan trial testimony.<sup>187</sup> He said that he wished to recant "certain portions" of his testimony that related to "the involvement of Henry Tameleo, Peter J. Limone, Joseph L. Salvati and Lewis [sic] Grieco [sic] in the killing of Teddy Deegan."<sup>188</sup> It is important to note that the four names provided by Barboza were consistent with information already in the hands of law enforcement, and that the two names not mentioned were also consistent with information in the hands of law enforcement in that those two individuals really were involved in the murder.
- On August 27, 1970, attorney F. Lee Bailey wrote a memorandum to attorney Joseph Balliro, saying, among other things, that "[Joseph] Salvati and Louis Greco were not present at all. Further, [Henry] Tamelio [sic] and [Peter] Lemone [sic] had nothing to do with arranging Deegan's murder nor had they any reason to believe that it was going to occur. The person sitting in the rear of the automobile which the Chelsea Police Captain saw was in fact bald and was Vincent Felemi [sic]."<sup>189</sup>

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<sup>183</sup> Memorandum from J. Edgar Hoover, Director, FBI, to Attorney General, U.S. Dept. of Justice (Aug. 3, 1971) (Exhibit 405).

<sup>184</sup> Memorandum from Will Wilson, Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, to J. Edgar Hoover, Director, FBI (Aug. 6, 1971) (Exhibit 406); Memorandum from Will Wilson, Assistant Attorney General, Criminal Division, U.S. Dept. of Justice, to J. Edgar Hoover, Director, FBI (Aug. 10, 1971) (Exhibit 407).

<sup>185</sup> Memorandum from [Redacted], Special Agent, to [Redacted], Special Agent in Charge (Aug. 2, 1968) (Exhibit 250).

<sup>186</sup> BOSTON GLOBE, May 4, 1970 (Exhibit 311). The Committee is aware that William Stuart was later implicated in the William Bennett murder.

<sup>187</sup> Jerome Sullivan, *Baron Admits Perjury in Deegan Murder Trial*, BOSTON GLOBE, July 29, 1970 (Exhibit 321); Affidavit of Joseph (Barboza) Baron (July 28, 1970) (Exhibit 321).

<sup>188</sup> *Id.*

<sup>189</sup> Memorandum from Lee Bailey to Joe Balliro (Aug. 27, 1970) (Exhibit 328).

- On November 9, 1970, William Geraway executed an affidavit stating that “[Barboza] admitted to me that five out of the six men he gave testimony against, four of whom are on death row, were innocent[.]” The men he included among the innocent were Henry Tameleo, Peter Limone, Louis Greco, and Joseph Salvati.<sup>190</sup>
- Anthony Stathopoulos, who was present when Deegan was murdered and who was almost killed himself, executed an affidavit on January 5, 1971. It states that “[Barboza] told me that he was going to keep Flemmi out of it [the Deegan prosecution] because he said that Flemmi was a friend of his and the only one who treated him decently.”<sup>191</sup>
- On March 29, 1971, William Geraway executed an affidavit that says Barboza told him that Joseph Salvati had “no part in the crime whatsoever, nor any knowledge that it was to happen.”<sup>192</sup>
- On April 16, 1971, a Boston newspaper reported that Boston Detective William Stuart swore in an affidavit that he gave evidence to John Doyle, Chief Investigator for the Suffolk County District Attorney’s office, that Louis Greco, Peter Limone, Henry Tameleo, and Joseph Salvati were innocent of the Teddy Deegan murder. Stuart said that Doyle did not care and indicated that the men were probably guilty of other crimes.<sup>193</sup>
- Vincent Teresa, one of the most heralded cooperating witnesses in organized crime trials, wrote a book in 1973. He says that he did not think that Henry Tameleo had anything to do with the murder, and that Joseph Salvati “was just an innocent sucker who Barboza didn’t like, but he’s doing life because of what Barboza said. He never had anything to do with the hit.”<sup>194</sup>
- On May 28, 1974, *The Boston Globe* reported that Anthony Stathopoulos said in an affidavit that Barboza told him he lied during the Deegan trial by omitting the name of a participant out of friendship. The article also provides information that Louis Greco and Joseph Salvati were not involved.<sup>195</sup>
- Gerald Alch, a lawyer who worked with F. Lee Bailey, signed an affidavit on April 9, 1976. It was based on interviews he conducted with Joseph Barboza in Walpole Prison, and it states that Barboza testified falsely about Peter Limone because he thought he would be strengthening his position with regard to promises made to him by law enforcement officials.<sup>196</sup>

<sup>190</sup> Affidavit of William Geraway (Nov. 9, 1970) (Exhibit 363).

<sup>191</sup> Affidavit of Anthony Stathopoulos (Jan. 5, 1971) (Exhibit 375).

<sup>192</sup> Affidavit of William Geraway (Mar. 29, 1971) (Exhibit 391).

<sup>193</sup> Alan Jehlen, *Byrne Had Evidence of Grieco’s [sic] Innocence*, PEABODY TIMES, Apr. 16, 1971 (Exhibit 395).

<sup>194</sup> VINCENT TERESA, *MY LIFE IN THE MAFIA* 248 (Doubleday & Company, Inc. 1973).

<sup>195</sup> William F. Doherty, *Pair Charge Perjury, Seek New Trial in Deegan Killing*, BOSTON GLOBE, May 28, 1974 (Exhibit 606).

<sup>196</sup> Affidavit of Gerald Alch (Apr. 9, 1976) (Exhibit 639).

- On November 29, 1976, Joseph Williams, Supervisor of the Investigation Unit, Board of Pardons prepared a memorandum for Board member Wendie Gershengorn. He states: “The ‘word’ from reputable law enforcement officers was that [Salvati] was just thrown in by Barboza on the murder because he hated subject[.]”<sup>197</sup>
- Louis Greco submitted to a polygraph examination that indicated he was not at the Deegan crime scene, according to an affidavit executed by attorney Richard Barest on December 21, 1977.<sup>198</sup>
- Louis Greco takes another polygraph examination on October 11, 1978, that indicates he was not in Massachusetts when Teddy Deegan was killed.<sup>199</sup>
- F. Lee Bailey executed an affidavit on October 16, 1978, which indicates that of those convicted for the Deegan homicide, French and Cassesso were involved, and Tameleo and Limone were not. Barboza implicated Tameleo and Limone because he was led by various authorities to believe that in order to escape punishment of charges pending against him, he would have to implicate someone of “importance.” Barboza said that he implicated Greco because of a personal grudge.<sup>200</sup>
- Roy French executed an affidavit on April 27, 1983, stating that Greco, Tameleo, and Limone were not involved in the shooting of Deegan.<sup>201</sup>
- On July 11, 1984, Ronald Cassesso told “The Review Committee” that Louis Greco was not in Massachusetts at the time of the Deegan murder.<sup>202</sup>
- In a 1993 book titled *The Godson: A True Life Account of 20 Years Inside the Mob*, Willie Fopiano stated that most of those convicted in the Deegan murder were innocent. He said Salvati was not involved, commenting “Salvati, who was just a doorman at an after hours joint, wouldn’t swat a mosquito.”<sup>203</sup>
- On July 30, 1993, a Detective Sergeant Bruce Holloway wrote a memorandum stating that former State Police Lieutenant Richard Schneiderhan indicated that he once heard

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<sup>197</sup> Memorandum from Joseph M. Williams, Jr., Supervisor, Warrant, Investigation Unit, to Board of Pardons, Special Attention Board Member Gershengorn (Nov. 29, 1976) (Exhibit 654).

<sup>198</sup> Affidavit of Richard Barest (Dec. 21, 1977) (Exhibit 663). Greco had also taken a polygraph in 1967 that indicated he was not involved in the Deegan homicide. *Commonwealth v. Grieco* [sic], Case No. 31601 (Suffolk County Super. Ct. Nov. 3, 1978) (Exhibit 673).

<sup>199</sup> Memorandum from Charles R. Jones, Case Review Committee, American Polygraph Association, to Whom It May Concern (Oct. 11, 1978) (Exhibit 667).

<sup>200</sup> Affidavit of Francis Lee Bailey (Oct. 16, 1978) (Exhibit 668).

<sup>201</sup> Affidavit of Roy French (Apr. 27, 1983) (Exhibit 758).

<sup>202</sup> Letter from Ronald Cassesso to The Review Committee (July 11, 1984) (Exhibit 783).

<sup>203</sup> WILLIE FOPIANO, *THE GODSON: A TRUE-LIFE ACCOUNT OF 20 YEARS INSIDE THE MOB* 127 (St. Martin’s Press 1993).

Joseph Barboza's lawyer, Robert Fitzgerald, say that Joseph Salvati was included as one of the defendants by Barboza to obtain revenge for a past financial debt.<sup>204</sup>

- Investigative reporter Dan Rea contacted John Doyle in 1993 to discuss the Deegan murder prosecution. Rea had just obtained the original copy of the Chelsea Police Report from the Deegan murder file at the Chelsea Police Department. Doyle, at the time of the Deegan homicide, was the Suffolk County District Attorney's investigator handling the case. The exchange between Rea and Doyle went as follows:

[Doyle] said to him, what is it that you're bothering me about now? And he said, well, he said that Chelsea police report. Yeah, there was no Chelsea police report. He said, yes, there is. As a matter of fact, I found the original Chelsea police report, and I have a copy of it. I would like to come over and show it to you and discuss it with you. I don't want to see you. Don't call me anymore. And that was the end of the conversation.<sup>205</sup>

- On July 11, 1995, James Southwood executed an affidavit which states that while preparing to write a book about Joseph Barboza in the early 1970s, Barboza said to him "Louie Greco wasn't in the alley."<sup>206</sup>
- In an April 3, 1996, letter from federal prosecutor James Herbert to Suffolk County District Attorney Ralph Martin, Herbert indicated that Anthony Ciulla, who was friendly with Barboza and sometimes acted as his driver, said that Salvati was never mentioned by Barboza in connection with the Deegan murder and as a result he concluded Salvati was not involved in the crime. Jimmy Flemmi, however, was discussed.<sup>207</sup>
- On February 10, 2000, FBI Agent Daniel Doherty prepared a memorandum for federal prosecutor Fred Wyshak, stating that he had interviewed John Martorano, and that Martorano had indicated that both Jimmy Flemmi and Joseph Barboza had told him that they were participants in the murder of Teddy Deegan.<sup>208</sup>

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<sup>204</sup> Memorandum from Bruce A. Holloway, Sergeant Detective, Office of Special Investigations, to James T. Curran, Lieutenant Detective, Office of Special Investigations (July 30, 1993) (Exhibit 855).

<sup>205</sup> "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 97 (May 3, 2001) (testimony of Victor Garo); *see also* Interview with Dan Rea (May 1, 2001).

<sup>206</sup> Affidavit of James Southwood (July 11, 1995) (Exhibit 871).

<sup>207</sup> Letter from Donald K. Stern, United States Attorney, by James D. Herbert, Assistant U.S. Attorney, Chief, Organized Crime Strike Force Unit, to the Honorable Ralph C. Martin, II, District Attorney, Suffolk County (Apr. 3, 1996) (Exhibit 875).

<sup>208</sup> Memorandum from Daniel M. Doherty, Special Agent, to Fred Wyshak, Assistant United States Attorney (Feb. 10, 2000) (Exhibit 916).

- Francis Imbruglia executed an affidavit on July 27, 2000, indicating that he was aware that Peter Limone, Henry Tameleo and Louis Greco had nothing to do with the Deegan murder.<sup>209</sup>
- On August 30, 2000, Wilfred “Roy” French indicated that his previous affidavit was accurate with the exception that he neglected to state that Joseph Salvati had nothing to do with the Deegan murder. He had made no mention of Salvati in the previous affidavit.<sup>210</sup>
- Joseph Balliro, the most experienced attorney among the Deegan defense lawyers, executed an affidavit on November 14, 2000, stating that Jimmy Flemmi had provided him with information that was exculpatory for the Deegan defendants, and that he would divulge this information if ordered to do so by a court.<sup>211</sup>
- On January 2, 2001, Ronald Chisholm, who was Ronnie Cassesso’s lawyer at the Deegan trial, signed an affidavit stating that Cassesso admitted to being a participant in the Deegan murder. Cassesso had told him that four of the six convicted were innocent. Cassesso also told him that before the Deegan trial began, FBI Special Agent H. Paul Rico approached him and said that he could escape prison if he corroborated Barboza’s testimony. He refused and spent the remainder of his life in prison.<sup>212</sup>
- Joseph Balliro executed an affidavit on January 2, 2001, indicating that Jimmy Flemmi told him that Barboza planned the Deegan murder and he participated in the crime.<sup>213</sup>

The above chronology, in a vacuum, cannot be considered dispositive. If federal and state law enforcement had not been in possession of information indicating that there had been a miscarriage of justice, and that Barboza had committed perjury, then it would have been easy to dismiss the above statements and affidavits as the type of routine information that attaches to any high profile criminal conviction. However, the above evidence is worth mentioning because it was consistent with what FBI officials already knew. It appears that the efforts to ignore information about the Deegan murder were almost directly related to the strength of the evidence indicating that some of those on trial were not involved in the crime as charged.

Barboza also made a number of potentially significant comments in his private correspondence. In closing arguments, Limone’s attorney, Robert Stranziani, quoted from a letter Barboza wrote to his then-girlfriend, “I don’t care whether they’re innocent or not. They go.”<sup>214</sup> In another letter to a different friend, Barboza made a request that Dennis Condon and Edward Harrington be contacted so that he could talk to them. He further instructed this friend to

<sup>209</sup> Affidavit of Francis Imbruglia (July 27, 2000) (Exhibit 921). According to the Chelsea Police Report describing the Deegan murder, just before Deegan was killed Joseph Barboza left the Ebb Tide with “Ronald Cassesso, Vincent [“Jimmy”] Flemmi, Francis Imbruglia, Romeo Martin, Nicky Femia and a man by the name of Freddi[.]” Statement by Thomas F. Evans, Lieutenant, Chelsea Police Department (Mar. 14, 1965) (Exhibit 80).

<sup>210</sup> Letter from Wilfred Roy French to John Cavicchi (Aug. 30, 2000) (Exhibit 922).

<sup>211</sup> Affidavit of Joseph J. Balliro, *Commonwealth v. Limone* (Nov. 14, 2000) (Exhibit 926).

<sup>212</sup> Affidavit of Ronald Chisholm (Jan. 2, 2001) (Exhibit 929).

<sup>213</sup> Affidavit of Joseph J. Balliro, *Commonwealth v. Limone* (Jan. 2, 2001) (Exhibit 930).

<sup>214</sup> See Ronald Wysocki, *Baron Dashed at Deegan Trial*, BOSTON GLOBE, July 29, 1968 (Exhibit 245).

place the calls from a particular individual's office, and he added: "after all he wouldn't want to obstruct justice in a capital case! ☺"<sup>215</sup> In another letter to a Santa Rosa investigator he implied that he had the ability to upset the convictions caused by his testimony "& a small Watergate will develop, & Walpole prison doors will open."<sup>216</sup>

## **7. The Deegan Murder Defendants After Conviction**

Federal law enforcement officials worked against the Deegan defendants receiving a fair trial by withholding significant exculpatory evidence. It appears, moreover, that once the Deegan defendants were incarcerated, federal law enforcement officials took affirmative steps to prevent them from receiving any form of executive clemency. The record is not complete on this point. Nevertheless, it appears that some of these steps were not grounded in fact.

The Committee did not investigate efforts by Louis Greco and Henry Tameleo to obtain clemency. Therefore, commentary regarding their efforts to obtain executive clemency is omitted. The following sections discuss efforts by Joseph Salvati and Peter Limone to obtain executive clemency.

### **i. Joseph Salvati**

After Joseph Salvati was convicted and sentenced to life in prison, he filed numerous commutation petitions in an effort to reduce his life sentence. Nearly thirty years after being sentenced, the Governor of Massachusetts finally commuted Salvati's sentence. Salvati's attorney, Victor Garo, described the commutation process in a May 3, 2001, Committee hearing:

In Massachusetts when you are convicted of murder in the first degree, you have no right to parole. The only way that you have the right to parole is if you receive a commutation, and a commutation is considered to be an extraordinary legal remedy. In order to get a commutation, three votes have to be taken, one by the parole board sitting as the advisory board of pardons, the second vote by the Governor of the Commonwealth of Massachusetts, and the third vote by the Governor's Council . . . a

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<sup>215</sup> Letter from John Costa [Joseph Barboza] to [Name Redacted by Committee] (Jan. 14, 1974) ("Smiley face" appears in the original letter) (Exhibit 593).

<sup>216</sup> Letter from Joseph Bentley [Joseph Barboza] to Greg Evans (Mar. 22, 1974) (Exhibit 605). It is illustrative of the failures of the past forty years in New England that, while the federal government is opposing civil lawsuits in Boston alleging government misconduct, the Justice Department appears disinterested in obtaining evidence about Barboza and his perjurious testimony. For example, the Committee was able to obtain a large body of correspondence between Barboza and a number of individuals simply by asking the individuals. The Justice Department has not only refrained from making such a request, it has also failed to approach the individuals to ask them any questions about their substantive knowledge of Barboza, his testimony in the various cases during which he was a cooperating witness, and his subsequent criminal conduct.



duly elected body. The three of those votes have to be situated for you to get a commutation. It is not easy to obtain.<sup>217</sup>

Commutation applicants must initially file a petition for a commutation hearing with the Massachusetts Parole Board. If approved, petitioners earn the opportunity to present their case to the Advisory Board of Pardons. The Advisory Board of Pardons forwards approved petitions to the Governor. If the Governor concurs with the Advisory Board's recommendation that a prisoner's sentence be commuted, the petition is considered by the Governor's Council, a group of eight elected officials. With the Council's consent, a prisoner is granted clemency.

Joseph Salvati's greatest obstacle proved to be the first one: receiving a hearing before the Advisory Board of Pardons. On November 28, 1975, Salvati filed his first petition for a commutation hearing with the Parole Board.<sup>218</sup> The Parole Board voted unanimously to deny Salvati's petition for a hearing, pointing out that insufficient time had elapsed since his sentencing.<sup>219</sup>

For his second petition, Salvati enlisted the support of two officials who assisted in his prosecution: Frank Walsh and Jack Zalkind. Frank Walsh, Sergeant for the Boston Police Department, was an investigating officer in the Deegan murder.<sup>220</sup> Walsh arrested Salvati on October 25, 1967, for the Deegan murder and assisted in Salvati's prosecution and conviction.<sup>221</sup> In a letter to the Parole Board, the former detective wrote, "This is the first time I have ever written to a Parole Board on behalf of any person. My sincere conviction that Mr. Salvati should be granted the opportunity to be heard by the Parole Board prompts me to express my views."<sup>222</sup>

Jack Zalkind, the prosecutor in the Deegan trial, expressed an even stronger opinion. Mr. Zalkind's letter to the Parole Board stated, "Mr. Salvati's involvement was minimal."<sup>223</sup> He continued, "I would have no hesitation to recommend that Mr. Salvati's Petition for Commutation be granted by the Parole Board. Furthermore, if the Board would like me to appear personally on behalf of Mr. Salvati, I would be willing to do so."<sup>224</sup> Thus, two officials who had significant responsibility for putting Salvati in prison agreed that, at the very least, he deserved a hearing.

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<sup>217</sup> "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 70 (May 3, 2001) (testimony of Victor Garo).

<sup>218</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from Martin K. Leppo, Partner, Leppo and Paris, to Executive Secretary, State of Massachusetts (Nov. 28, 1975)) (Exhibit 630).

<sup>219</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Received Dec. 10, 1975)) (Exhibit 635).

<sup>220</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from Frank L. Walsh, former Sergeant Detective, Boston Police Department, to Paul Carr, Administrative Assistant, Massachusetts Parole Board (Jan. 26, 1976)) (Exhibit 634).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from Jack I. Zalkind, former Assistant District Attorney, Suffolk County, to Paul Carr, Administrative Assistant, Massachusetts Parole Board (Feb. 20, 1976)) (Exhibit 637).

<sup>224</sup> *Id.*

In addition to these two letters, Parole Board member Wendie Gershengorn requested that Parole Board Investigator Joseph Williams prepare a confidential memorandum regarding Joseph Salvati.<sup>225</sup> The memorandum stated: “The ‘word’ from reputable law enforcement officers was that subject [Joe Salvati] was just thrown in by Barboza on the murder because he hated subject, that Joseph Barboza was asked by people was this true and that Barboza denied this.”<sup>226</sup> Notwithstanding this observation by Williams, Gershengorn did not ask for any additional information. During testimony before the Committee, Gershengorn could not recall why she asked Williams to prepare a report or whether she asked for more information after she reviewed the report.<sup>227</sup> In an interview with Committee investigators, Williams said the following about Salvati: “To my knowledge, he was never involved in the [Deegan] murder.”<sup>228</sup> Despite this information, the Parole Board denied Salvati’s second petition for a commutation hearing on February 28, 1977. The Board found that Salvati had served an insufficient amount of time to warrant a hearing.<sup>229</sup>

Nearly two years later, on February 1, 1979, Salvati filed his third petition for a commutation hearing.<sup>230</sup> Jack Zalkind and Frank Walsh again wrote letters supporting a commutation.<sup>231</sup> The Superintendent of Framingham Correctional Institute, where Salvati had been imprisoned for over five years, added his voice to the growing chorus advocating a shortened sentence for Salvati.<sup>232</sup> Moreover, correction officers, social workers, businessmen, and family members wrote letters of support for Salvati. Unpersuaded, the Parole Board voted on February 16, 1979, not

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<sup>225</sup> Massachusetts Executive Office of Public Safety Document Production (Memorandum from Joseph M. Williams, Jr., Supervisor, Warrant & Investigation Unit, to Massachusetts Parole Board (Nov. 29, 1976)) (Exhibit 654); see also “Investigations of Allegations of Law Enforcement Misconduct in New England,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 105 (May 11, 2002) (testimony of Wendie Gershengorn). In an interview with Williams, the Parole Board Investigator initially claimed that there were no documents indicating his involvement in Salvati’s commutation attempts. Williams said he very rarely produced written reports on petitioners and was never asked to compile a report on Salvati. Contrary to Williams’ claims, the Committee obtained a memorandum regarding Salvati that was drafted by Williams. In addition, the Committee has a second report written by Williams regarding Peter Limone, another Deegan defendant. Interview with Joseph Williams, former Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board (June 29, 2001).

<sup>226</sup> Massachusetts Executive Office of Public Safety Document Production (Memorandum from Joseph M. Williams, Jr., Supervisor, Warrant & Investigation Unit, to Massachusetts Parole Board (Nov. 29, 1976)) (Exhibit 654).

<sup>227</sup> “Investigations of Allegations of Law Enforcement Misconduct in New England,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 105-07 (May 11, 2002) (testimony of Wendie Gershengorn).

<sup>228</sup> Interview with Joseph Williams, Supervisor of the Warrant & Investigation Unit, Massachusetts Parole Board (June 29, 2001).

<sup>229</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from Massachusetts Advisory Board of Pardons, to the Governor, State of Massachusetts (Feb. 28, 1977)) (Exhibit 657).

<sup>230</sup> Massachusetts Executive Office of Public Safety Document Production (Petition for Commutation of Sentence of Joseph L. Salvati (Feb. 1, 1979)) (Exhibit 679).

<sup>231</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from Jack Zalkind, former Assistant District Attorney, Suffolk County (Mar. 12, 1979)) (Exhibit 683); Massachusetts Executive Office of Public Safety Document Production (Letter from Frank L. Walsh, former Sergeant Detective, Boston Police Department (Mar. 15, 1979)) (Exhibit 684).

<sup>232</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from John E. Bates, Superintendent, Framingham Correctional Institution (Nov. 13, 1978)) (Exhibit 675).

to grant him a hearing because “this petition has been presented too soon following conviction of Murder-First Degree.”<sup>233</sup>

Salvati submitted his fourth petition for a commutation hearing on July 2, 1980.<sup>234</sup> Several months later, on November 18, 1980, FBI Agents John J. Cloherty, Jr., and Robert R. Turgiss met with the Deputy Commissioner of Corrections, the Director of Internal Affairs at the Department of Corrections, and the Superintendent at Framingham Correctional Institute, where Salvati was imprisoned.<sup>235</sup> One of the purposes of this meeting was to discuss allegations that Salvati was using the prison’s canteen to bring drugs into the institution.<sup>236</sup> The FBI also alleged that Salvati was operating a gambling ring using the prison’s telephones and computer equipment.<sup>237</sup> On the same day the FBI brought these allegations to the attention of Corrections authorities, the Advisory Board of Pardons voted to deny Salvati a commutation hearing.<sup>238</sup> Salvati was later cleared of any misconduct arising from these allegations.<sup>239</sup>

Salvati petitioned the Board again on November 12, 1985.<sup>240</sup> By this time, the Board’s reservations about granting Salvati a hearing had apparently abated. In a unanimous vote, the Board approved Salvati’s petition in early January 1986.<sup>241</sup> The Board reasoned that Salvati deserved a hearing based on his “excellent institutional record,” and the fact that three co-defendants in the Deegan trial had already received a hearing.<sup>242</sup>

Following this vote, the Board requested information on Salvati from the Federal Bureau of Investigation,<sup>243</sup> the Massachusetts Department of Correction,<sup>244</sup>

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<sup>233</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from the Massachusetts Advisory Board of Pardons, to the Governor, State of Massachusetts (Feb. 23, 1979)) (Exhibit 681).

<sup>234</sup> Massachusetts Executive Office of Public Safety Document Production (Petition for Commutation of Joseph L. Salvati (July 2, 1980)) (Exhibit 699).

<sup>235</sup> Department of Justice Document Production (Memorandum from John J. Cloherty, Jr., Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Nov. 20, 1980)) (Exhibit 701).

<sup>236</sup> *Id.*

<sup>237</sup> *Id.* Salvati was later indicted for these offenses. See *Prison Probe Indictments*, BOSTON GLOBE, Mar. 28, 1982, at 40 (Exhibit 734).

<sup>238</sup> See Massachusetts Executive Office of Public Safety Document Production (Letter from Massachusetts Advisory Board of Pardons to the Governor, State of Massachusetts (undated)) (Exhibit 702).

<sup>239</sup> Massachusetts Executive Office of Public Safety Document Production (Memorandum from Tammy E. Perry, Assistant, to the Director, Massachusetts Advisory Board of Pardons (Nov. 28, 1988)) (Exhibit 749).

<sup>240</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from Victor J. Garo, Attorney for Joseph Salvati, to Louise Maloof, Executive Secretary, Governor’s Council (Nov. 12, 1985)) (Exhibit 792).

<sup>241</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Dec. 26, 1985, and Jan. 6, 1986)) (Exhibit 794).

<sup>242</sup> *Id.*

<sup>243</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to James Greenleaf, Special Agent in Charge, Boston FBI Field Office (Feb. 4, 1986)) (Exhibit 795).

<sup>244</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to Michael V. Fair, Commissioner, Massachusetts Department of Correction (Feb. 4, 1986)) (Exhibit 795).

the Massachusetts Department of Public Safety,<sup>245</sup> and the Suffolk County District Attorney.<sup>246</sup> The FBI responded to the Board's request in a letter signed by Supervisory Special Agent James A. Ring. The letter connected Salvati to Frank Oreto, who was under investigation at the time for running a loansharking business. The letter notified the Board of the following:

Concerning Joseph Salvati, investigation by the FBI and Massachusetts State Police placed Salvati in contact with Frank Oreto during November and December of 1985, and particular details regarding a meeting between these two individuals in the vicinity of the Museum of Fine Arts in Boston has already been provided to you by the Massachusetts State Police and is therefore not being reiterated.<sup>247</sup>

The implication of this communication is that there might be something to the Salvati-Oreto contact for the Board to consider. In an effort to determine whether there was an innocent explanation for this contact, the Committee requested that the Department of Justice provide all records of intercepted conversations between Salvati and Oreto.<sup>248</sup> If the Oreto surveillance tapes indicated that the contacts were innocuous, one would have expected the FBI to make this clear in its letter to the Parole Board.<sup>249</sup> Similarly, if the tapes raised a matter of concern, one would have expected the FBI to provide that specific information to the Parole Board. The Justice Department, however, was unable to locate the tapes of the conversations or any transcripts of the tapes.<sup>250</sup>

The impact of the letter from the FBI, however, was significant in that the Parole Board reversed its decision to grant Salvati a commutation hearing. All seven

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<sup>245</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to Frank Trabucco, Commissioner, Massachusetts Department of Public Safety (Feb. 4, 1986)) (Exhibit 795).

<sup>246</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to Newman Flanagan, District Attorney, Suffolk County (Feb. 4, 1986)) (Exhibit 795).

<sup>247</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Mar. 24, 1986)) (Exhibit 797). The names of both SAC James Greenleaf and Supervisory Special Agent James Ring appear on the letter, but only James Ring's signature is on the letter. Although Salvati was in prison, he did receive occasional furloughs.

<sup>248</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to John Ashcroft, Attorney General, U.S. Dept. of Justice (Dec. 18, 2001) (Appendix I). At this time, the FBI and Massachusetts State Police were conducting a joint investigation of Oreto. Oreto was under surveillance, and his telephone lines were wiretapped.

<sup>249</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Mar. 24, 1986)) (Exhibit 797). Salvati's attorney, Victor Garo, maintains that his client and Oreto harmlessly met to discuss selling an antique car that sparked Oreto's interest. Interview of Victor Garo, Attorney for Joseph Salvati (Mar. 26, 2001).

<sup>250</sup> Communicated by telephone to James C. Wilson, Chief Counsel, Comm. on Govt. Reform.

of the Board members cited the information provided by the FBI as the reason for denying Salvati a chance to be heard.<sup>251</sup>

On August 8, 1988, over twenty months after the FBI notified the Parole Board of the Salvati-Oreto contacts, the Board requested an update on the FBI's investigation.<sup>252</sup> An FBI response to the Board's request for information was not included in the documents provided to the Committee by the Massachusetts Parole Board, which suggests that the FBI never responded to the Board's request.

Salvati again applied for a commutation hearing on October 17, 1988.<sup>253</sup> The Board approved Salvati's petition for a hearing this time with Board member Michael Albano commenting that the concern raised by the FBI in 1986 was "apparently resolved."<sup>254</sup> Uncertain about the status of the investigation, the Board for a second time had requested an update on the FBI's probe into the relationship between Salvati and Oreto.<sup>255</sup> The FBI responded in a letter stating that it had dropped the investigation of the contacts between Oreto and Salvati sometime after the Board's vote in 1986.<sup>256</sup> Based on the evidence it had gathered, the FBI arrived at two conclusions: Salvati had no relationship with Oreto's loanshark operation, and Salvati likely met with Oreto so his wife could borrow money from Oreto.<sup>257</sup> The Board was not informed that the Salvati-Oreto investigation was closed until it received this letter. With the FBI having reached an innocuous conclusion about the relationship between Salvati and Oreto, the Board unanimously granted Salvati clemency on December 8, 1989.<sup>258</sup> Although this was a positive step, it was only the first step in the process to obtain a release from prison.

The FBI first raised the possibility that Salvati was involved in Frank Oreto's loansharking business on March 24, 1986.<sup>259</sup> Over three and a half years later, the

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<sup>251</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Dec. 4, 1986)) (Exhibit 800).

<sup>252</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to James Ahearn, Special Agent in Charge, Boston FBI Field Office (Aug. 8, 1988)) (Exhibit 822).

<sup>253</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from Victor J. Garo to Louise Maloof, Executive Secretary, Governor's Council (Oct. 17, 1988)) (Exhibit 823).

<sup>254</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Mar. 14, 1989)) (Exhibit 824).

<sup>255</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from John J. Curran, Chairman, Massachusetts Parole Board, to James Ahearn, Special Agent in Charge, Boston FBI Field Office (Nov. 30, 1989)) (Exhibit 836).

<sup>256</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from James F. Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Dec. 1, 1989)) (Exhibit 837).

<sup>257</sup> *Id.*

<sup>258</sup> Massachusetts Executive Office of Public Safety Document Production (Executive Clemency Vote Sheet (Dec. 8, 1989)) (Exhibit 838).

<sup>259</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Mar. 24, 1986)) (Exhibit 797).

FBI finally resolved this concern on December 1, 1989.<sup>260</sup> During this time, action on Salvati's commutation requests ground to a halt. Most disturbing, however, is that the FBI could have determined that Salvati was not involved in Oreto's loansharking business *before* writing the March 24, 1986, letter. According to Agent James Ring, the FBI official who signed the March 24, 1986, letter, the FBI found the Oreto's book of records on January 9, 1986 that indicated that Salvati was a debtor to, not an owner of, the loansharking business.<sup>261</sup> Although the FBI and Massachusetts State Police had the records two and a half months *before* the FBI's warning letter to the Parole Board, their conclusions about Salvati's relationship to Oreto were not included in the letter.

After approving Salvati's clemency petition, the Board waited seventeen months before forwarding its recommendation to the Governor.<sup>262</sup> Incoming Governor William Weld had already voiced opposition to clemency for the Deegan defendants.<sup>263</sup>

The Board finally submitted its opinion to Governor Weld on April 29, 1991.<sup>264</sup> For over a year and a half, Governor Weld took no action on Salvati's petition. The Governor ultimately responded on January 19, 1993, with a tersely worded rejection. The Governor based his denial "in part upon the seriousness of the crimes and the length of your criminal record."<sup>265</sup> However, "the length of [Salvati's] criminal record" only included a 1956 conviction for stealing a pair of pliers and a couple of traffic tickets.<sup>266</sup>

Soon after Weld's 1993 denial, Boston television journalist Dan Rea began to cover the Salvati case.<sup>267</sup> Rea spotlighted evidence and witnesses that pointed to Salvati's innocence in a series of over thirty television reports.<sup>268</sup> On February 5, 1997, Governor Weld commuted

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<sup>260</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from James F. Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Dec. 1, 1989)) (Exhibit 837).

<sup>261</sup> Interview with James A. Ring, Supervisory Special Agent, Boston FBI Field Office (Sept. 25, 2002).

<sup>262</sup> Massachusetts Executive Office of Public Safety Document Production (Opinion of the Advisory Board of Pardons (Apr. 29, 1991)) (Exhibit 845).

<sup>263</sup> *Id.*; see also Letter from William F. Weld, U.S. Attorney, Dept. of Justice, to Michael S. Dukakis, Governor, State of Massachusetts (Sept. 12, 1983) (strongly recommending that the Governor deny clemency for Peter Limone, a Deegan defendant) (Exhibit 775); Letter from William F. Weld, U.S. Attorney, Dept. of Justice, to Brian A. Callery, Chairman, Massachusetts Parole Board (July 1, 1983) (urging the Board to deny a commutation to Limone) (Exhibit 770).

<sup>264</sup> Massachusetts Executive Office of Public Safety Document Production (Opinion of the Advisory Board of Pardons (Apr. 29, 1991)) (Exhibit 845).

<sup>265</sup> Massachusetts Executive Office of Public Safety Document Production (Letter from William F. Weld, Governor, Commonwealth of Massachusetts, to Joseph Salvati (Jan. 19, 1993)). (Exhibit 854).

<sup>266</sup> "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 72 (May 3, 2001) (testimony of Victor Garo). The 1956 conviction involved the theft of some pliers. See Massachusetts Executive Office of Public Safety Document Production (Opinion of the Advisory Board of Pardons (Apr. 29, 1991)) (Exhibit 845).

<sup>267</sup> Don Aucoin, *Weld Seeks Clemency for Salvati*, BOSTON GLOBE, Dec. 19, 1996, at B1.

<sup>268</sup> Don Aucoin, *Dead Convict's Lawyer Hits Weld on Sentence Commutation*, BOSTON GLOBE, Jan. 4, 1997, at B6.

Salvati's sentence.<sup>269</sup> Despite the fact that Weld had recommended only six other commutations during his administration, the Governor insisted that his decision was unrelated to Salvati's newfound notoriety.<sup>270</sup>

ii. Peter Limone

A second Deegan defendant, Peter Limone, also encountered FBI opposition to his efforts to seek clemency. On his first three attempts, the Parole Board denied Limone a commutation hearing.<sup>271</sup> On January 3, 1983, his luck changed when the Board granted Limone an opportunity to present his case for clemency.<sup>272</sup> Within the month, the FBI wrote a letter to the Board stating, "Current law enforcement intelligence reflects that Peter Limone continues to be considered an important cog in the Boston Organized Criminal element. Should Mr. Limone be released, he would enjoy a position of elevated status within the Boston Organized Crime Structure."<sup>273</sup> Parole Board Investigator Joseph Williams concurred with the FBI's opinion that Limone was a member of the Boston mafia.<sup>274</sup>

Several Board members told Committee investigators about personal contacts by FBI agents lobbying against Limone's release. Richard Luccio said he received an unsolicited telephone call from FBI agents, requesting that Limone's hearing be denied.<sup>275</sup> Luccio told Committee investigators that the agents were attempting to influence his decision but were unsuccessful.<sup>276</sup> Michael Albano, who was also a Board Member, told the Committee that two FBI agents personally visited him regarding the Limone commutation and asked him "intimidating" questions.<sup>277</sup> Albano said that one of the agents told him, "If you let this bastard [Limone] out, you'll have to let them all out," referring to the other Deegan defendants. In addition, Mr. Albano and another Board Member, Kevin Burke, both recall that FBI agents

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<sup>269</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation of Joseph Salvati (Feb. 5, 1997)).

<sup>270</sup> Don Aucoin, *Dead Convict's Lawyer Hits Weld on Sentence Commutation*, BOSTON GLOBE, Jan. 4, 1997, at B6.

<sup>271</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheets (Nov. 8, 1978, June 2, 1981, and Mar. 23, 1982)) (Exhibit 674).

<sup>272</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Received Nov. 4, 1982)) (Exhibit 750).

<sup>273</sup> Letter from John M. Morris, Supervisory Special Agent, Boston FBI Field Office, and James A. Ring, Acting Supervisory Special Agent, Boston FBI Field Office, to Brian A. Callery, Chairman, Massachusetts Parole Board (Jan. 27, 1983) (Exhibit 751). This letter was a response to the Parole Board's request for information on Peter Limone. Though Agent Ring signed the letter, he stated that he had no memory of the letter. Ring also stated that he suspected Agent Morris wrote the letter because Ring had just arrived at the Boston FBI Office in January 1983.

<sup>274</sup> Memorandum from Joseph Williams, Warrant & Investigation Unit, Massachusetts Parole Board, to the Advisory Board of Pardons (Apr. 22, 1983) (Exhibit 756).

<sup>275</sup> Interview with Richard Luccio, Member, Massachusetts Parole Board (May 31, 2001).

<sup>276</sup> *Id.*

<sup>277</sup> Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002). Mr. Albano believes the two agents were Special Agent John Connolly and Supervisory Special Agent John Morris. *Id.* The Special Agent in Charge (SAC) of the Boston FBI Office at this time, James W. Greenleaf, said it would be unusual for an agent to request a meeting with a Board member regarding a petitioner, but SAC Greenleaf was unsure whether such actions violated Bureau policy. Interview with James W. Greenleaf, Special Agent in Charge, Boston FBI Field Office (Sept. 25, 2002).

attended the Limone hearing.<sup>278</sup> In spite of the FBI's lobbying effort, the Board approved Limone's petition for a commutation on August 1, 1983, by a 5-2 vote.<sup>279</sup> Massachusetts Governor Michael Dukakis, however, did not support the Board's recommendation and denied Limone clemency the following month.<sup>280</sup>

The full ramifications of the Limone vote were not felt until the following year. The former chairman of the Massachusetts Parole Board told Committee investigators that in 1984, the two Board members who opposed Limone's commutation requested an investigation of the five Board members who favored Limone's commutation to determine whether they were influenced by organized crime figures.<sup>281</sup> Another former Board member told Committee investigators that State Police Colonel Peter Agnes conducted the investigation in a "very accusatory."<sup>282</sup> Another Board member recalled for Committee investigators that Colonel Agnes told him that the FBI was either a partner in the investigation or interested in the results of the investigation.<sup>283</sup> After the accused Board members were cleared of any criminal wrongdoing, the allegations were then referred to the state Ethics Commission, which found no violations.<sup>284</sup> Former Board members told Committee investigators that the multiple investigations fractured the Board and caused its members to be wary of organized crime cases.<sup>285</sup>

Peter Limone received a second commutation hearing in 1987.<sup>286</sup> Upon request of the Parole Board, the FBI submitted two separate letters detailing contacts between Limone and organized crime members.<sup>287</sup> The Board denied Limone's clemency request based, in part, on the FBI's letters.<sup>288</sup> In 1990, Limone again petitioned for clemency, but was not even granted a hearing.<sup>289</sup> Judge Hinkle ordered Limone's release on January 5, 2001, because new evidence

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<sup>278</sup> Interview with Kevin Burke, Member, Massachusetts Parole Board (May 30, 2001). James Ahearn, who served as Special Agent in Charge of the Boston Office from 1986 to 1989, commented that it would be "most unusual and improper" for an FBI agent to attend a commutation hearing unless authorized.

<sup>279</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (Aug. 1, 1983)) (Exhibit 773).

<sup>280</sup> Shelley Murphy, *Parole Panelists Cite Retaliation After Vote*, BOSTON GLOBE, June 19, 2001.

<sup>281</sup> Interview with Brian Callery, former Chairman, Massachusetts Parole Board (June 26, 2001).

<sup>282</sup> Interview with Kevin Burke, former Board Member, Massachusetts Parole Board (May 30, 2001). Another Board member recalls that income tax records were searched for irregularities. Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002).

<sup>283</sup> Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002).

<sup>284</sup> See Interview with Jack Curran, former Chairman, Massachusetts Parole Board (June 28, 2001); Shelley Murphy, *Parole Panelists Cite Retaliation After Vote*, BOSTON GLOBE, June 19, 2001, at B2.

<sup>285</sup> See Interview with Dick Luccio, former Board Member, Massachusetts Parole Board (May 31, 2001); Interview with Michael Albano, former Member, Massachusetts Parole Board (Sept. 23, 2002).

<sup>286</sup> Massachusetts Executive Office of Public Safety Document Production (Clemency Vote Sheet (Nov. 16, 1987)) (Exhibit 812).

<sup>287</sup> Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 19, 1987) (Exhibit 810); Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 28, 1987) (Exhibit 811).

<sup>288</sup> Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 19, 1987) (Exhibit 810); Letter from James Ahearn, Special Agent in Charge, Boston FBI Field Office, to John J. Curran, Chairman, Massachusetts Parole Board (Oct. 28, 1987) (Exhibit 811).

<sup>289</sup> Massachusetts Executive Office of Public Safety Document Production (Commutation Hearing Vote Sheet (June 25, 1990)) (Exhibit 842).



cast serious doubts on the credibility of Joseph Barboza, whose testimony helped convict Limone.<sup>290</sup> Limone did not receive a commutation.

## 8. Efforts to Protect Stephen Flemmi After the Deegan Murder Trial

After the Deegan murder trial, Stephen Flemmi led a charmed life. The FBI protected Flemmi from being prosecuted for his role in major criminal activities – including murder and attempted murder, drug dealing, and arms running – for the next two decades. The Committee has not thoroughly investigated these matters; nevertheless, a brief recapitulation of efforts to protect Stephen Flemmi provides an indication of how far the government went to assist their Top Echelon informant. Although the Justice Department has not yet provided the Committee with all documents pertaining to Stephen Flemmi, the following efforts to protect Flemmi have come to the Committee's attention:

- On December 23, 1967, Stephen Flemmi allegedly murdered William Bennett.<sup>291</sup> On January 30, 1968, Flemmi allegedly planted a car bomb in attorney John Fitzgerald's car.<sup>292</sup> Flemmi was indicted for the Bennett murder on September 11, 1969.<sup>293</sup> He was indicted for his role in the Fitzgerald bombing on October 10, 1969.<sup>294</sup> Prior to being indicted for these crimes, FBI Special Agent H. Paul Rico called Flemmi to warn him that he was about to be indicted and that he should flee.<sup>295</sup> Flemmi followed Agent Rico's advice and left the country.<sup>296</sup> Flemmi did not return to Boston until 1974, when Agent Rico advised Flemmi to return because his legal problems would be favorably resolved.<sup>297</sup> Rico was correct. Robert Daddeico told Committee investigators that he was not pressed to testify against Flemmi for the Bennett murder and the Fitzgerald car bombing.<sup>298</sup> On May 6, 1974, as arranged by Rico, Flemmi returned to Boston and was promptly released on bail.<sup>299</sup> Soon thereafter, Flemmi's fugitive charges, the Bennett murder charges, and the car bombing charge were dismissed.<sup>300</sup>

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<sup>290</sup> *Commonwealth v. Limone*, No. 32367, 32369, 32370, slip op. at \*14 (Suffolk County Sup. Ct. Jan. 5, 2001).

<sup>291</sup> Interview with Robert Daddeico (Oct. 17-18, 2001); see also Shelley Murphy, *Playing Both Sides Pays Off*, BOSTON HERALD, Apr. 23, 1993.

<sup>292</sup> "Law enforcement officials said Mr. Fitzgerald was targeted for death because he was the lawyer for a famed Cosa Nostra soldier turned-informer, Joseph Barboza Baron." Andy Dabilis & Ralph Ranalli, *Mob Lawyer Maimed in '68 Dies*, BOSTON GLOBE, July 5, 2001.

<sup>293</sup> See Office of Professional Responsibility Investigative Report (focusing on allegations of FBI mishandling of confidential informants) (Exhibit 280).

<sup>294</sup> *Commonwealth v. Salemme*, 323 N.E. 2d 922 (Mass. App. 1975).

<sup>295</sup> *U.S. v. Salemme*, 91 F. Supp. 2d 141, 148, 182 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

<sup>296</sup> *Id.*

<sup>297</sup> *Id.* at 185.

<sup>298</sup> Interview with Robert Daddeico (Oct. 17-18, 2001); Former FBI Special Agent Dennis Condon testified: "It's also my understanding that Daddeico positively refused to testify against Flemmi, supposedly because he had a dislike for Salemme that he did not have for Flemmi, and refused to testify. That's my understanding. Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office 187 (February 21, 2002). It is worth noting that law enforcement did not pressure Daddeico to testify against Flemmi, and it appears that it was acceptable to law enforcement to allow the witness to testify against one defendant and refrain from testifying against another defendant based on personal friendship.

<sup>299</sup> *Salemme*, 91 F. Supp. 2d at 185.

<sup>300</sup> *Id.* at 182, 185. The *Salemme* court found:

- A former Las Vegas police detective told Committee investigators that in 1970, the FBI interfered with a Nevada law enforcement investigation to protect Flemmi from being prosecuted for the murder of Peter Poulos.<sup>301</sup>
- In 1977, FBI Special Agent John Connolly alerted Flemmi that a cleaning company had been “wired” to obtain evidence of Flemmi’s loansharking.<sup>302</sup> “As a result, Flemmi avoided that location and was not intercepted.”<sup>303</sup>
- In 1977 or 1978, National Melotone, a vending machine company, attempted to prompt an FBI probe of Stephen Flemmi for using threats of violence against National Melotone officials to have their machines replaced with machines from Flemmi’s National Vending Company.<sup>304</sup> Connolly sought to protect Flemmi and successfully dissuaded National Melotone officials from pursuing their allegations.<sup>305</sup>
- In October 1977, informant information indicated that Stephen Flemmi made death threats to an individual named Francis Green.<sup>306</sup> Green corroborated this information.<sup>307</sup> However, although Green was used as an important government witness in another matter, the FBI never sought to develop Green as a witness against Flemmi.<sup>308</sup>
- In 1979, Boston Organized Crime Strike Force prosecutor Jeremiah O’Sullivan was conducting an investigation into allegations of a horse race-fixing scheme.<sup>309</sup> The key witness, Anthony Ciulla, provided evidence that Stephen Flemmi participated in the scheme.<sup>310</sup> Understanding that they could lose Flemmi as an informant, in early January

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If Flemmi had been prosecuted in 1969 for the Fitzgerald bombing or the William Bennett murder, his role as an FBI informant might have been disclosed, and its legal implications might have been examined, three decades ago. Flemmi’s successful flight to avoid prosecution spared Rico, and the FBI the risk of the embarrassment and controversy that disclosure of Flemmi’s dual status as an FBI informant and an alleged murderer has recently entailed. Rico had reason to be concerned about embarrassment to the FBI. . . . By honoring his promise to protect Flemmi, Rico also promoted the possibility that Flemmi would in the future again become a valuable FBI informant.

<sup>301</sup> Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>302</sup> *Salemme*, 91 F. Supp. 2d at 198.

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.* at 199; Memorandum from Gerald E. McDowell, Attorney in Charge, and Jeremiah T. O’Sullivan, Prosecutor, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Jan. 29, 1979) (document retained by the Justice Department).

<sup>310</sup> *Salemme*, 91 F. Supp. 2d at 199; Memorandum from Gerald E. McDowell, Attorney in Charge, and Jeremiah T. O’Sullivan, Prosecutor, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to

1979, FBI Supervisory Special Agent John Morris and FBI Special Agent John Connolly met with O'Sullivan in an effort to convince him not to indict and prosecute Flemmi.<sup>311</sup> Notwithstanding evidence that Flemmi was a principal in the criminal conspiracy, Flemmi was not indicted for his role in the race-fixing scheme.<sup>312</sup> O'Sullivan testified before the Committee on December 5, 2002, that at the time he was considering indictments for the Ciulla race-fixing case, he knew Flemmi was a murderer but used "prosecutorial discretion" in deciding not to prosecute Flemmi.<sup>313</sup> O'Sullivan claimed that he did not indict Flemmi because the testimony against him was uncorroborated.<sup>314</sup> However, a prosecution memorandum shows that O'Sullivan indicted another individual, James Sims, even though the testimony against him was also uncorroborated.<sup>315</sup> Moreover, O'Sullivan testified before the Committee that another reason that he did not indict Flemmi was because Flemmi's role in the race-fixing scheme was limited to receipt of proceeds from the illegal scheme.<sup>316</sup> This testimony was false. When confronted with his own memorandum that Stephen Flemmi and James Bulger participated in a meeting to discuss the race-fixing scheme, that Bulger and Flemmi "would help find outside bookmakers to accept the bets of the group" that they were financiers of the conspiracy and that Flemmi appeared to be a part of the core working group of the conspiracy, O'Sullivan replied, "You've got me."<sup>317</sup>

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Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Jan. 29, 1979) (document retained by the Justice Department).

<sup>311</sup> *Salemme*, 91 F. Supp. 2d at 200; "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 300-02 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan).

<sup>312</sup> *Salemme*, 91 F. Supp. 2d at 200; Memorandum from Gerald E. McDowell, Attorney in Charge, and Jeremiah T. O'Sullivan, Prosecutor, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Jan. 29, 1979) (document retained by the Justice Department).

<sup>313</sup> "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 335 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan); see also Shelley Murphy, *Former US Attorney Denies Protecting FBI Informants*, BOSTON GLOBE, Dec. 6, 2002, at A1.

<sup>314</sup> *Id.*; see also Shelley Murphy, *Former US Attorney Denies Protecting FBI Informants*, BOSTON GLOBE, Dec. 6, 2002, at A1.

<sup>315</sup> See Memorandum from Walter T. Barnes and Edward F. Harrington, Assistant U.S. Attorney, to Henry Petersen, Chief, Organized Crime and Racketeering Section (June 6, 1967) (document retained by the Justice Department) ("James L. Sims – The case against Sims rests solely on Ciulla's testimony."). O'Sullivan also admitted this when testifying before the Committee. "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 301-02 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan).

<sup>316</sup> "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 325 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan).

<sup>317</sup> "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 326 (Dec. 5, 2002) (testimony of Jeremiah O'Sullivan); Memorandum from Gerald E. McDowell, Attorney in Charge of the Boston Strike Force, and Jeremiah T. O'Sullivan, of the Boston Organized Crime Strike Force, to Gerald T. McGuire, Deputy Chief of the Organized Crime and Racketeering Section (Jan. 29, 1979) (document is retained by the Justice Department). The memorandum states the following: "The Boston Strike Force recommends the indictment of the twenty-one individuals listed below, including the principals of the Winter Hill gang, for their involvement with Anthony Ciulla in a multi-state pari-mutuel thoroughbred horse race fixing scheme involving race tracks in five states." The net profits were almost two million dollars. Ciulla and Barnoski met with Howard Winter "and six of his associates" in late 1973 to discuss a race fixing scheme. "Winter and his partners would provide the money necessary to carry out the scheme." The six associates included Flemmi and James Bulger. The memo states that after the initial meeting with Winter, Ciulla and Barnoski met with Winter's other partners in the scheme – John Martorano, Joseph McDonald, James Sims, John Martorano, James Bulger and

- Notwithstanding the fact that FBI Supervisory Special Agent John Morris received informant information in July 1979 that Flemmi was “shaking down” bookmakers, the FBI made no effort to investigate this matter.<sup>318</sup>
- In 1979 and early 1980, the FBI received informant information that Flemmi was involved in additional criminal activity, including illegal gambling and drug trafficking.<sup>319</sup> The FBI did not investigate these allegations.<sup>320</sup>
- “In 1980, the FBI contributed to frustrating a Massachusetts State Police investigation of criminal activity of . . . [Stephen] Flemmi and many others occurring at the Lancaster Street Garage[.]”<sup>321</sup>
- In 1981 and 1982, the FBI received reliable informant information that Stephen Flemmi was involved in illegal drug distribution and demanded money from bookmakers to operate in South Boston.<sup>322</sup> However, the FBI did not investigate these allegations.<sup>323</sup>
- On May 27, 1981, business tycoon and owner of World Jai Alai, Roger Wheeler, was murdered in Tulsa, Oklahoma.<sup>324</sup> Shortly thereafter, Flemmi became a major suspect in the Wheeler murder.<sup>325</sup> Boston FBI officials prevented other FBI offices and local law enforcement agents, including Tulsa, Oklahoma, police officials, from interviewing Flemmi.<sup>326</sup> Brian Halloran, who was facing a state murder charge, began cooperating with the FBI in Boston and implicated Flemmi in the Wheeler murder by stating that he met with Flemmi at former World Jai Alai President John Callahan’s apartment and was asked to kill Wheeler.<sup>327</sup> Concerned that Halloran’s allegations would jeopardize Flemmi’s informant status, FBI Supervisory Special Agent John Morris told FBI Special Agent John Connolly of Halloran’s cooperation and claims against Flemmi.<sup>328</sup> Agent Connolly then, in turn, told Flemmi.<sup>329</sup> Halloran was murdered on May 11, 1982.<sup>330</sup> Shortly after Halloran’s murder, John Callahan’s body was found in the trunk of his car at

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Stephen Flemmi. Bulger and Flemmi “would help find outside bookmakers to accept the bets of the group.” “Ciulla and the Winter group then began to fix races at tracks around the country.” The scheme lasted for 2 years and more than 200 races were fixed. In an interview with the Committee, Anthony Ciulla confirmed that Bulger and Flemmi played a significant role in the race-fixing conspiracy and that prosecutors were fully aware of the extent of Bulger and Flemmi’s activities. Interview with Anthony Ciulla (Dec. 5, 2002); *see also* J.M. Lawrence, *Mob Scene; Bulger May Stay Mum on Whitey*, BOSTON HERALD, Dec. 6, 2002, at 1.

<sup>318</sup> *Salemme*, 91 F. Supp. 2d at 201.

<sup>319</sup> *Id.*

<sup>320</sup> *Id.*

<sup>321</sup> *Id.* at 202-03; Interview with Bob Long, Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>322</sup> *Salemme*, 91 F. Supp. 2d at 208.

<sup>323</sup> *Id.* at 209.

<sup>324</sup> *See id.* at 208.

<sup>325</sup> *Id.*

<sup>326</sup> *See id.* at 208, 211-12; “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 272-73 (Dec. 5, 2002) (testimony of Michael Huff).

<sup>327</sup> *See Salemme*, 91 F. Supp. 2d at 208-09.

<sup>328</sup> *See id.*

<sup>329</sup> *See id.*

<sup>330</sup> *See id.* at 209-10.

Miami International Airport on August 4, 1982.<sup>331</sup> Callahan had been killed weeks earlier.<sup>332</sup> Callahan had been interviewed by the FBI in connection with the Wheeler murder.<sup>333</sup> According to one former Miami Dade Police Detective, the Boston FBI Office also “stonewalled” Florida’s efforts in investigating Flemmi’s role in the Callahan murder.<sup>334</sup>

- According to *U.S. v. Salemme*,<sup>335</sup> Brian Halloran was not the only informant that the FBI identified for Flemmi.<sup>336</sup> FBI Special Agent H. Paul “Rico disclosed the identity of several informants to Flemmi” and FBI Special Agent John Connolly identified for “Flemmi at least a dozen individuals who were either FBI informants or sources for other law enforcement agencies.”<sup>337</sup> The purpose of these disclosures was so that Flemmi “could avoid making any unnecessary incriminating statements to other informants.”<sup>338</sup>
- In mid-October 1984, John McIntyre, an engineer on a ship named the Valhalla, which was used in an attempt to deliver guns and ammunition from Massachusetts to the Irish Republican Army in Ireland, began providing information to local Massachusetts law enforcement about Flemmi’s involvement in the Valhalla arms shipment.<sup>339</sup> Local law enforcement told the FBI about McIntyre’s cooperation.<sup>340</sup> The FBI subsequently interviewed McIntyre regarding his allegations.<sup>341</sup> The FBI then allegedly told Flemmi about McIntyre’s cooperation and claims.<sup>342</sup> “[D]espite the obvious potential for McIntyre’s cooperation to result in several significant, if not sensational cases, no evidence has been presented that the FBI conducted any investigation based on McIntyre’s charges concerning . . . Flemmi[.]”<sup>343</sup> McIntyre disappeared around November 1984.<sup>344</sup> His remains were found in a make-shift grave on January 14, 2000.<sup>345</sup> Flemmi was later indicted for aiding and abetting in McIntyre’s murder.<sup>346</sup> Moreover, notwithstanding other evidence demonstrating Flemmi’s involvement with the

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<sup>331</sup> See *id.* at 210-13.

<sup>332</sup> See *id.* at 211.

<sup>333</sup> See *Salemme*, 91 F. Supp. 2d at 209.

<sup>334</sup> Interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2001) (“I was stonewalled and snowballed [by the FBI] and left to hang out and dry.”); See also *Salemme*, 91 F. Supp. 2d at 211.

<sup>335</sup> *Salemme*, 91 F. Supp. 2d at 213.

<sup>336</sup> *Id.*

<sup>337</sup> *Id.*

<sup>338</sup> *Id.*

<sup>339</sup> *Id.* at 213.

<sup>340</sup> *Id.* at 214.

<sup>341</sup> *Id.*

<sup>342</sup> *Id.* at 214-15; see also Dick Lehr, *Mob Underling’s Tale of Guns, Drugs, Fear Weeks Before His Death, McIntyre Felt ‘Trapped*, BOSTON GLOBE, Feb. 27, 2000 at A1.

<sup>343</sup> *Salemme*, 91 F. Supp. 2d at 215.

<sup>344</sup> See Shelley Murphy, *Remains of Slay Victim Cremated*, BOSTON GLOBE, Mar. 15, 2001, at B3; *Salemme*, 91 F. Supp. 2d at 215.

<sup>345</sup> Shelley Murphy, *3 Bodies Unearthed in Dorchester, Bulger Confidant is Said to Give Tip*, BOSTON GLOBE, Jan. 15, 2000, at A1; Dick Lehr, *Mob Underling’s Tale of Guns, Drugs, Fear Weeks Before His Death, McIntyre Felt ‘Trapped*, BOSTON GLOBE, Feb. 27, 2000 at A1.

<sup>346</sup> *U.S. v. O’Neil*, 99-CR-10371-RGS, Superseding Indictment.

Valhalla arms shipment, Flemmi was not charged in a prosecution that took place years later regarding the Valhalla.<sup>347</sup>

- In January 1984, FBI Special Agent John Connolly received reliable information that Stephen Flemmi was involved in an ongoing extortion of the owners of the South Boston Liquor Mart.<sup>348</sup> However, the FBI did not investigate this extortion in any way.<sup>349</sup>
- In 1984 and 1985, the FBI told Stephen Flemmi that he was being targeted in a major Drug Enforcement Agency (“DEA”) investigation, which included electronic surveillance.<sup>350</sup> The DEA’s “lengthy and expensive investigation was deemed unsuccessful and was eventually closed.”<sup>351</sup>
- In April 1985, FBI Supervisory Special Agent John Morris told Stephen Flemmi that “you can do anything you want as long as you don’t clip anyone.”<sup>352</sup>
- In the late 1980’s, Stephen Flemmi was protected from being prosecuted for his role in the extortion of reputed drug dealer Hobart Willis.<sup>353</sup>
- In 1986, the FBI continued an investigation regarding payoffs to members of the Boston Police Department.<sup>354</sup> Agent John Connolly forewarned Stephen Flemmi not to make incriminating statements to Boston Police Lieutenant James Cox, who was going to attempt to record conversations with Flemmi.<sup>355</sup>
- In 1988, the FBI received information implicating Stephen Flemmi in the Brian Halloran and Bucky Barrett murders.<sup>356</sup> Notwithstanding receiving such significant information, this information “was not provided to any agents responsible for investigating those matters or indexed so that it could be accessed by such agents.”<sup>357</sup>
- In the spring of 1988, FBI Special Agents Robert Jordan and Stanley Moody prepared an application for electronic surveillance targeting bookmaker John Baharoian, Stephen Flemmi, and others.<sup>358</sup> Prior to the inception of the surveillance, Agents John Morris and John Connolly warned Flemmi about the planned surveillance.<sup>359</sup> The surveillance

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<sup>347</sup> *Salemme*, 91 F. Supp. 2d at 215.

<sup>348</sup> *Id.* at 210, 212.

<sup>349</sup> *Id.*

<sup>350</sup> *Id.* at 220-42.

<sup>351</sup> *Id.* at 242.

<sup>352</sup> *Id.* at 242-43.

<sup>353</sup> *Id.* at 254-55.

<sup>354</sup> *Id.* at 258.

<sup>355</sup> *Id.*

<sup>356</sup> *Id.* at 256-58.

<sup>357</sup> *Id.* at 258.

<sup>358</sup> *Id.* at 259.

<sup>359</sup> *Id.*

produced evidence that led to the indictment of John Baharoian and others.<sup>360</sup> However, because he was forewarned, Flemmi was not intercepted, and therefore not indicted.<sup>361</sup>

- In 1988 or 1989, Agent John Connolly indirectly warned Stephen Flemmi through James Bulger that alleged extortion victim Timothy Connolly was cooperating with the FBI and would attempt to record conversations with Flemmi.<sup>362</sup>
- In 1992, the United States Attorney's Office began a grand jury investigation targeting Stephen Flemmi.<sup>363</sup> From 1992 to 1995, Flemmi received frequent reports concerning the progress of the grand jury investigation from retired FBI Agent John Connolly, who was being fed information from his contacts at the FBI.<sup>364</sup> Flemmi spoke to Connolly "'constantly' concerning the ongoing grand jury investigation."<sup>365</sup> Finally, on or about January 3, 1995, Connolly indirectly informed Flemmi, through James Bulger, that Flemmi was about to be indicted on or about January 10, 1995.<sup>366</sup> However, despite the fact that he received the advance warning, Flemmi did not flee immediately and was arrested on January 5, 1995, prior to his indictment.<sup>367</sup>

Stephen Flemmi served as an FBI informant for thirty years.<sup>368</sup> During that time, the FBI promised him protection.<sup>369</sup> As discussed above, the FBI made good on this promise, protecting him from a long list of crimes, including murder, attempted murder, and even gun smuggling to a foreign country. Notwithstanding knowledge of his involvement in the Poulos and William Bennett murders, the maiming of attorney John Fitzgerald, and the certainty by at least one U.S. Attorney that he was a murderer, nothing was done until the mid-1990s to bring Stephen Flemmi to justice. To the contrary, extraordinary measures were taken to protect him. The protection of Stephen Flemmi is another unfortunate example of what happened in New England when the government used an "ends justifies the means" approach to law enforcement. No one disputes the proposition that destroying organized crime in the United States was an important law enforcement objective. However, the steps that were taken may have been more injurious than the results obtained. Along the way, lives were destroyed, witnesses were murdered, respect for the rule of law was eviscerated, and the government has been exposed to billions of dollars in potential civil liability.

## **9. The Misuse of the Flemmi Brothers as Informants: Two Human Perspectives**

The FBI's misuse of informants had profound human consequences for a number of individuals. In the Deegan prosecution alone it appears that the death penalty was unfairly

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<sup>360</sup> *Id.*

<sup>361</sup> *Id.*

<sup>362</sup> *Id.* at 263.

<sup>363</sup> *Id.* at 294.

<sup>364</sup> *Id.* at 295-96.

<sup>365</sup> *Id.* at 296.

<sup>366</sup> *Id.* at 297.

<sup>367</sup> *Id.*

<sup>368</sup> *Id.* at 148. At times he was technically closed as an informant. There appear to be few, if any, practical ramifications pertaining to these closures.

<sup>369</sup> *Id.* at 151.

assessed and men innocent of the crime for which they were convicted died in prison. The following testimony, however, provides an indication of the human suffering caused by the FBI and Justice Department's failure to police its own use of informants:

In returning from one of the visits before the trial of her father, [Joe Salvati's daughter Sharon – around 8 or 9 years old at the time] came home and asked her mother and then asked her father, daddy, what's the electric chair? They say you're going to get the electric chair. Are they giving you a present?<sup>370</sup>

Testimony of Victor Garo  
Attorney for Joseph Salvati

\* \* \*

The government stole more than 30 years of my life. . . . My life as a husband and father came to a tumbling halt. In order to clear my name, it has been a long and frustrating battle. Yet, through all the heartbreak and sometimes throughout the years, my wife and I have remained very much in love. Prison may have separated us physically, but our love has always kept us together mentally and emotionally. Our children have always been foremost in our minds. We tried our best to raise them in a loving and caring atmosphere even though we were separated by prison walls. More than once my heart was broken because I was unable to be with my family at very important times.<sup>371</sup>

Testimony of Joseph Salvati

\* \* \*

From October 25, 1967, the date my husband was arrested, until January 30, 2001, when all the charges were dropped, my life was extremely difficult. The government took away my husband and the father of our children in 1967. My world was shattered. This wonderful life that we shared was gone. Many people looked down on me. Children in the neighborhood would tease our kids. I did my best to comfort my children but no one was there to comfort me. Many a night I cried by myself, and I suffered in silence.<sup>372</sup>

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<sup>370</sup> "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 32 (May 3, 2001) (testimony of Victor Garo).

<sup>371</sup> "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 39 (May 3, 2001) (testimony of Joseph Salvati).

<sup>372</sup> "The FBI's Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 43 (May 3, 2001) (testimony of Marie Salvati).



\* \* \*

From the very beginning of imprisonment, I knew that it would be important for the children to have constant contact with their family, with their father. And every weekend, you know, I'd dress up, pack a little lunch, and we'd go off to see him for their hugs and their kisses and whatever went on. And he would give them a father's guidance, even though he was not home with them. Sometimes it took hours to get there, and every time you got there, you were all nervous.<sup>373</sup>

Testimony of Marie Salvati

\* \* \*

My father's life represented what many consider to be the American ideal: vision, hard work, a good sense of opportunity and maybe a little bit of luck. . . . One Wednesday afternoon I received a call, telling me only that my father had been shot in the head . . . . The next day I had to repeatedly negotiate between the funeral home and my mother. She kept asking to see her husband. They kept asking for more time and finally, in desperation, asked me, "Do you realize where he was shot?" When we arrived at the funeral home to view my father I finally started to lose control. My mother kissed my father's body. I almost passed out fearing that part of dad's face would fall apart.<sup>374</sup>

Testimony of David Wheeler

The Committee regrets that it has been unable to receive testimony from more of the victims of Joseph Barboza, the Flemmis, and James Bulger. Their stories are all tragic, and the Committee, by quoting the above testimony, does not wish to indicate that any one set of circumstances is worse than another.

#### **B. Interference with State Law Enforcement**

The use of Joseph Barboza as a cooperating witness and the development of Jimmy and Stephen Flemmi as informants led to problems in other state law enforcement activities. In California, for example, Joseph Barboza committed a murder, for which federal law enforcement officials tried to help him escape the legal consequences. In Nevada, Oklahoma, and Florida, murders were committed apparently involving Stephen Flemmi. The ensuing investigations

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<sup>373</sup> *Id.*

<sup>374</sup> "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 268-69 (Dec. 5, 2002) (testimony of David Wheeler).

appear to have been hampered by federal law enforcement officials. In Connecticut, federal officials appear to have worked against a state-wide probe of organized crime in the jai alai industry. Finally, FBI agent H. Paul Rico – who was intimately involved with the development of Joseph Barboza as a cooperating witness and Jimmy and Stephen Flemmi as confidential informants – was found by the Supreme Court of Rhode Island to have suborned perjury and to have himself committed perjury. As a result, one participant in a homicide was released from prison.

This section discusses the intersection of state and federal law enforcement efforts, and how the use of Barboza and the Flemmis interfered with state efforts to enforce criminal laws.

## 1. California

The murder of Clay Wilson by Joseph Barboza, and the ensuing prosecution for this homicide present one of the more bizarre stories in the annals of federal law enforcement. Notwithstanding Barboza's past as a brutal killer, he was resettled in Santa Rosa, California, as the first member of the federal Witness Protection Program. Shortly thereafter, he murdered a local criminal named Clay Wilson. Once this murder was discovered and Barboza was charged with the crime, the federal government went to great lengths to help Barboza escape the consequences of his crime.

### i. Joseph Barboza's Relocation to California

Following his testimony in the Raymond Patriarca, Jerry Angiulo, and Edward Deegan cases in 1967 and 1968, the FBI relocated Joseph Barboza to Santa Rosa, California, in April 1969. Barboza, also known as Joseph Baron, was given the name Joe Bentley. According to interviews by Committee investigators of FBI agents assigned to the Santa Rosa area at that time, the U.S. Marshals enrolled Barboza in a cooking school,<sup>375</sup> and the FBI provided him with an automobile<sup>376</sup> and took mail to him.<sup>377</sup> Other than these minimal contacts, the agents said they had no contact with Barboza.<sup>378</sup> In fact, Bill Baseman, the agent who ran the Santa Rosa FBI Field Office, said he did not want to have any contact with Barboza because he knew Barboza would get into trouble.<sup>379</sup> FBI headquarters did not provide the Santa Rosa Office with any directions or instructions regarding Barboza and provided little or no information about Barboza's criminal background and cooperation with the government.<sup>380</sup> Barboza's murderous past was clearly understood. One memorandum directed to FBI Director Hoover called Barboza

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<sup>375</sup> Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001). Special Agent Dennis Condon told Chuck Hiner that Barboza had testified and was in the Witness Protection Program. *Id.* Hiner described the cooking school as a "den of thieves." *Id.*

<sup>376</sup> Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001).

<sup>377</sup> 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. 24, 2001).

<sup>378</sup> 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. 24, 2001); Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001).

<sup>379</sup> Interview with Bill Baseman, former Special Agent, Santa Rosa FBI Field Office (Sept. 24, 2001).

<sup>380</sup> 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. 24, 2001); Interview with Chuck Hiner, former Special Agent in Charge, San Francisco FBI Field Office (Sept. 25, 2001).

“a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in [the Boston] area to be the most dangerous individual known.”<sup>381</sup> Notwithstanding this belief, the FBI failed to inform local law enforcement of Barboza’s presence in Santa Rosa.<sup>382</sup>

Once settled in California, Barboza began making trips back to Massachusetts in violation of the terms of his parole.<sup>383</sup> During these trips, Barboza negotiated with the mafia to recant his testimony in the Deegan trial in return for money.<sup>384</sup> In May of 1970, Barboza met with an associate of New England Mafia boss Raymond L. S. Patriarca in Massachusetts. Barboza told Patriarca’s associate that he would recant his testimony in exchange for \$500,000 and the legal services of F. Lee Bailey.<sup>385</sup>

In July of 1970, Barboza met with Bailey in New Bedford, Massachusetts.<sup>386</sup> At this meeting, Barboza told Bailey that Henry Tameleo, Joe Salvati, Peter Limone, and Louie Greco were innocent of the Deegan murder.<sup>387</sup> Furthermore, Barboza told Bailey that his testimony in the Patriarca case was largely fabricated and that FBI Agents H. Paul Rico and Dennis Condon assisted him with the fabrication.<sup>388</sup> In light of these allegations, Bailey demanded that Barboza submit to a lie detector test.<sup>389</sup>

Before Bailey could begin documenting Barboza’s perjured testimony, Barboza was arrested on July 17, 1970, in New Bedford, Massachusetts, and imprisoned on firearm and narcotics charges.<sup>390</sup> Once the Massachusetts Parole Board learned of his arrest, Barboza’s parole was revoked based on a provision of his parole that prohibited him from ever returning to Massachusetts.<sup>391</sup> On July 20, 1970, District Attorney Edmund Dinis dropped the firearms and narcotics charges purportedly due to constitutional problems arising because Barboza had no

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<sup>381</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (June 20, 1967) (Exhibit 141). According to Vincent Teresa, Barboza was “dangerous. He was unpredictable. When he tasted blood, everyone in his way got it.” VINCENT TERESA, *MY LIFE IN THE MAFIA* 167 (Doubleday & Company, Inc. 1973).

<sup>382</sup> “The California Murder Trial of Joe ‘The Animal’ Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 40 (Feb. 13, 2002) (testimony of Ed Cameron and Tim Brown).

<sup>383</sup> One of the conditions of Barboza’s parole was that he not return to Massachusetts. See Edward Counihan, *Informer Baron Arrested, Parole Revoked*, BOSTON GLOBE, July 18, 1970 (Exhibit 316).

<sup>384</sup> Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 7, 1971) at 192 (cross-examination of Joseph [Barboza]) (Exhibit 433). Another alleged reason for Barboza’s return to Massachusetts concerned his apparent attempts to sell bonds or stock certificates that were stolen in California.

<sup>385</sup> *Id.* at 196-97; Interview with James Southwood, former reporter, BOSTON HERALD TRAVELER (Sept. 28, 2001).

<sup>386</sup> “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 122 (May 3, 2001) (testimony of F. Lee Bailey); see also Affidavit of Francis Lee Bailey (Oct. 16, 1978) (Exhibit 668).

<sup>387</sup> “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 122 (May 3, 2001) (testimony of F. Lee Bailey); see also Affidavit of Francis Lee Bailey (Oct. 16, 1978) (Exhibit 668).

<sup>388</sup> “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 122-23 (May 3, 2001) (testimony of F. Lee Bailey).

<sup>389</sup> *Id.* at 123.

<sup>390</sup> *Baron Seized, Held on Arms, Pot Charges*, BOSTON GLOBE, July 17, 1970 (Exhibit 316).

<sup>391</sup> *Id.*

legal representation at his arraignment.<sup>392</sup> However, according to Dinis, federal authorities had contacted him before he dropped the charges, stating that they “were concerned with [Barboza’s] welfare” and that “[h]e [Barboza] ha[d] been most cooperative with them and given them vital testimony.”<sup>393</sup> After the firearm and narcotics charges were dropped, Barboza was imprisoned in Massachusetts’ Walpole State Prison where he was held pending charges for his parole violation.<sup>394</sup>

Barboza’s arrest prompted FBI Director Hoover’s office to relay the following information to Attorney General John Mitchell:

Without the knowledge of the Strike Force, Barboza returned to New Bedford, Massachusetts, and was arrested by the New Bedford Police Department[.]

\* \* \*

On July 20, 1970, the charges against Barboza were nol-prossed by the District Attorney’s Office in that Barboza’s rights had been violated as he was not represented by counsel.

\* \* \*

Our Boston office has advised that the Strike Force in Boston and the District Attorney’s Office, Suffolk County, are attempting to have Barboza transferred from the Massachusetts Correctional Institution because his life could be in danger from other inmates.

This matter will be followed and you will be advised of additional pertinent information.<sup>395</sup>

Though FBI Director Hoover’s statement that Barboza returned to Massachusetts without the knowledge of the Strike Force may have been true, FBI agents certainly knew that Barboza had been traveling to Massachusetts in violation of his parole terms. For example, in February 1970, FBI Special Agent Paul Rico warned Barboza to leave Massachusetts because of threats against his life.<sup>396</sup>

Despite Barboza’s arrest, F. Lee Bailey continued to extract information from Barboza concerning his testimony in the Deegan trial. On July 28, 1970, Barboza signed an affidavit stating, “I wish to recant certain portions of my testimony during the course of the above-said

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<sup>392</sup> Edward Counihan, *Charges Against Baron Dropped*, BOSTON GLOBE, July 20, 1970 (Exhibit 317).

<sup>393</sup> *Id.*

<sup>394</sup> Edward Counihan, *Court Asked to Release Baron from Walpole*, BOSTON GLOBE, Aug. 11, 1970 (Exhibit 325).

<sup>395</sup> Letter from J. Edgar Hoover, Director, FBI, to John Mitchell, Attorney General, U.S. Dept. of Justice (July 22, 1970) (Exhibit 320).

<sup>396</sup> Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James F. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Nov. 29, 1971) (Exhibit 426).

trial [*Commonwealth v. French*] insofar as my testimony concerned the involvement of Henry Tameleo, Peter J. Limone, Joseph L. Salvati and Lewis [sic] Grieco [sic] in the killing of Teddy Deegan.”<sup>397</sup> Bailey, attempting to buttress the credibility of Barboza’s affidavit, scheduled a lie-detector test for Barboza.<sup>398</sup> In the meantime, Barboza began giving Bailey details of the Deegan murder and the circumstances surrounding his recantation. Bailey memorialized this information in a memorandum to Deegan defense attorney Joseph Balliro:

As you recall, when I met with [Barboza] at his request in New Bedford, he stated that he had felt for some time that he should make a direct effort to right the injustice which his testimony had caused. He indicated that he had been assured all along that (especially in the murder cases) a conviction was unlikely, and after the conviction occurred he was told to expect that due to trial errors the Supreme Court would reverse the cases, and of course there would never be a re-trial; therefore, no permanent harm would be done to anyone whereas the government would have accomplished its primary objection: much publicity about prosecuting organized crime.

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Nonetheless, after many hours of conversation with [Barboza] at Walpole I am convinced that I have most of the details of what actually took place.

\* \* \*

It appears that Mr. French did in fact shoot Deegan, that Mr. Cassesso was present with [Barboza] in the car and conspired to kill Stathopoulos but was not involved in the Deegan killing, and that Salvati and Greco were not present at all. Further, Tameleo [sic] and Lemone [sic] had nothing to do with arranging Deegan’s murder nor had they any reason to believe that it was going to occur. The person sitting in the rear of the automobile which the Chelsea Police Captain saw was in fact bald and was Vincent Felemi [sic]. Romeo Martin in fact shot Deegan but the role

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<sup>397</sup> Affidavit of Joseph Baron (July 28, 1970) (Exhibit 321). On August 3, 1970, Edward Harrington, Deputy Chief of the Strike Force, met with Suffolk County District Attorney Garrett Byrne and Jack Zalkind, the prosecutor of the Deegan case, to discuss “the affidavit signed by Joseph Barboza Baron and filed in connection with the motion for a new trial on the Deegan murder case.” FBI Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Aug. 3, 1970) (Exhibit 323). At the meeting, Byrne told Harrington that Barboza’s affidavit was insufficient to warrant a hearing because it contained only a general statement. *Id.*

<sup>398</sup> “The FBI’s Controversial Handling of Organized Crime Investigations in Boston: The Case of Joseph Salvati,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 123 (May 3, 2001) (testimony of F. Lee Bailey); *see also* Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

ascribed to Greco as the third assailant of Deegan in fact involved another man whose last name begins with "C" as you had earlier suggested to me.<sup>399</sup>

Barboza told authorities that he was recanting his testimony in exchange for payment from the mafia. Yet, the information Barboza divulged to Bailey regarding the Deegan murder was more consistent with police reports on the murder, information received from informants, and information the FBI received independent of Barboza, both before and after the murder, than it was with Barboza's testimony at the Deegan trial.

Barboza's arrest, however, presented the immediate problem of a potential prison sentence. On August 20, 1970, Barboza was charged with violating his parole, which carried a four to five year prison sentence. Five days later, on August 25, 1970, Bailey petitioned the court to allow Barboza to take a lie detector test.<sup>400</sup> That same day, Walter Barnes, Special Attorney of the Organized Crime and Racketeering Section, was told that Barboza requested a meeting.<sup>401</sup> Barnes and his colleague, Edward Harrington, met with Barboza at Walpole State Prison on August 28, 1970. Barnes and Harrington's memorandum of the meeting states that Barboza:

Requested Barnes and Harrington to relocate his wife and family from California in light of the fact that their whereabouts had become public knowledge, having been disclosed by his counsel, F. Lee Bailey, at a prior court proceeding. Barnes and Harrington did not make any response to this request. [Barboza] also requested that his probation revocation warrant be withdrawn. Barnes and Harrington advised [Barboza] that they had no control over the Massachusetts Parole Board and that they could make no promises in this regard.

\* \* \*

[Barboza] stated that it was his original intention to inveigle members of the underworld into giving him money on the pretext that he would recant his testimony given in previous trials and that, when he received the money, he would leave the area without recanting;

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<sup>399</sup> Memorandum from Lee Bailey to Joe Balliro (Aug. 27, 1970) (Exhibit 328).

<sup>400</sup> Edward Counihan, *Hearing on Barboza Test Continued, Starts Row*, BOSTON GLOBE, Aug. 25, 1970 (Exhibit 326).

<sup>401</sup> Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (Aug. 25, 1970) (Exhibit 327). The memorandum states that Barboza wanted FBI Special Agent Dennis Condon to attend the meeting but that "Condon will not see Barboza;" see also Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

[Barboza] also stated that his counsel, F. Lee Bailey, "made him sign the affidavit" and that "they" have sent his wife money in return for his signing the affidavits[.]

\* \* \*

[Barboza] also advised that his testimony in the Deegan case was truthful and that he had signed the affidavits only for money; that he is not going to take the lie-detector test on August 31, 1970, for he feels that once he has taken the test Bailey will have no further use for him and that his life will be in danger; that he will tell Bailey that he had spoken with Barnes and Harrington merely to tell them that, if they were going to pressure him by initiating criminal charges, he would open up a "Pandora's box."

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Barnes and Harrington told [Barboza] that they would and could make no promises to him but that they would merely pass the results of their conversation on to [Suffolk County] District Attorney Garrett Byrne, which was done by Harrington at approximately 3:30 P.M. on August 28, 1970.<sup>402</sup>

According to both this memorandum and Harrington's testimony before the Committee, neither Barnes nor Harrington gave Barboza any instructions or guidance about recanting his testimony or taking the lie detector test.<sup>403</sup> In a subsequent letter, however, Barboza appears to be referring to advice that Barnes and Harrington provided on this matter: "Ted, when you [and] Walter came down to see me, you and Walter asked me not to do something and I didn't. How long can the little money I bled out of those creeps last, what'll happen to my wife and babies then?"<sup>404</sup>

Barboza also told Barnes and Harrington that F. Lee Bailey "made him sign the affidavit."<sup>405</sup> However, when Barboza was prosecuted for murder the following year, the prosecutor asked Barboza whether the affidavit was truthful, and Barboza replied, "It wasn't clearly understood by me."<sup>406</sup>

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<sup>402</sup> Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

<sup>403</sup> *Id.*; see also "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 191-92 (Feb. 14, 2002) (testimony of Judge Edward Harrington).

<sup>404</sup> Letter from Joseph Barboza to Edward Harrington, Special Attorney, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Sept. 28, 1970) (Exhibit 342).

<sup>405</sup> Memorandum from Walter T. Barnes and Edward F. Harrington, Special Attorneys, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Aug. 28, 1970) (Exhibit 330).

<sup>406</sup> Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 8, 1971) at 276 (cross-examination of Joseph Barboza) (Exhibit 433).

The Suffolk County District Attorney's Office had its own reasons for wanting to keep Barboza in custody. In August 1970, Henry Tameleo, Ronnie Cassesso, Peter Limone, and Louis Greco filed motions for new trials.<sup>407</sup> According to the FBI, the Suffolk County District Attorney planned to delay any proceedings against Barboza for violating his parole to ensure Barboza's presence in case the Deegan defendants were granted new trials.<sup>408</sup> Thus, Barboza's fate would remain uncertain until the motions by the Deegan defendants were settled. The FBI's detailed understanding of what was happening to the Deegan defendants also indicates that the Deegan murder prosecution was a great deal more important than former Justice Department officials have depicted it to be.

During this time, Barboza was in contact with both organized crime figures and federal authorities about recanting his testimony in the Deegan murder trial. Barboza had two choices: either he could recant his testimony and possibly receive money from the mafia, or he could reassert his trial testimony and possibly avoid jail. Before he made his decision, law enforcement learned that Barboza had committed a murder in California while in the Witness Protection Program.

## ii. The Murder of Clay Wilson

In October 1970, the Santa Rosa Police Department received letters from William Geraway and Lawrence Woods, two inmates in Walpole State Prison in Massachusetts, stating that Joe Barboza had committed a murder in California.<sup>409</sup> Geraway had occupied the prison cell next to Barboza. A letter sent by Geraway and received by the Santa Rosa Police Department on October 1, 1970, claimed that Barboza had described in extensive detail how he murdered an individual in the first week of July 1970.<sup>410</sup> Based on Geraway and Wood's letters and the disappearance of a man named Clay Wilson, Sonoma County law enforcement personnel began an investigation.<sup>411</sup>

From the outset, the seasoned, veteran investigators from Sonoma County were not comfortable working with the FBI in the Wilson murder investigation. Ed Cameron, Investigator

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<sup>407</sup> *Limone Files Appeal of Deegan Slay Conviction*, BOSTON GLOBE, July 30, 1970; *Appeals for 4<sup>th</sup> in Slaying*, BOSTON GLOBE, Aug. 18, 1970.

<sup>408</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Sept. 21, 1970) (Exhibit 341).

<sup>409</sup> See Affidavit of Edwin F. Cameron (Oct. 13, 1970) (Exhibit 343).

<sup>410</sup> See Memorandum from Dennis M. Condon, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Oct. 5, 1970) (Exhibit 345).

<sup>411</sup> While everyone involved with Geraway stated that his credibility was questionable, Geraway provided very precise details about the Wilson murder that the police were able to corroborate. See Letter from Tim R. Brown, Detective Sergeant, Sonoma County Sheriff's Office, to William R. Geraway (Jan. 14, 1972) (Exhibit 454). Geraway told the authorities that Wilson was shot in the head, bound, and buried in a shallow grave. *Id.* He also provided the names of two female witnesses to the murder, the location of the witnesses' residence, a description of their vehicles, and the names of one of the witness' children and pets. *Id.* Lawrence Wood later denied that Barboza told him details of the murder and said he learned the details only from Geraway.



for the Sonoma County District Attorney's Office, stated that the FBI was not forthcoming with information about Barboza at the outset of their investigation.<sup>412</sup>

Although not officially involved in the Wilson murder investigation, the FBI followed the investigation intently. On October 5, 1970, the San Francisco office informed FBI Special Agent Dennis Condon of Geraway's letter to the Santa Rosa police.<sup>413</sup> Condon relayed this information to the Special Agent in Charge of the Boston office,<sup>414</sup> who then passed the information on to FBI Director Hoover that same day.<sup>415</sup> The San Francisco office informed the Boston office and Director Hoover that it was "closely following [the Wilson] matter with local authorities."<sup>416</sup> The Boston office requested that the San Francisco office apprise both Boston and FBI headquarters of all developments in the Wilson case.<sup>417</sup> A memo from FBI Director Hoover then instructed the Boston and San Francisco offices to advise headquarters of the status of any prosecutions pending against Barboza.<sup>418</sup>

Sonoma County Investigator Ed Cameron traveled to Boston to learn more about Barboza and to interview William Geraway. Cameron met with FBI Special Agent Dennis Condon for a briefing on Barboza, but Condon provided only publicly available information.<sup>419</sup> Cameron received more assistance and information from John Reagan of the Massachusetts State Police than from the FBI, which had harbored Barboza for the past four years.<sup>420</sup> Cameron, who spent fifteen years in law enforcement as a police officer and then as an investigator with the District Attorney's Office, said that he had a bad feeling about the FBI in this case and was baffled as to why another law enforcement agency would not assist his investigation.<sup>421</sup> In fact, Cameron's intuition about the FBI's malfeasance led him to take special precautions to determine whether someone was tampering with papers left in his hotel room.<sup>422</sup> Although he did not know who was responsible, he told the Committee that he believed his briefcase was searched at a time

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<sup>412</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 37-39 (Feb 13, 2002) (testimony of Ed Cameron); see also Interview with Tim Brown, former Detective Sergeant, Sonoma County Sheriff's Office (Aug. 30, 2001).

<sup>413</sup> Memorandum from Dennis M. Condon, Special Agent, Boston FBI Field Office, to Special Agent in Charge, Boston FBI Field Office (Oct. 5, 1970) (Exhibit 345).

<sup>414</sup> *Id.*

<sup>415</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Oct. 5, 1970) (Exhibit 344).

<sup>416</sup> Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Oct. 13, 1970) (Exhibit 352).

<sup>417</sup> Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI, and San Francisco FBI Field Office (Oct. 15, 1970) (Exhibit 355).

<sup>418</sup> Memorandum from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office (Dec. 23, 1970) (Exhibit 373).

<sup>419</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 37 (Feb. 13, 2002) (testimony of Edwin Cameron).

<sup>420</sup> *Id.*

<sup>421</sup> *Id.*

<sup>422</sup> *Id.* at 34.

when it was supposed to be securely locked in his room.<sup>423</sup> Cameron's FBI contacts were Special Agents Rico and Condon.<sup>424</sup>

After returning to California, Cameron met with the prosecution team to discuss the status of the investigation. The team decided that Cameron should call Agent Condon to request records on Barboza. Cameron placed numerous telephone calls to Condon requesting the records, but Condon never returned his calls or produced the records.<sup>425</sup>

In the meantime, Detective Sergeant Tim Brown pursued the Barboza investigation for the Sonoma County Sheriff's Office. Prior to the discovery of the Wilson murder, Brown had routine contacts with FBI Special Agent Doug Ahlstrom of the Santa Rosa FBI Office. Agent Ahlstrom apparently became concerned after the sheriff's office received the letters from the two inmates regarding the Wilson murder. According to the police report on the murder, Agent Ahlstrom accompanied Detective Sergeant Brown to the home of the two eyewitnesses, Paulette Ramos and Clay Wilson's wife, Dee Wilson.<sup>426</sup> Ahlstrom denied to Committee investigators that he went to the house in connection with the Wilson murder investigation, saying it concerned an unrelated matter.<sup>427</sup>

Law enforcement in Sonoma County was quickly able to corroborate the details provided by the inmates' letters. On October 12, 1970, investigators discovered Clay Wilson's body exactly where Geraway said it would be located.<sup>428</sup> Over the next several days, the FBI learned that both eyewitnesses, Dee Wilson and Paulette Ramos, told local authorities that they saw Barboza shoot Wilson.<sup>429</sup> Barboza was charged with first degree murder, a charge carrying a possible death penalty in California. He was then turned over to California authorities in late February 1971<sup>430</sup> and entered a plea of not guilty on March 1, 1971.<sup>431</sup>

Once Barboza was in the custody of Sonoma County law enforcement, Detective Sergeant Brown began meeting with Agent Ahlstrom several times a week to discuss any developments. One reason for their continual contacts was the fact that Brown began to surreptitiously record Barboza's conversations with visitors to his prison cell upon learning that a known bookmaker named Theodore Sharliss, also known as Jimmy Chalmis, was frequently

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<sup>423</sup> *Id.*

<sup>424</sup> *Id.* at 33.

<sup>425</sup> *Id.* at 39.

<sup>426</sup> Sonoma County Sheriff's Office Police Report on the Murder of Clayton Rickey Wilson (Oct. 22, 1970) (Exhibit 358).

<sup>427</sup> Interview with Doug Ahlstrom, former Special Agent, Santa Rosa FBI Field Office (Aug. 28, 2001).

<sup>428</sup> Letter from Tim R. Brown, Detective Sergeant, Sonoma County Sheriff's Office, to William R. Geraway (Jan. 14, 1972) (Exhibit 454); Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI (Oct. 13, 1970) (Exhibit 352).

<sup>429</sup> *Id.*; Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Oct. 16, 1970) (Exhibit 357).

<sup>430</sup> Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Feb. 23, 1971) (Exhibit 379).

<sup>431</sup> *Baron Pleads Not Guilty*, Mar. 1, 1971 (Exhibit 382)(newspaper source illegible).

visiting Barboza.<sup>432</sup> Whenever the recordings yielded information Brown thought would be of interest to the FBI, he made a cassette tape of the relevant portion and gave it to Agent Ahlstrom.<sup>433</sup> In fact, Brown stated that one of the tapes helped solve a murder in Las Vegas.<sup>434</sup>

Even though Sonoma County investigators shared information on the investigation with the FBI, the FBI failed to reciprocate and assist Sonoma County. Three or four months prior to the commencement of Barboza's trial, Brown was told that three individuals were coming from the East Coast to kill the two witnesses to the Wilson murder.<sup>435</sup> Brown reached out to the FBI to identify the potential killers, but he received no response.<sup>436</sup> Instead, non-FBI sources gave Brown the name of a Boston attorney who in turn provided the names of the assassins sent to the West Coast.<sup>437</sup> Brown told the Committee that he was worried his two eyewitnesses would be murdered, yet federal law enforcement officials refused to provide assistance.<sup>438</sup>

Eventually, Agent Ahlstrom began to give Detective Sergeant Brown some information. Agent Ahlstrom informed Brown that three federal officials would testify on Barboza's behalf.<sup>439</sup> Brown believed that Agent Ahlstrom was unhappy with the fact that the federal officials were going to assist Barboza.<sup>440</sup> Through their constant contact, Brown learned more about Barboza from Agent Ahlstrom than from any other source.<sup>441</sup>

Before Barboza was extradited to California in late February 1971, he extracted a promise from Edward Harrington, Attorney-in-Charge of the Organized Crime and Racketeering Section in Boston. In a letter to Harrington on March 7, 1971, Barboza stated, "You promised me you'd be down two weeks after I left. . . . [P]lease come down like you promised me, this can throw my case wide open[.]"<sup>442</sup> Harrington did indeed visit Barboza in his California prison cell, and he explained his visit in a memorandum to his superior, James Featherstone:

Government witnesses John J. Kelley and Vincent C. Teresa have advised the writer that the reason that they decided to cooperate with the government was the government's treatment of [Barboza]

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<sup>432</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 54 (Feb. 13, 2002) (testimony of Tim Brown).

<sup>433</sup> *Id.* at 55. The Committee was unable to obtain any of the tapes of the visits to Barboza either from the Sonoma County Sheriff's Office or the FBI.

<sup>434</sup> *Id.* at 54.

<sup>435</sup> *Id.* at 48, 89. Brown believes that this information was provided to him by William Geraway. *Id.*

<sup>436</sup> *Id.* at 89.

<sup>437</sup> *Id.* at 48, 89. Brown believes that this information was provided to him by William Geraway. *Id.* Although the police tracked the alleged killers to their last known address in California, the men were never apprehended. The two witnesses were unharmed.

<sup>438</sup> *Id.* at 89.

<sup>439</sup> *Id.* at 49.

<sup>440</sup> *Id.*

<sup>441</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 43 (Feb. 13, 2002) (testimony of Tim Brown).

<sup>442</sup> Letter from Joe Barboza to Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Mar. 7, 1971) (Exhibit 385).

while he was in protective custody and because the government fulfilled their obligations to him.

\* \* \*

In keeping with the government's obligation to [Barboza], I have assured [Barboza] that this office would take all proper steps to insure that he receives a fair and impartial trial on his pending murder charge. This obligation must be kept in view of the fact that many law enforcement officials in the Boston area consider that the pending murder charge has been concocted by the underworld as a means of retaliating against [Barboza].

\* \* \*

This trip to confer with [Barboza] is important to the interests of the government in that it is a fulfillment of this office's commitments to do all within its power to insure that [Barboza] suffers no harm as a result of his cooperation with the federal government.

The writer will do nothing to attempt to dissuade the prosecution from bringing its case but will alert them of the possibility that the murder is a Mafia frame. The fulfillment of this obligation is also in the practical interests of the government as [Barboza] may otherwise determine that the government has failed him in his time of need and, it is my judgment, that he will then retaliate against the government by submitting false affidavits to the effect that his testimony in the Patriarca and Deegan cases was in fact false, and thus tarnish those most significant prosecutions.<sup>443</sup>

Harrington visited Barboza in California on March 25, 1971, and Barboza told Harrington that he had indeed killed Wilson and was not being framed by the Mafia.<sup>444</sup> Barboza told Harrington that he shot Wilson in self-defense.<sup>445</sup> However, Harrington admitted before the Committee that he was not convinced by Barboza's claim of self defense:

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<sup>443</sup> Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 23, 1971) (Exhibit 386).

<sup>444</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 163-64 (Feb. 14, 2002) (testimony of Judge Edward Harrington); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

<sup>445</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 164 (Feb. 14, 2002) (testimony of Judge Edward Harrington).

Judge Harrington: Well, I have to reconstruct it. But in essence, I wanted to find out whether he was framed or was he involved in it.

Mr. Tierney: So he told you he was involved in it, he was guilty, right?

Judge Harrington: No. He told me that it was self-defense.

Mr. Tierney: But then you became familiar with the circumstances of the case and you did not believe that for a second.

Judge Harrington: It was irrelevant. I was out there –

Mr. Tierney: Please, Judge. You did not believe it. You are a seasoned attorney at that time, you did not believe that at all, right?

Judge Harrington: Well, if forced to answer, I would say I would have thought that he killed him.<sup>446</sup>

Barboza's admission that he shot Wilson and was not being framed by the Mafia still did not prevent the Justice Department and the FBI from continuing to assist him. Upon his return from California, Harrington again wrote his boss, Deputy Chief of the Organized Crime and Racketeering Section James Featherstone, to report on the results of his trip.<sup>447</sup> Harrington stated that he met with Sonoma County District Attorney Kiernan Hyland and assured him that the Justice Department was not attempting to interfere with the prosecution.<sup>448</sup> Rather, the Justice Department was merely fulfilling its promise to Barboza to inform the Sonoma County District Attorney's Office of the possibility that the Mafia framed Barboza for the Wilson murder.<sup>449</sup> Remarkably, in the same memorandum, Harrington stated that he told Barboza's defense attorney, Marteen Miller, that FBI Agents Rico and Condon, along with John Doyle, Chief Investigator for the Suffolk County District Attorney's Office, were "available to testify on behalf of [Barboza], if subpoenaed, as they possess information which would tend to discredit the veracity of prospective state witnesses Geraway and Wood."<sup>450</sup>

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<sup>446</sup> *Id.* at 163-64.

<sup>447</sup> Memorandum from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 31, 1971) (Exhibit 392).

<sup>448</sup> *Id.*

<sup>449</sup> *Id.*

<sup>450</sup> *Id.* At the end of the memorandum to Featherstone, Harrington said that Barboza told him that the "underworld" would take no steps to try to overturn the Deegan murder convictions until Barboza was found guilty of the Wilson murder. At that time, the underworld would then offer him the money he would need to support his family from prison in return for affidavits disavowing his testimony in the Deegan trial. However, it should be noted that Barboza began negotiating with the underworld to change his testimony, including executing an affidavit renouncing certain portions of his testimony, before the Wilson murder was ever discovered.

As Harrington stated in his memorandum, he met with District Attorney Hyland.<sup>451</sup> Yet, the meeting was apparently more eventful than Harrington recalled. Hyland requested to meet with Harrington after learning from jail officials that Harrington had visited Barboza.<sup>452</sup> According to Cameron, who attended the brief meeting, Hyland was angry that a prominent Justice Department official would visit a prisoner without telling the district attorney the purpose of his visit.<sup>453</sup> Thereafter, the prosecutors prevented federal officials from having any more clandestine visits with Barboza.<sup>454</sup>

In the same memorandum in which Harrington reported that the Justice Department would not interfere with Barboza's prosecution, Harrington explicitly stated that the Justice Department, the FBI, and the Suffolk County District Attorney's Office would be available to undermine the only two witnesses who were able to speak about Barboza's confession to the Wilson murder.<sup>455</sup> Harrington's statement that they should ensure that Barboza "suffers no harm as a result of his cooperation with the federal government"<sup>456</sup> appears to be an accurate description of the Justice Department's actions, and the fact that federal law enforcement personnel were preparing to undermine a California murder prosecution appears to have been a matter of no concern.

### iii. The Clay Wilson Murder Trial in California

Barboza's first degree murder trial began on October 19, 1971. At the beginning of the trial, Marteen Miller, Barboza's defense attorney, stated his intention to call Strike Force Attorney Edward Harrington and FBI Agents H. Paul Rico and Dennis Condon as witnesses for Barboza.<sup>457</sup> Kiernan Hyland, the Sonoma County District Attorney, upset that federal officials were being called to testify on Barboza's behalf, sent letters to FBI Director J. Edgar Hoover and Attorney General John Mitchell arguing:

[The intention of the defense to call Harrington, Rico, and Condon] is disconcerting for the prosecution because it presents a picture of a house divided against itself. The murder for which we are prosecuting [Barboza] has nothing to do with his Mafia

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<sup>451</sup> *Id.*

<sup>452</sup> Letter from Kiernan Hyland, District Attorney, Sonoma County, to J. Edgar Hoover, Director, FBI (Oct. 26, 1971) (Exhibit 418); Letter from Kiernan Hyland, District Attorney, Sonoma County, to John Mitchell, Attorney General, U.S. Dept. of Justice (Oct. 26, 1971) (Exhibit 419).

<sup>453</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 55 (Feb. 13, 2002) (testimony of Ed Cameron).

<sup>454</sup> *Id.*

<sup>455</sup> Memorandum from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 31, 1971) (Exhibit 392).

<sup>456</sup> Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 23, 1971) (Exhibit 386).

<sup>457</sup> Bony Saludes, *The Defense Strategy: Mafia Planned to Kill Baron*, PRESS DEMOCRAT, Oct. 24, 1971 (Exhibit 417).

connections. When and if [Mr. Harrington and the FBI agents testify as defense witnesses], it would be appreciated [if they] would do me the courtesy of contacting me first and allowing me to interview [them] concerning [their] possible testimony.<sup>458</sup>

Harrington wrote another memorandum to James Featherstone in late November 1971, outlining the proposed testimony of Agent Rico, Agent Condon, and himself.<sup>459</sup> According to Harrington, he would say that Barboza had testified against underworld figures in state and federal trials, was placed in protective custody and relocated to California under an assumed name, and wanted to carry a gun but his request was denied.<sup>460</sup> Harrington stated that Agents Rico and Condon would testify that the Mafia both in Massachusetts and California had threatened Barboza's life and that William Geraway was known to be a liar.<sup>461</sup>

On November 17, 1971, FBI Director Hoover's office informed the Boston and Miami offices that Special Agents Condon and Rico were to comply with subpoenas demanding their appearance at the Wilson trial in California.<sup>462</sup> On December 2, 1971, the Attorney General gave Special Agents Rico and Condon authority to testify in the Clay Wilson murder trial. This authority, however, was limited to testifying about threats made in Massachusetts and California on Barboza's life.<sup>463</sup> The Attorney General's letters to the agents also contained the following prohibition: "You may not disclose any other information or produce any material acquired as a result of your official duties or because of your official status[.]"<sup>464</sup> On the same day, the Attorney General authorized Harrington to testify in the Wilson case regarding Barboza's testimony against individuals in the Mafia, his protective custody, his relocation with an assumed name, his entry into a cooking school, and Harrington's denial of Barboza's request to carry a

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<sup>458</sup> Letter from Kiernan Hyland, District Attorney, Sonoma County, to J. Edgar Hoover, Director, FBI (Oct. 26, 1971) (Exhibit 418); Letter from Kiernan Hyland, District Attorney, Sonoma County, to John Mitchell, Attorney General, U.S. Dept. of Justice (Oct. 26, 1971) (Exhibit 419).

<sup>459</sup> Memorandum from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James F. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Nov. 29, 1971) (Exhibit 426).

<sup>460</sup> *Id.* The alleged request by Barboza to carry a gun because his life was in danger would have bolstered the defense's argument that Barboza shot Wilson in self-defense.

<sup>461</sup> *Id.* In the memorandum, Harrington stated that Agent Rico told Barboza on February 3, 1970, that he should leave Massachusetts because the Mafia knew he was in Massachusetts and two individuals were going to kill him. The problem with this admission by Harrington was that Barboza's presence in Massachusetts was a direct violation of his parole agreement with the state, which required that Barboza not return to Massachusetts. Thus, the Justice Department knew that Barboza was violating the terms of his parole. There is no indication that this was made known to state authorities. In July of 1970, Barboza was arrested in New Bedford, Massachusetts, on firearm and narcotics charges. The charges were dropped, but Barboza was held because his parole had been revoked for re-entering Massachusetts.

<sup>462</sup> Teletype from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office, and Special Agent in Charge, Miami FBI Field Office (Nov. 17, 1971) (Exhibit 423).

<sup>463</sup> Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to H. Paul Rico, Special Agent, Miami FBI Field Office (Dec. 2, 1971) (Exhibit 429); Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to Dennis Condon, Special Agent, Boston FBI Field Office (Dec. 2, 1971) (Exhibit 430).

<sup>464</sup> *Id.* Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to H. Paul Rico, Special Agent, Miami FBI Field Office (Dec. 2, 1971) (Exhibit 429).

gun.<sup>465</sup> The Attorney General's letter to Harrington carried the same restriction as the letters to the FBI agents.<sup>466</sup>

Harrington and Condon both told the Committee that they appeared as witnesses for Barboza because they received subpoenas, implying that they had no choice in the matter.<sup>467</sup> While it is true that the three federal officials were subpoenaed to testify on Barboza's behalf, it was disingenuous to state that they were forced to appear because of the subpoenas because Harrington had previously volunteered their services to Barboza's defense attorney.<sup>468</sup> Furthermore, it is inconceivable that the defense would have called federal law enforcement officials unless the defense was certain that the officials would not harm the defendant on either direct questioning or cross-examination. According to Barboza's attorney, the FBI had agreed to testify in support of Barboza.<sup>469</sup>

During the trial, Lieutenant Ed Maybrun of the Sonoma County Sheriff's Office received a telephone call from Lawrence W. Brown of New Bedford, Massachusetts, who said he read in the newspaper about some items the sheriff's office was seeking for the Barboza trial.<sup>470</sup> According to Lieutenant Maybrun, Lawrence Brown, also known as Lawrence Hughes, stated that he had received some bonds or stock certificates from Barboza and he wished to speak to someone handling the Barboza case.<sup>471</sup> The issue of the stolen bonds or stock certificates was important to the prosecution's contention that Barboza murdered Wilson over the stolen bonds and not in self-defense. The prosecutors, therefore, called Lawrence Hughes to testify at the Barboza trial about the stolen bonds he received from Barboza.<sup>472</sup> Hughes, who was already known by the FBI, had become an obstacle in the federal government's attempt to help Barboza.

Lawrence Hughes's injection into the Barboza murder trial revealed the lengths to which the Justice Department and the FBI would go in order to help Barboza. When the prosecutor informed federal officials that Hughes was being called as a witness against Barboza, the San

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<sup>465</sup> Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 2, 1971) (Exhibit 431).

<sup>466</sup> *Id.*

<sup>467</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 137-38 (Feb 14, 2002) (testimony of Judge Edward Harrington); Deposition of Dennis M. Condon, former Special Agent, Boston FBI Field Office (Feb. 21, 2002) at 107.

<sup>468</sup> See Memorandum from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to James J. Featherstone, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Mar. 31, 1971) (Exhibit 392).

<sup>469</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 33 (Feb 13, 2002) (testimony of Marteen Miller).

<sup>470</sup> Sonoma County Sheriff Police Report on the Murder of Clayton Rickey Wilson (Nov. 21, 1971) (Exhibit 425). Lawrence W. Brown was actually Lawrence Hughes. The information given to Lt. Maybrun was consistent with Lawrence Hughes' testimony in the Clay Wilson murder trial.

<sup>471</sup> *Id.*

<sup>472</sup> Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 1, 1971) at 334 (direct examination of Lawrence Hughes) (Exhibit 427).



Francisco FBI office immediately notified FBI Director Hoover's office.<sup>473</sup> As the teletype revealed, the FBI had known about Hughes since September of 1970 when Hughes contacted the Boston FBI office to inform it of Barboza's meetings in Massachusetts with Mafia representatives to negotiate the recantation of his testimony in the Deegan trial in exchange for money.<sup>474</sup> In fact, after Hughes approached the FBI with information about Barboza's meetings with the Mafia, Edward Harrington wrote a letter to Gerald Shur at the Criminal Division of the Justice Department requesting help for Hughes. The letter stated:

It is requested that employment be procured for Lawrence P. Hughes. Mr. Lawrence P. Hughes . . . has been kept in protective custody by the Suffolk County District Attorney's Office as a potential witness for the last two months. Hughes furnished information relative to a meeting in the woods in the Freetown, Massachusetts area between Joseph [Barboza] and Frank Davis, an associate of Raymond L. S. Patriarca, relative to negotiations for a change of testimony on the part of [Barboza] to release the organized crime figures that he had testified against. . . . Hughes will testify to this in a hearing relating to a motion for a new trial which has been filed by six Cosa Nostra members who had previously been convicted for the first-degree murder of Boston gangster Edward Deegan.<sup>475</sup>

With Hughes's information jeopardizing Barboza's fate, the FBI and the Justice Department sought authorization to expand the scope of Condon's testimony. The Justice Department now wanted to disclose Condon's interview with Hughes in September of 1970 in which Hughes allegedly did not mention Barboza's admission of involvement in Wilson's murder.<sup>476</sup> On December 7, 1971, Attorney General John Mitchell authorized Agent Condon to testify that Hughes did not mention Barboza's involvement with the stolen bonds or the Wilson murder during their interview.<sup>477</sup> Thus, the same FBI and Justice Department officials who thought Hughes was credible enough to testify about Barboza the previous year to keep the Deegan defendants in jail were now going to question his honesty about Barboza.<sup>478</sup>

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<sup>473</sup> Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Dec. 2, 1971) (Exhibit 428). The teletype to Director Hoover noted that both District Attorney Kiernan Hyland and Edward Harrington believed that Hughes had been sent out to California by the Mafia to help get Barboza convicted.  
*Id.*

<sup>474</sup> *Id.*

<sup>475</sup> Letter from Edward Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald Shur, Criminal Division, U.S. Dept. of Justice (Nov. 16, 1970) (Exhibit 366).

<sup>476</sup> Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI, and Boston FBI Field Office (Dec. 2, 1971) (Exhibit 428).

<sup>477</sup> Letter from John Mitchell, Attorney General, U.S. Dept. of Justice, to Dennis Condon, Special Agent, Boston FBI Field Office (Dec. 7, 1971) (Exhibit 437).

<sup>478</sup> Although Agent Condon did testify at the Barboza trial, he was not asked any questions about Lawrence Hughes. Hughes was able to produce some of the bonds or stock certificates at trial. When Barboza testified at his trial, he admitted that he attempted to sell the stolen bonds in Massachusetts.

On the witness stand, the prosecution asked Special Agent Condon if he had any knowledge about Barboza negotiating with the Mafia to change his testimony.<sup>479</sup> Condon, who knew about the negotiations from his interview of Lawrence Hughes, responded, “I respectfully decline to answer on instructions from the Attorney General of the United States.”<sup>480</sup> Thus, when the answer would have harmed Barboza, Agent Condon used the limited authority granted by the Attorney General to refuse to answer.

The three federal officials called as witnesses for Barboza – Strike Force Attorney Edward Harrington, FBI Special Agent H. Paul Rico, and FBI Special Agent Dennis Condon – all testified on December 8, 1971. None of them testified to any of the circumstances surrounding the Wilson murder. Essentially, all three testified about the same matters regarding Barboza: he was a government witness who testified against the Mafia, he was placed in protective custody and relocated, and his life was threatened.

According to Barboza’s attorney, Marteen Miller, the federal officials were not called to speak to the Wilson murder.<sup>481</sup> They were called because “[t]he FBI was held in such esteem that if I could call them as a witness and have them say substantially anything, relevant or not, that would be a point in my favor.”<sup>482</sup>

Miller’s assertion that basically anything the FBI and a highly placed Justice Department official said would be a point in Barboza’s favor was substantiated in testimony before the Committee by Ed Cameron, Investigator for the Sonoma County District Attorney’s Office, who worked on the Wilson case:

Mr. Cameron:

Well, our concern was that, we thought we had a pretty good capital murder case. And we didn’t have the best witnesses in the world, but we had witnesses, and we had evidence. And we had testimony from people who, and all of that. And we got to the end and we’re having FBI agents suddenly appear as almost character witnesses. We had a long talk about what we should do with them as far as attacking them.

And you have to keep in mind, this is in the early 1970’s. The FBI, as far as we were concerned, was pretty sacrosanct. And our feeling was that if they really started getting into it and we knew what was going to happen, they were going to say, we can’t go into that

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<sup>479</sup> Trial Transcript, *California v. Bentley* (Cal. Super. Ct. Dec. 8, 1971) at 303 (cross-examination of FBI Special Agent Dennis Condon) (Exhibit 439).

<sup>480</sup> *Id.*

<sup>481</sup> “The California Murder Trial of Joe ‘The Animal’ Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 33 (Feb. 13, 2002) (testimony of Marteen Miller).

<sup>482</sup> *Id.*

because of this, that and the other thing. Plus they had damaged our case to the point we didn't think the jury was going to convict on a first degree murder case.<sup>483</sup>

Miller concurred with Cameron's assessment of the impact of the testimony by the FBI agents and Harrington in favor of Barboza at the Wilson trial:

Rep. LaTourette: Mr. Miller, do you have an opinion as to . . . whether or not these agents, Mr. Harrington had an impact on the jury?

Mr. Miller: No question they had an impact, sir.<sup>484</sup>

Two days following the testimony of the three federal officials for Barboza, the prosecution decided to start discussing a plea agreement with Barboza's attorney.<sup>485</sup> On December 13, 1971, a plea agreement whereby Barboza pleaded guilty to second-degree murder was entered with the court. Investigator Cameron, Prosecutor Ron Fahey, and Sonoma County District Attorney Kiernan Hyland agreed that the testimony by Harrington, Rico, and Condon had weakened their case to such a point that the prosecution accepted the second-degree murder plea.<sup>486</sup> On December 14, 1971, Barboza was sentenced to prison for five years.<sup>487</sup>

#### iv. Joseph Barboza Returns to Prison

Even while Barboza was serving his prison sentence in California, his contacts with Edward Harrington did not end. Almost immediately, Harrington began helping Barboza plot his course for parole. On January 19, 1972, less than one month after Barboza was sentenced, Harrington wrote to the Correctional Counselor at Barboza's prison stating:

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<sup>483</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 80 (Feb. 13, 2002) (testimony of Ed Cameron).

<sup>484</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 80 (Feb. 13, 2002) (testimony of Marteen Miller).

<sup>485</sup> *Id.*

<sup>486</sup> "The California Murder Trial of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 80 (Feb. 13, 2002) (testimony of Ed Cameron); Interview with Ron Fahey, former Chief Deputy District Attorney, Sonoma County (July 9, 2001).

<sup>487</sup> According to interviews with the judge, prosecutors and other witnesses, the five-year sentence appears to have been routine and not influenced by the Justice Department or the FBI. See Interview with Marteen Miller, former Public Defender, Sonoma County, and Bony Saludes, former reporter, PRESS DEMOCRAT (July 9, 2001); Interview with Ed Cameron, former Investigator, Sonoma County District Attorney's Office (July 10, 2001); Interview with Ron Fahey, former Chief Deputy District Attorney, Sonoma County, and Gary Bricker, former U.S. Marshal (July 9, 2001); Interview with Judge Joseph P. Murphy, Jr. (Aug. 29, 2001) (Judge Joseph Murphy was the presiding judge for the Wilson murder trial.)

It is the United States Government's desire that the State of California place [Barboza] in a constructive correction program designed for his ultimate release as a contributing member of society. . . . The government also requests that [Barboza's] significant contribution to law enforcement in the organized crime field be weighed when his eligibility for parole is considered.<sup>488</sup>

Harrington also informed Barboza that the Justice Department would inform the parole board of Barboza's contribution "to the government's campaign against organized crime."<sup>489</sup>

In the meantime, Barboza kept himself busy in prison by writing a book about his life. Barboza enlisted the aid of Harrington, who told Barboza he would be happy to talk to the author and identify "other individuals who would have background information relating to your career."<sup>490</sup> In addition, Barboza was invited to appear before the Select Committee on Crime in the U.S. House of Representatives to discuss organized crime where he stated that Frank Sinatra was involved in organized crime.<sup>491</sup> John Partington, the U.S. Marshal who led the detail to guard Barboza for three years, told Committee investigators that he later accused Barboza of lying about Sinatra's alleged involvement with organized crime.<sup>492</sup>

In September of 1972, Barboza was transferred from California to the Montana State Prison in Deer Lodge, Montana, to protect his life. While there, Barboza became increasingly concerned about parole. Barboza enlisted the help of Harrington to increase his chances of a favorable decision from the parole board. On June 1, 1973, Harrington wrote the following to the Director of the Parole Board for Montana:

I have been requested by Joseph Bentley, who will appear before the Montana Parole Board on June 26, 1973, to testify as a witness in his behalf.

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[Barboza's] defection from the organized underworld and his decision to become a government witness against his former associates constitutes the single most important factor in the success of the federal government's campaign against organized crime in the New England area. . . . Please advise me if the

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<sup>488</sup> Letter from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Lois Eggers, Correctional Counselor I, California Medical Facility (Jan. 19, 1972) (Exhibit 456).

<sup>489</sup> Letter from Edward F. Harrington, Attorney-in-Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Joe Barboza (June 19, 1972) (Exhibit 480).

<sup>490</sup> Letter from Edward F. Harrington, Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Joe Barboza (May 17, 1972) (Exhibit 469). Harrington's assistance with Barboza's book earned Harrington the dubious honor of having the book dedicated to him.

<sup>491</sup> "Organized Crime in Sports (Racing), Part 2," *Hearing Before the Select Comm. on Crime*, 92d Cong. 752, 755, 763 (May 24, 1972) (testimony of Joseph Barboza)

<sup>492</sup> Interview with John Partington, former U.S. Marshal (Sept. 24, 2001).

appearance of witnesses before the Montana Parole Board is in conformity with your practices.<sup>493</sup>

On July 31, 1973, Barboza received a hearing before the Montana Parole Board. Although the Committee was unable to obtain the hearing records, Barboza revealed part of the proceedings in a letter to Greg Evans, investigator for Barboza's former attorney in California, Marteen Miller:

How can I ever thank you and Marty [Miller] for what you two and Ted H. [Harrington] did for me today. Words can never even begin to express what I feel . . . The parole board said this is the fastest hearing in the History of Montana . . . I didn't even say one word! . . . You, Marty and Ted H. made this all come true. Nobody did I ever owe so much to!<sup>494</sup>

Instead of being paroled, however, Barboza was transferred back to California. Barboza then attempted to contact Harrington, Condon, the Rhode Island Attorney General, and the Superintendent of the Rhode Island State Police to disclose information Barboza claimed he had regarding the murder of Romeo Martin.<sup>495</sup> However, the reactions to Barboza's offer by Harrington and Gerald McDowell, an attorney in the Boston Office of the Organized Crime Strike Force, show that the government had concerns about any additional information provided by Barboza:

Mr. McDowell and Mr. Harrington had previously advised that [Barboza's] credibility as a witness had been seriously diminished by events that have transpired [sic] in regard to him since his testimony in Federal and State Courts in 1968 and this is also the opinion of authorities in the Organized Crime Section of the Justice Department at Washington, D.C. . . . Boston sees no useful purpose in interview of [Barboza] at this time and events referred to by him occurred prior to his testimony in 1968. It is felt that this is another effort on part of [Barboza] to obtain Government support in bid for parole. Strike Force will not consider any future prosecutions based on [Barboza's] testimony.<sup>496</sup>

Although the Justice Department apparently would no longer use Barboza or listen to his information, it was concerned about his welfare. During 1975, media reports stated that the Mafia knew where Barboza was located and that a contract had

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<sup>493</sup> Letter from Edward F. Harrington, former Attorney in Charge, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Robert Miles, Director of the Parole Board, Montana State Prison (June 1, 1973) (Exhibit 566).

<sup>494</sup> Letter from Joseph Barboza to Greg Evans, Investigator, Sonoma County Public Defender's Office (July 31, 1973) (Exhibit 580).

<sup>495</sup> Romeo Martin was killed in July of 1966. There are a number of indications that Barboza murdered his old friend. FBI Report by Thomas Sullivan, Special Agent, Boston FBI Field Office (July 18, 1967) (Exhibit 149); VINCENT TERESA, MY LIFE IN THE MAFIA 117 (Doubleday & Company, Inc. 1973).

<sup>496</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to Clarence Kelley, Director, FBI (Jan. 23, 1974) (Exhibit 594).

been put out for his murder. The Justice Department and the FBI were concerned that the effectiveness of the Witness Protection Act would be adversely affected if Barboza were murdered.<sup>497</sup> Consequently, after serving a mere four years in prison for the Wilson murder, Barboza was “quietly paroled” from the Sierra Conservation Camp in California on October 30, 1975.<sup>498</sup>

On February 11, 1976, Joe Barboza was murdered in San Francisco.<sup>499</sup> Theodore Sharliss, also known as Jimmy Chalmis, a constant companion of Barboza while they were in prison in California, pleaded guilty in January of 1979 to setting up Barboza’s murder.<sup>500</sup> In 1992, Joseph Russo pleaded guilty to murdering Barboza.<sup>501</sup>

## 2. Nevada

There is substantial evidence that the FBI interfered with the Las Vegas Police investigation of the murder of Peter J. Poulos to protect its informants. In this instance, the FBI sought to protect Top Echelon informant Stephen Flemmi from being prosecuted for the Poulos murder.<sup>502</sup>

William Bennett, one of the central figures in Boston’s gang wars of the 1960’s, was fatally shot and thrown from a moving car into a snow bank near Boston on December 23, 1967.<sup>503</sup> He was apparently murdered by Stephen Flemmi and Frank Salemme with the assistance of Robert Daddeico and Peter J. Poulos.<sup>504</sup> A short time thereafter, on January 30, 1968, Flemmi and Salemme planted a bomb in the automobile of Joseph Barboza’s attorney, John E. Fitzgerald. This resulted in the loss of one of Fitzgerald’s legs and part of the other.<sup>505</sup>

In early September 1969, FBI Special Agent H. Paul Rico called Flemmi and warned him that “indictments were coming down” for the William Bennett murder and Fitzgerald

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<sup>497</sup> See Memorandum from Gerald E. McDowell, Chief Attorney, Organized Crime Strike Force, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Sept. 17, 1975) (Exhibit 623); Airtel from Special Agent in Charge, Boston FBI Field Office, to Clarence Kelley, Director, FBI (Sept. 19, 1975) (Exhibit 626).

<sup>498</sup> *Former New England Mafia Figure Paroled*, PRESS DEMOCRAT, Nov. 7, 1975 (Exhibit 628).

<sup>499</sup> *Killer Barboza Slain*, BOSTON HERALD, Feb. 12, 1976 (Exhibit 636).

<sup>500</sup> Teletype from San Francisco FBI Field Office to J. Edgar Hoover, Director, FBI (June 6, 1979) (Exhibit 678).

<sup>501</sup> *Nation Briefly*, ORANGE COUNTY REGISTER, Jan. 23, 1992.

<sup>502</sup> Flemmi began exchanging information with the FBI in the early 1960s, *U.S. v. Salemme*, 91 F. Supp. 2d 141, 176 (D. Mass. 1999), *rev’d in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000), and was targeted as an informant in November 1964. See Office of Professional Responsibility Summary Report (Exhibit 58). He served as an FBI informant for almost 30 years. *Id.*

<sup>503</sup> Interview with Robert Daddeico (Oct. 17-18, 2001); Shelley Murphy, *Playing Both Sides Pays Off*, BOSTON HERALD, Apr. 23, 1993.

<sup>504</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299) (stating that information received from the Boston Police Department indicated that Flemmi and Salemme used Poulos as a “decoy” to get Bennett into a position where he could be killed); Interview with Robert Daddeico (Oct. 17-18, 2001).

<sup>505</sup> “Law enforcement officials said Mr. Fitzgerald was targeted for death because he was the lawyer for a famed Cosa Nostra soldier turned-informer, Joseph Barboza Baron.” Andy Dabilis & Ralph Ranalli, *Mob Lawyer Maimed in ‘68 Dies*, BOSTON GLOBE, July 5, 2001.

bombing.<sup>506</sup> Agent Rico suggested that Flemmi and “his friend,” referring to Salemme, leave town.<sup>507</sup> Flemmi took Rico’s advice and he, Salemme, and Poulos fled together.<sup>508</sup> A few days later, on September 11, 1969, a Suffolk County indictment was returned against Flemmi, Salemme, and Poulos for the Bennett murder.<sup>509</sup> A month later, on October 10, 1969, Flemmi and Salemme were indicted for the Fitzgerald bombing.<sup>510</sup>

On that same day, October 10, 1969, the body of an unidentified man, later determined to be Peter J. Poulos, was found forty feet south of a desert highway, just outside of Las Vegas in Clark County.<sup>511</sup> Employees of the Nevada Highway Department found the body while picking up trash.<sup>512</sup> Clark County Detectives Charles Lee and Jim Duggan were assigned to the investigation but did not know the victim’s identity.<sup>513</sup>

Upon arriving at the crime scene, Lee believed that it looked like a “hit.”<sup>514</sup> After searching the victim, Detectives Lee and Duggan found no identification.<sup>515</sup> They did, however, find a small loose-leaf notebook in the victim’s jacket pocket, which revealed the name Paul J. Andrews and the address of a Los Angeles apartment.<sup>516</sup> After the body was examined at the scene, it was sent to a mortuary in Las Vegas, where an autopsy determined that the cause of death was multiple gunshot wounds.<sup>517</sup>

Lee and Duggan then contacted the Los Angeles Police Department and requested a check of the address to ascertain if it was the residence of Paul J. Andrews.<sup>518</sup> Los Angeles detectives confirmed that Paul J. Andrews had, in fact, rented an apartment at the address.<sup>519</sup> The detectives also discovered that Andrews had not been at the apartment for some time.<sup>520</sup> The Los Angeles Police compared fingerprints found in the apartment to the victim’s fingerprints, positively establishing that the victim had been present in Andrews’ apartment.<sup>521</sup>

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<sup>506</sup>*Salemme*, 91 F. Supp. 2d at 182.

<sup>507</sup>*Id.* According to the *Salemme* court, in warning Flemmi and Salemme about the impending indictments, Rico aided and abetted the unlawful flight of a fugitive, in violation of 18 U.S. C. §§ 2 and 1073. *Id.* The FBI’s protection of Stephen “The Rifleman” Flemmi is discussed in Section II.A.8, *supra*.

<sup>508</sup> *Salemme*, 91 F. Supp. 2d at 182.

<sup>509</sup> Office of Professional Responsibility Investigative Report (Exhibit 9-11-69) (focusing on allegations of FBI mishandling of confidential informants); DICK LEHR & GERARD O’NEILL, BLACK MASS 12 (Perennial 2001).

<sup>510</sup> *Commonwealth v. Salemme*, 323 N.E.2d 922 (Mass. App. Ct. 1975).

<sup>511</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

<sup>512</sup> *Id.*

<sup>513</sup> Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>514</sup> *Id.* Lee also indicated that the victim was well dressed and his fingers were well manicured. *Id.*

<sup>515</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>516</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>517</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

<sup>518</sup> *Id.*

<sup>519</sup> *Id.*

<sup>520</sup> *Id.*

<sup>521</sup> *Id.*

As a result, Detectives Lee and Duggan traveled to Los Angeles to investigate the case further.<sup>522</sup> They spoke with the former apartment manager of the apartment where Andrews resided.<sup>523</sup> The manager provided a physical description, which resembled that of Peter Poulos.<sup>524</sup> The manager also stated that another man accompanied the victim when he rented the apartment, and she last saw both men on September 27, 1969.<sup>525</sup>

Detectives Lee and Duggan forwarded the victim's fingerprint cards to the FBI, but the FBI failed to identify the victim.<sup>526</sup> To establish the victim's identity, the detectives were forced to go another route. In addition to being well-dressed, the victim had extensive gold dental work.<sup>527</sup> Therefore, the Clark County Detectives requested that the victim's teeth be extracted for the purpose of creating a dental mold.<sup>528</sup> The detectives then sent the "elaborate photographs" of the dental mold, along with a flier with a description of the victim, to all major police departments throughout the United States.<sup>529</sup>

The first big break in the case came on January 30, 1970.<sup>530</sup> Responding to the flier and photographs sent by Detectives Lee and Duggan, Sergeant Frank Walsh of the Organized Crime Section of the Boston Police Department tentatively identified the murder victim found near Las Vegas on October 10, 1969, as being Peter J. Poulos.<sup>531</sup> Indeed, Detective Lee said that it was "Frank Walsh [who] broke the case for us. He was a world of information."<sup>532</sup>

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<sup>522</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>523</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

<sup>524</sup> *Id.*

<sup>525</sup> *Id.* As noted in this memorandum, this is the likely date that Poulos left the apartment. First, the apartment manager stated that she saw the man whom she knew to be Paul Andrews and the person accompanying him carrying groceries into the apartment that day. Los Angeles Police found two sacks of unpacked groceries inside the apartment. Second, this date comports with the estimated time of death given by the coroner, who estimated that the death occurred ten to fourteen days prior to the discovery of the body. *See id.* The investigation conducted after the discovery of the body revealed that the death likely occurred on September 29, 1969. *Id.*

<sup>526</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). According to Lee, there was not a nationwide fingerprint database in 1969 like there is today. Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>527</sup> Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>528</sup> *Id.*

<sup>529</sup> *Id.*; *see also* Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299) (stating that the fliers were sent out on January 6, 1970).

<sup>530</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Clark County Sheriff's Department Follow-Up Police Report ["Follow-Up Report"] (Feb. 9, 1970) (Exhibit 290).

<sup>531</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). This memorandum states that it was the Las Vegas FBI Office that notified the Clark County Sheriff's Department that it had received information from the Boston FBI Office that the Boston Police Department had established tentative identification of Poulos. *See also* Follow-Up Report (Exhibit 290); Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>532</sup> Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).



On that same day, January 30, 1970, Special Agent McKinnley of the Las Vegas FBI Office notified the Clark County Sheriff Department that his office received information from the Boston FBI Office that the Boston Police Department had established tentative identification of the victim as being Peter Poulos.<sup>533</sup> Agent McKinnley further stated that Poulos was wanted by the Boston Police Department for the murder of William Bennett and was wanted by the FBI for unlawful flight to avoid prosecution in connection with the Bennett murder.<sup>534</sup>

Three days later, on February 2, 1970, Agent McKinnley provided Clark County Detectives with an apparent FBI wanted poster on Poulos that contained his fingerprints.<sup>535</sup> A comparison of the victim's fingerprints with that of Poulos' fingerprints positively established the victim as being Peter J. Poulos.<sup>536</sup> That same day, the Clark County Detectives talked to Sergeant Walsh on the phone. Sergeant Walsh told the detectives that Stephen Flemmi and Frank Salemme probably murdered Poulos.<sup>537</sup>

Sergeant Walsh stated that the Boston Police Department wanted Poulos, Flemmi, and Salemme for their role in the William Bennett murder.<sup>538</sup> He further stated that Poulos was a loan shark and racketeer in the Boston area and that Flemmi and Salemme were members of the Boston La Cosa Nostra.<sup>539</sup> Walsh told the detectives that on the day that Poulos, Flemmi, and Salemme were indicted for the Bennett murder, they all disappeared from the Boston area.<sup>540</sup> In fact, Sergeant Walsh stated that the Boston Police Department discovered that Poulos, who lived with his mother, received several phone calls on September 11, 1969, asking him to contact a person named "Steve," presumably Stephen Flemmi.<sup>541</sup> Once Poulos returned home that day, his mother gave him the message. He told his mother that he was going to vacation on Cape Cod for a while.<sup>542</sup> Poulos then left immediately, taking very few clothes.<sup>543</sup>

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<sup>533</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

<sup>534</sup> *Id.*

<sup>535</sup> *Id.*; Follow-Up Report (Exhibit 290).

<sup>536</sup> Clark County Sheriff's Evidence Examined Report (Feb. 2, 1970) (Exhibit 289); Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Follow-Up Report (Exhibit 290).

<sup>537</sup> Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>538</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

<sup>539</sup> *Id.* Although both were associated with La Cosa Nostra criminal activity, at the time neither were members of the organization.

<sup>540</sup> *Id.*; Follow-Up Report (Exhibit 290).

<sup>541</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). *But see* Letter from Frank Walsh, Sergeant Detective, Organized Crime Section, Boston Police Department (Feb. 3, 1970) (Exhibit 291), which states that on a night previous to the return of the true bill "Peter received a telephone call from a person who stated to Mrs. Poulos that it was very important for Peter to get in touch with Steve. This message was given to Peter when he came home on Monday, September 8, 1969, and he stated to her that he was going to Cape Cod for a couple of weeks vacation."

<sup>542</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299); Letter from Frank Walsh, Sergeant Detective, Organized Crime Section, Boston Police Department (Feb. 3, 1970) (Exhibit 291); Follow-Up Report (Exhibit 290).

<sup>543</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299). Four days later, Mrs. Poulos notified the

Walsh also told the detectives that additional information received by the Boston Police Department established that Poulos took \$50,000 with him.<sup>544</sup> Walsh conveyed that local police expected that Poulos would never be seen alive again, because Flemmi and Salemme considered him a “weak link” and would eventually kill him.<sup>545</sup> Detective Lee told Committee staff that Walsh told him that just before the three fled, Poulos “rolled over as an informant” and was going to incriminate Flemmi and Salemme.<sup>546</sup> Detective Lee also thinks that Sergeant Walsh mentioned a grand jury. Hence, Flemmi and Salemme were likely tipped off that Poulos was an informant, or was considering becoming an informant or cooperating witness, and that Poulos testified or agreed to testify before a grand jury regarding the Bennett murder or another crime.<sup>547</sup>

Once the identity of the victim was established as Peter J. Poulos, photographs of Flemmi, Salemme, and Poulos were shown to the apartment manager in Los Angeles.<sup>548</sup> The manager indicated that the photographs of Poulos and Salemme closely resembled Andrews and his associate.<sup>549</sup> Moreover, information received from Sergeant Walsh indicated that the bullets that killed William Bennett matched the bullets that killed Poulos.<sup>550</sup>

The detectives’ case was coming together. All of the evidence pointed directly at Flemmi and Salemme as Poulos’ murderers.<sup>551</sup> Detectives Lee and Duggan’s police report concluded that Poulos, Flemmi, and Salemme fled Boston together on September 11, 1969, and traveled to Los Angeles, where one of the three rented an apartment using the alias, “Paul J. Andrews.”<sup>552</sup> On September 27, 1969, the three left the apartment, heading towards Las Vegas. Before arriving in Las Vegas, “Flemmi and Salemme shot and killed victim Peter J. Poulos leaving his body alongside the highway where it was subsequently discovered.”<sup>553</sup>

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Boston Police that her son’s car was parked outside of her home. See Letter from Frank Walsh, Sergeant Detective, Organized Crime Section, Boston Police Department to Charles Lee, Detective, Office of the Clark County Sheriff (Feb. 3, 1970) (Exhibit 291). Mrs. Poulos stated that someone placed the car in the driveway during the night. *Id.* Human blood was found on the right front bumper of the car. *Id.* This was probably the blood of William Bennett since Poulos’ car was used for the William Bennett murder. Interview with Robert Daddico (Oct. 17-18, 2001).

<sup>544</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

<sup>545</sup> *Id.*

<sup>546</sup> Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002). Detective Lee also thinks that Sergeant Walsh said something about a grand jury. *Id.* See also John Smith, *Police Frustrated over Federal Protection of Slaying Suspects*, LAS VEGAS REVIEW JOURNAL, Oct. 21, 1998 (Exhibit 281).

<sup>547</sup> Detective Lee stated that Sergeant Walsh knew that Poulos was an informant, so he postulated that others in the Boston Police Department may have too, which may have led to Flemmi and Salemme being tipped off as to Poulos’ status as an informant. Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002); see also John Smith, *Police Frustrated over Federal Protection of Slaying Suspects*, LAS VEGAS REVIEW JOURNAL, Oct. 21, 1998 (Exhibit 281) (“Someone tipped [Flemmi and Salemme] off and Poulos was silenced.”)

<sup>548</sup> Memorandum from Ralph Lamb, Sheriff, Clark County, by Jim Duggan and Charles Lee, Detectives, to George Franklin, District Attorney, Clark County (Mar. 11, 1970) (Exhibit 299).

<sup>549</sup> *Id.*

<sup>550</sup> *Id.*

<sup>551</sup> *Id.*

<sup>552</sup> *Id.*

<sup>553</sup> *Id.*

With everything ostensibly in order, Clark County District Attorney George Franklin was ready to move forward with the case. He approved a criminal complaint charging Flemmi and Salemme for the murder of Poulos.<sup>554</sup> District Attorney Franklin then issued a warrant charging Flemmi and Salemme for Poulos' murder.<sup>555</sup> On March 12, 1970, Judge Roy Woofter signed the arrest warrant.<sup>556</sup> The investigation then came to an unexpected and sudden halt.<sup>557</sup>

First, Detectives Lee and Duggan asked for routine permission to travel to Boston to interview the key witnesses and suspects.<sup>558</sup> District Attorney Franklin denied their routine request.<sup>559</sup> Lee told Committee staff that in all of his years as a homicide detective he "never ran across a case where you could not interview [the] suspects."<sup>560</sup> Second, despite getting an arrest warrant signed by Judge Woofter, which Franklin himself issued, Franklin refused to initiate extradition proceedings against Flemmi and Salemme.<sup>561</sup> Undeterred, Lee then asked Franklin if a fellow detective from Clark County, who was going back East to visit his family, could conduct some interviews and an investigation while he was there.<sup>562</sup> This request was also denied.<sup>563</sup>

Lee was perplexed.<sup>564</sup> He then asked Franklin why his investigation was being blocked and why Franklin suddenly refused to initiate extradition proceedings.<sup>565</sup> Franklin told Lee that "the FBI stopped the case."<sup>566</sup> Lee said that he remembers this encounter vividly, because "it was the only case where he got a murder warrant and it was not pursued."<sup>567</sup> Lee remarked, "We got murder warrants on the two, but everything came to a sudden stop."<sup>568</sup> Lee further recalls, "They wouldn't let us go back to interview them. And there was no move to extradite them. I worked a lot of homicides. That's the only one that ended up like this."<sup>569</sup> Lieutenant Tom Monahan told Committee staff that "it is clear the FBI asked the DA to step aside and not do anything."<sup>570</sup>

In conclusion, the FBI's interference with Nevada law enforcement's efforts to prosecute Flemmi and Salemme for the murder of Poulos inhibited the administration of justice. The

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<sup>554</sup> Interview with David Hatch, Detective, Las Vegas Metro Police Dept., Cold Case Review, Homicide Section (Apr. 4, 2002).

<sup>555</sup> *Id.*

<sup>556</sup> Clark County Sheriff's Department Case Cleared Report (Mar. 19, 1970) (Exhibit 300).

<sup>557</sup> Interview with Charles Lee, former Detective, Las Vegas Metropolitan Police Dept. (Apr. 4, 2002).

<sup>558</sup> *Id.*

<sup>559</sup> *Id.*

<sup>560</sup> *Id.*

<sup>561</sup> *Id.*

<sup>562</sup> *Id.*

<sup>563</sup> *Id.*

<sup>564</sup> *Id.*

<sup>565</sup> *Id.*

<sup>566</sup> *Id.*

<sup>567</sup> *Id.*

<sup>568</sup> John L. Smith, *Police Frustrated over Federal Protection of Slaying Suspects*, LAS VEGAS REVIEW JOURNAL, Oct. 21, 1998 (Exhibit 281).

<sup>569</sup> *Id.*

<sup>570</sup> Interview with Tom Monahan, Lieutenant, Las Vegas Metropolitan Police Dept., Homicide Section (Apr. 4, 2002).

reason this murder investigation was unexpectedly halted by the FBI is apparent. In fact, it is the same reason Rico encouraged Flemmi to flee before he was indicted for the William Bennett murder and the Fitzgerald bombing. The FBI was protecting its Top Echelon informant Stephen Flemmi.

### 3. Oklahoma

In the late 1970s, Oklahoma businessman Roger Wheeler, Sr., purchased World Jai Alai, a company that owned facilities where it was legal to gamble on the handball-like sport.<sup>571</sup> Although rumors of organized crime's involvement in the gaming industry made him hesitate to invest in the company, Wheeler was comforted by the fact that his staff was composed of former FBI agents, including former Special Agent H. Paul Rico, who assured him that his company was "clean."<sup>572</sup> Wheeler, however, came to suspect the president of World Jai Alai of skimming money from the company for Winter Hill Gang members, including James "Whitey" Bulger and Stephen Flemmi.<sup>573</sup> Wheeler fired the World Jai Alai president and began a company-wide audit.<sup>574</sup> Shortly thereafter, Winter Hill Gang hit men murdered Wheeler at the Southern Hills Country Club in Tulsa, Oklahoma, on May 27, 1981.<sup>575</sup>

Sergeant Michael T. Huff was the first detective to arrive at the scene.<sup>576</sup> Soon after the murder, the Massachusetts State Police provided Huff with information that Bulger and Flemmi were possibly involved.<sup>577</sup> Bulger, Flemmi, and John Callahan – the former President of World Jai Alai whom Wheeler fired – allegedly attempted to arrange Wheeler's murder.<sup>578</sup> They asked Brian Halloran, a Winter Hill Gang member, if he was willing to kill Wheeler.<sup>579</sup> Several months later, Halloran was facing a state murder charge for a separate incident and offered to cooperate with the FBI.<sup>580</sup> He told FBI agents about his meeting regarding Wheeler.<sup>581</sup> The agents informed the supervisor of the Organized Crime squad, John Morris, of Halloran's allegations.<sup>582</sup> Morris told Agent John Connolly, who handled Bulger and Flemmi, of Halloran's cooperation, expecting Connolly to relate the information to his informants.<sup>583</sup> Agent Connolly, in turn, informed Bulger and Flemmi of Halloran's cooperation, and Bulger and Flemmi promptly killed Halloran.<sup>584</sup>

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<sup>571</sup> See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 268 (Dec. 5, 2002) (testimony of David Wheeler); *U.S. v. Salemme*, 91 F. Supp. 2d 141, 208 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

<sup>572</sup> "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 266, 269 (Dec. 5, 2002) (testimony of David Wheeler).

<sup>573</sup> *Salemme*, 91 F. Supp. 2d at 208.

<sup>574</sup> *See id.* at 209.

<sup>575</sup> See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 26 (Dec. 5, 2002) (testimony of Michael T. Huff).

<sup>576</sup> *See id.*

<sup>577</sup> *See id.* at 27.

<sup>578</sup> *See Salemme*, 91 F. Supp. 2d at 209.

<sup>579</sup> *See id.*

<sup>580</sup> *See id.*

<sup>581</sup> *See id.*

<sup>582</sup> *See id.*

<sup>583</sup> *See id.*

<sup>584</sup> *See id.* at 209-10.

Sergeant Huff, and other local officials in Oklahoma and Boston, did not have an opportunity to speak with Halloran before he was murdered.<sup>585</sup> The Miami, Oklahoma City, and Boston FBI offices held a meeting soon after Halloran's murder, but they did not discuss advising the local law enforcement agencies investigating the Wheeler murder of the information Halloran had provided concerning Bulger and Flemmi.<sup>586</sup> The Boston FBI departed from the Bureau's standard procedures to ensure that the information it had received from Halloran regarding Bulger and Flemmi was virtually inaccessible to anyone who might want to review it.<sup>587</sup> The Boston FBI also succeeded in keeping local law enforcement officials such as Huff from ever speaking to Bulger and Flemmi.<sup>588</sup>

In July 1982, Huff traveled to Boston to meet with detectives from the Connecticut State Police and Massachusetts State Police.<sup>589</sup> Huff wanted information on the activities and location of former World Jai Alai President John Callahan.<sup>590</sup> Before Huff could locate Callahan and question him about the Wheeler murder, Callahan's body was found in the trunk of his car in Miami, Florida.<sup>591</sup>

While in Boston, Huff also met with Organized Crime Strike Force Prosecutor Jeremiah O'Sullivan.<sup>592</sup> At this meeting, Huff was shocked by what he learned.<sup>593</sup> Federal authorities knew that Flemmi and Bulger were hit men.<sup>594</sup> O'Sullivan described former FBI Special Agent H. Paul Rico, then vice-president of World Jai Alai, as a "rogue agent" who caroused with Winter Hill Gang members.<sup>595</sup> During the meeting, the Massachusetts State Police mentioned that FBI Special Agent John Connolly had real estate transactions with the Winter Hill Gang, but O'Sullivan downplayed these transactions.<sup>596</sup> Despite all of this information, the FBI's official position was that Rico and Connolly were the "cream of the crop."<sup>597</sup> Huff also discussed Halloran with O'Sullivan, but O'Sullivan called Halloran a liar and questioned his credibility.<sup>598</sup> Huff candidly described his meeting with O'Sullivan to the Committee:

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<sup>585</sup> See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 266 (Dec. 5, 2002) (testimony of Michael T. Huff).

<sup>586</sup> See *Salemme*, 91 F. Supp. 2d at 210-11.

<sup>587</sup> See *id.* at 212.

<sup>588</sup> See *id.* at 208.

<sup>589</sup> "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 266 (Dec. 5, 2002) (testimony of Michael T. Huff).

<sup>590</sup> See *id.*

<sup>591</sup> See *Salemme*, 91 F. Supp. 2d at 211.

<sup>592</sup> See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 277 (Dec. 5, 2002) (testimony of Michael T. Huff).

<sup>593</sup> See *id.*

<sup>594</sup> See *id.*

<sup>595</sup> See *id.* O'Sullivan testified that he did not recall telling Sergeant Huff that Rico socialized with Winter Hill Gang members. When pressed, O'Sullivan said that it was possible that he told Sergeant Huff this information, but the prosecutor could not specifically recall doing so. See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 266 (Dec. 5, 2002) (testimony of Jeremiah T. O'Sullivan).

<sup>596</sup> See *id.* at 28.

<sup>597</sup> See *id.*

<sup>598</sup> See *id.* at 44.

Over the past twenty years, there have been many such instances of surprise and disappointment during this investigation. I look back to the July meeting in this very building as an “end of innocence” in my career in law enforcement. I had never been exposed to such a cesspool of dirt and corruption.<sup>599</sup>

This meeting had a deep impact on Huff, and the information provided by O’Sullivan led him to include FBI Special Agents Paul Rico and John Connolly as associates of the Winter Hill Gang when he subsequently drafted a report in August of 1982.<sup>600</sup>

Without cooperation from the FBI, the Wheeler murder investigation sputtered until 1995.<sup>601</sup> In January 1995, the Massachusetts State Police called Huff and informed him that Flemmi, Bulger, and others would soon be prosecuted.<sup>602</sup> From his experience with the Wheeler investigation, Huff knew that “unimaginable corruption within the FBI” would soon be discovered.<sup>603</sup> Despite FBI corruption and lack of cooperation, the Wheeler murder investigation is still active.<sup>604</sup> In May 2002, John Martorano, the Winter Hill Gang hit man who murdered Wheeler, told a federal jury that former Agent H. Paul Rico furnished information about Wheeler’s habits that helped Martorano plan Wheeler’s murder.<sup>605</sup> Rico was the vice president and director of security at World Jai Alai when Wheeler was murdered.<sup>606</sup> Martorano reportedly testified that he was given “a piece of paper written by Rico with all the information – his phone numbers, addresses.”<sup>607</sup> The Tulsa Police Department continued to investigate Rico, who was the Director of Security at World Jai Alai when Wheeler was murdered, as a conspirator in the Wheeler murder.<sup>608</sup> Following Stephen Flemmi’s acceptance of a plea agreement on federal charges, Rico was finally arrested in connection with the Wheeler murder.<sup>609</sup>

While the Wheeler investigation and now prosecution continues, Roger Wheeler’s son David poignantly reminded:

Forgotten in all of this are the people the Agency is sworn to serve,  
the people it was designed to protect: People like my father.  
People like all of the others murdered by this Agency’s informants,

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<sup>599</sup> *Id.* at 28.

<sup>600</sup> *See id.*

<sup>601</sup> *See id.* at 29.

<sup>602</sup> *See id.*

<sup>603</sup> *See id.*

<sup>604</sup> *See id.* at 29-30.

<sup>605</sup> See J. M. Lawrence, *Oh, Brother; Hit Man Says Bulger Asked Agent to Watch over Whitey*, BOSTON HERALD, May 14, 2002, at 1.

<sup>606</sup> See “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 269 (Dec. 5, 2002) (testimony of Michael T. Huff); Edmund H. Mahony, *Detective: Jai Alai Slaying Investigation Still Active*, HARTFORD COURANT, Dec. 6, 2002, at A14.

<sup>607</sup> See Edmund H. Mahony, *Detective: Jai Alai Slaying Investigation Still Active*, HARTFORD COURANT, Dec. 6, 2002, at A14.

<sup>608</sup> See “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 272 (Dec. 5, 2002) (testimony of Michael T. Huff); Edmund H. Mahony, *Detective: Jai Alai Slaying Investigation Still Active*, HARTFORD COURANT, Dec. 6, 2002, at A14.

<sup>609</sup> Ralph Ranalli, *Break Seen In Fight on Corruption*, BOSTON GLOBE, Oct. 10, 2003.

whose families – some of them present today, in this room – grieve to this day.

Something else has been lost, too, perhaps forever, as a result of these disclosures of FBI abuse: Trust and confidence. The trust of people who, like my father, believed the FBI served a good and honorable purpose. People who would like to trust the Bureau, but now, sadly, do not. Where there was once trust, there is now fear. And that is a loss we cannot afford.<sup>610</sup>

David Wheeler's story is not unique; FBI informants destroyed the lives of many other families.

#### 4. Florida

There is substantial evidence that state and local law enforcement efforts in Florida were obstructed by the FBI during a Miami homicide investigation. On August 4, 1982, John Callahan's body was found in the trunk of his car at the Miami Airport.<sup>611</sup> Shelton Merritt, lead investigator in the homicide investigation, told Committee investigators that he had received information that there might be a Boston connection to the Callahan murder. Consequently, he and Sergeant Mike Hammerschmidt traveled to Boston shortly after Callahan's body was discovered to pursue various leads.<sup>612</sup> Merritt and Hammerschmidt met with Special Agent Gerald Montanari in the Boston FBI Office and indicated they wanted to interview witnesses about the Callahan murder.<sup>613</sup> Montanari said "let's walk outside," and, when they were outside, he told the Florida police officers that that they could not talk in the office.<sup>614</sup> Montanari said the FBI was interviewing the witnesses and that Merritt and Hammerschmidt could not.<sup>615</sup> Montanari told Merritt and Hammerschmidt that Callahan had been planning to provide the FBI with information but was killed before doing so.<sup>616</sup> Merritt went back to Miami, aware that he was dealing with organized crime.<sup>617</sup>

From the outset of the investigation, the FBI had access to the Florida homicide unit's investigative findings.<sup>618</sup> H. Paul Rico, a former FBI Special Agent and the Security Director of World Jai Alai, soon became aware of every move Merritt and the other investigators made.<sup>619</sup> Florida homicide investigators became uncomfortable with this arrangement. As a result, FBI

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<sup>610</sup> See "The Justice Department's Use of Informants in New England," *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 270 (Dec. 5, 2002) (testimony of David Wheeler).

<sup>611</sup> *U.S. v. Salemme*, 91 F. Supp. 2d 141, 211 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

<sup>612</sup> Telephone interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2002).

<sup>613</sup> *Id.*

<sup>614</sup> *Id.*

<sup>615</sup> *Id.*

<sup>616</sup> *Id.*

<sup>617</sup> *Id.*

<sup>618</sup> *Id.*

<sup>619</sup> *Id.*

agents were not allowed to look at reports or even to go on the homicide floor without supervision.<sup>620</sup>

Upon returning to Florida, Merritt began working with the Florida Department of Law Enforcement (“FDLE”), which was conducting an investigation of corruption in the gaming industry.<sup>621</sup> Merritt and the FDLE began working with IRS auditors in an attempt to understand the alleged motive for the Callahan murder.<sup>622</sup> Lewis Wilson, an FDLE Special Agent, was involved in the investigation.<sup>623</sup> At the time, Wilson was aware that Rico employed the wife of one FBI Special Agent at World Jai Alai.<sup>624</sup> Documents obtained by the Committee also show that the previous year Rico had entertained FBI Special Agents Tom Dowd, whose wife worked for Rico, and Jerry Forrester in the Bahamas and that this business relationship was paid for by World Jai Alai.<sup>625</sup> Wilson has had a persistent feeling for the last twenty years that “things didn’t feel right” with the FBI.<sup>626</sup> According to Wilson, “this case has haunted [him] for the last twenty years.”<sup>627</sup>

The Callahan murder investigation and the related investigation of corruption in the jai alai business gradually fizzled out.<sup>628</sup> According to Merritt, he was “stonewalled and snowballed” by the FBI and “the FBI gave them the cold shoulder.”<sup>629</sup>

## 5. Massachusetts

This section makes no attempt to provide a complete accounting of the problems experienced by state investigators. Although there may be many more, this section discusses four investigations that appear to have been compromised in an effort to protect Stephen Flemmi and James Bulger.

### i. Operation Lobster

FBI personnel appear to have compromised a number of state investigations in Massachusetts. In 1977, the Boston FBI and the Massachusetts State Police initiated Operation Lobster, a joint probe of the widespread hijacking of trucks in New England.<sup>630</sup> The lead state police representative, Bob Long, recalled that there was no cooperation from the FBI on the operation.<sup>631</sup> Operation Lobster intended to target James “Whitey” Bulger, Stephen Flemmi, and

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<sup>620</sup> *Id.*

<sup>621</sup> *Id.*

<sup>622</sup> *Id.*

<sup>623</sup> Telephone interview with Lewis Wilson, former Special Agent, Florida Department of Law Enforcement (Dec. 2, 2002).

<sup>624</sup> *Id.*

<sup>625</sup> World Jai Alai Purchase Report (May 11, 1981) (Exhibit 719).

<sup>626</sup> Telephone interview with Lewis Wilson, former Special Agent, Florida Department of Law Enforcement (Dec. 2, 2002).

<sup>627</sup> *Id.*

<sup>628</sup> Telephone interview with Shelton Merritt, former Detective, Metro Dade Police Dept. (Dec. 2, 2002).

<sup>629</sup> *Id.*

<sup>630</sup> See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>631</sup> *Id.*



other members of the Winter Hill Gang.<sup>632</sup> FBI Agent Nick Gianturco went undercover, posing as a fence for the truck hijackers.<sup>633</sup> The investigation continued into 1978 when, in an off-hand remark, Bulger told FBI Agent John Connolly that some of his associates were considering robbing a fence (Gianturco) in Boston.<sup>634</sup> Connolly was concerned for Gianturco's safety, called the undercover agent, and warned him that the hijackers were going to kill him.<sup>635</sup> Sergeant Bob Long, however, said there was never any evidence that Gianturco's life was in danger.<sup>636</sup> Agent Connolly did not notify the FBI and state police officials responsible for Gianturco's safety or Bulger's remark, nor did he document the episode in an FBI report until two years later.<sup>637</sup> After Connolly warned Gianturco of the possible threat on his life, Operation Lobster was quickly concluded with the arrest of 46 people from every organized crime faction in the city except Bulger's and Flemmi's South Boston.<sup>638</sup>

## ii. The Lancaster Street Garage

In 1980, the Massachusetts State Police determined that the Lancaster Street Garage ("Garage") in downtown Boston was a hub for organized crime figures conducting illegal activities.<sup>639</sup> From an apartment across Lancaster Street, the state police saw virtually every organized crime figure in New England visit James "Whitey" Bulger and Stephen Flemmi at the Garage.<sup>640</sup> After watching the Garage for eleven weeks, the police consulted Jeremiah O'Sullivan, the top federal prosecutor for the New England Organized Crime Strike Force, about obtaining authority for microphone surveillance.<sup>641</sup> The Massachusetts State Police insisted that the FBI not be told about the microphone because state officials believed that Bulger and Flemmi were FBI informants who might compromise the investigation if they knew about the bug.<sup>642</sup> Considering the request to conduct the investigation without the FBI, O'Sullivan recommended that the state police work with the Suffolk County District Attorney's Office.<sup>643</sup> With the local prosecutor's assistance, the state police obtained a warrant to bug the Lancaster Street Garage.<sup>644</sup> On July 24, 1980, the state police successfully installed a microphone in the Garage.<sup>645</sup>

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<sup>632</sup> *Id.*

<sup>633</sup> See *United States v. Salemme*, 91 F. Supp. 2d 141, 197 (D. Mass. 1999), *rev'd in part sub nom. U.S. v. Flemmi*, 225 F.3d 78 (1st Cir. 2000).

<sup>634</sup> See DICK LEHR & GERARD O'NEILL, BLACK MASS 61 (Perennial 2000).

<sup>635</sup> See *id.* Flemmi contradicted Connolly's account, saying that Connolly was informed of a possible shakedown of Gianturco, not a planned murder. Connolly would later claim that Bulger helped save an FBI agent's life as a justification for leaving Bulger open as an informant. See *id.* at 130; *Salemme*, 91 F. Supp. 2d at 197.

<sup>636</sup> See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>637</sup> See DICK LEHR & GERARD O'NEILL, BLACK MASS 61, 130 (Perennial 2000). The authors of *Black Mass* concluded that Flemmi – not Bulger – informed Connolly of the plan to rob the fence. Compare *id.* with *Salemme*, 91 F. Supp. 2d at 197.

<sup>638</sup> See Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>639</sup> See *Salemme*, 91 F. Supp. 2d at 202.

<sup>640</sup> See *id.*; DICK LEHR & GERARD O'NEILL, BLACK MASS 85 (Perennial 2000).

<sup>641</sup> See *Salemme*, 91 F. Supp. 2d at 202; DICK LEHR & GERARD O'NEILL, BLACK MASS 84-85 (Perennial 2000).

<sup>642</sup> See *Salemme*, 91 F. Supp. 2d at 202; Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>643</sup> Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001). Concerning the exclusion of the FBI from Long's investigation, O'Sullivan also advised Long that it would be suicide for him to go against the FBI. See *id.*

<sup>644</sup> See *Salemme*, 91 F. Supp. at 202; DICK LEHR & GERARD O'NEILL, BLACK MASS 85 (Perennial 2000).

<sup>645</sup> See *Salemme*, 91 F. Supp. at 202.

For about two weeks, the Lancaster Street bug was “extremely productive.”<sup>646</sup> Bob Long, a Sergeant for the Massachusetts State Police, said that they initially picked up transmissions of Bulger and Flemmi meeting in the Garage’s office.<sup>647</sup> However, within a few weeks Bulger and Flemmi abruptly changed their routine and no longer discussed business in the office.<sup>648</sup> Instead, Bulger and Flemmi joked about what great guys the state police were, and the two informants eventually stopped using the Garage altogether.<sup>649</sup> The state police knew that Bulger and Flemmi had been tipped off concerning the electronic surveillance.<sup>650</sup> According to Judge Mark Wolf, Flemmi originally learned of the bug from a Massachusetts State Police Trooper.<sup>651</sup> Flemmi then discussed this matter with Agent John Connolly, who was able to confirm for Flemmi and Bulger that the Lancaster Street Garage was bugged.<sup>652</sup> Flemmi and Bulger conveyed the information to their organized crime associates, and discussion of criminal activity at the Garage stopped.<sup>653</sup> The Lancaster Street Garage investigation was a failure.

### iii. The Howard Johnson’s Investigation

A few weeks after the Lancaster Street Garage investigation was compromised, the Massachusetts State Police began a new investigation of Bulger and Flemmi.<sup>654</sup> The state police determined that Bulger and Flemmi were using a bank of pay phones at a Howard Johnson’s restaurant in Boston to conduct business.<sup>655</sup> State troopers believed that Bulger and Flemmi were involved in drug trafficking after they were seen meeting with Frank Lepere, a marijuana dealer, who had visited the Lancaster Street Garage.<sup>656</sup> The following day, September 5, 1980, Bulger and Flemmi met at Howard Johnson’s with Mickey Caruna, reputedly the biggest drug trafficker in New England.<sup>657</sup> Based on this information, the state police obtained a second warrant to conduct electronic surveillance of Bulger and Flemmi.<sup>658</sup> On September 17, 1980, the five pay phones outside the Howard Johnson’s were tapped.<sup>659</sup> The state troopers awaited the targets’ arrival, but Bulger and Flemmi never used the Howard Johnson’s for business again.<sup>660</sup>

### iv. The DEA Investigation

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<sup>646</sup> *See id.*

<sup>647</sup> Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>648</sup> *See* Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001); DICK LEHR & GERARD O’NEILL, BLACK MASS 85 (Perennial 2000).

<sup>649</sup> Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>650</sup> *See Salemme*, 91 F. Supp. 2d at 202.

<sup>651</sup> *See id.*

<sup>652</sup> *See id.*

<sup>653</sup> *See id.*

<sup>654</sup> *See* DICK LEHR & GERARD O’NEILL, BLACK MASS 90 (Perennial 2000).

<sup>655</sup> *See id.* at 90-91; Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001).

<sup>656</sup> *See* DICK LEHR & GERARD O’NEILL, BLACK MASS 91 (Perennial 2000).

<sup>657</sup> *See id.*

<sup>658</sup> *See id.*

<sup>659</sup> *See* Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001); DICK LEHR & GERARD O’NEILL, BLACK MASS 91 (Perennial 2000).

<sup>660</sup> *See* Interview with Bob Long, former Sergeant, Massachusetts State Police (Apr. 17, 2001); DICK LEHR & GERARD O’NEILL, BLACK MASS 91 (Perennial 2000).

Several years later, in 1984, the DEA initiated an investigation targeting Bulger and Flemmi.<sup>661</sup> DEA officials understood that any effort to obtain a court order to conduct electronic surveillance of Bulger and Flemmi would have to include a law enforcement agency with the authority to investigate non-narcotics offenses because the DEA expected to overhear evidence of loansharking, gambling, and extortion.<sup>662</sup> The DEA preferred not to collaborate with the FBI, which had the authority to investigate these offenses, because DEA agents believed that Bulger and Flemmi were FBI informants.<sup>663</sup> Thus, the DEA recruited the Massachusetts State Police, instead of the FBI, to assist with the investigation.<sup>664</sup> Despite efforts to keep the joint investigation secret, Special Agent Connolly learned of the investigation and advised his informants of the possibility of electronic surveillance.<sup>665</sup> The DEA and U.S. Attorney's Office soon realized that Bulger and Flemmi were aware that they had been targeted, but decided to continue the investigation.<sup>666</sup> Federal authorities wanted to convey the impression to Bulger and Flemmi that the investigation had been concluded.<sup>667</sup> In an effort to reduce the number of people who knew about the investigation and minimize the risk of leaks, the DEA cut the Massachusetts State Police out of the investigation on the pretext that it was being abandoned. Thus, the DEA lost the partner in the joint investigation with the authority and experience to investigate gambling and loansharking.<sup>668</sup> The DEA investigation was ultimately unsuccessful, and, due to Agent Connolly's leak, the Massachusetts State Police's role in another Bulger and Flemmi investigation had been compromised.<sup>669</sup>

## 6. Connecticut

Connecticut state law enforcement also encountered interference with important investigations, particularly in regard to its scrutiny of organized crime involvement in the sport of jai alai.<sup>670</sup> "Investigators from agencies for various states, in particular state police detectives from Connecticut, have long complained that FBI agents in Boston impeded jai alai investigations in an effort to protect two bureau informants."<sup>671</sup> According to Austin McGuigan, former chief prosecutor of the Connecticut Statewide Organized Crime Task Force, "Federal agents were all too willing to provide information regarding state and local investigations to former FBI agents who were employed by the very businesses that were under investigation . . . [, but] the same information was not provided to the agencies mandated by law to prosecute these cases."<sup>672</sup>

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<sup>661</sup> *Salemme*, 91 F. Supp. 2d at 220.

<sup>662</sup> *Id.* at 223.

<sup>663</sup> *See id.* at 220, 223.

<sup>664</sup> *See id.* at 223.

<sup>665</sup> *See id.* at 227-28.

<sup>666</sup> *See id.* at 230.

<sup>667</sup> *See id.*

<sup>668</sup> *See id.*

<sup>669</sup> *See id.* at 242.

<sup>670</sup> Jai alai is a court game similar to handball in which players use a long hand-shaped basket strapped to the wrist to catch and propel the ball.

<sup>671</sup> Edmund Mahony, *Sources: Gangster Admits to Jai Alai Killing*, HARTFORD COURANT, July 23, 1998, at A1.

<sup>672</sup> "Justice Department Misconduct in Boston: Are Legislative Solutions Required?," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 681 (Feb. 27, 2002) (testimony of Austin McGuigan).

The Connecticut legislature legalized jai alai gambling in April 1972.<sup>673</sup> This authorization led to several state law enforcement jai alai investigations concerning game fixing and connections to organized crime. “Before the first [Connecticut] fronton<sup>674</sup> opened in 1976, allegations surfaced that mob-connected businessmen from Florida were trying to expedite the Connecticut licensing process with a substantial cash payment.”<sup>675</sup> As a result, the Connecticut Statewide Organized Crime Task Force, with Austin McGuigan as its chief prosecutor, began an investigation in the fall of 1975 into the opening of a Bridgeport Jai Alai fronton.<sup>676</sup> During the investigation, the task force discovered meetings between major New York and New Jersey La Cosa Nostra figures and the President of Bridgeport Jai Alai and determined that a loan from the Central State Teamsters Fund had funded the fronton.<sup>677</sup> The task force revoked Bridgeport Jai Alai’s license because of its connection to organized crime but did not have jurisdiction to conduct a thorough investigation because certain meetings were occurring in New Jersey and New York and the loans were originating in Chicago.<sup>678</sup> Consequently, the task force attempted to turn over the information it had uncovered to federal law enforcement.<sup>679</sup> However, according to McGuigan, “they displayed a singular lack of interest in pursuing the case and, to say the least, were uncooperative.”<sup>680</sup>

Chief Prosecutor McGuigan and the task force then began a licensing investigation into World Jai Alai, which was planning to open a fronton in Hartford.<sup>681</sup> Members of the task force had previously met a number of ex-FBI agents engaged as security specialists at World Jai Alai, including H. Paul Rico, the head of security who had formerly worked as a Special Agent in the Boston FBI Office.<sup>682</sup> As a Justice Department employee, Rico specialized in organized crime investigations and the development of confidential informants. The task force requested information about World Jai Alai President John Callahan from federal law enforcement agencies but received no information of consequence.<sup>683</sup> McGuigan later discovered that the federal government was aware, in January 1976, of allegations that Callahan was involved in loan sharking with Boston’s Winter Hill Gang.<sup>684</sup> This information was shared with former FBI Special Agent Paul Rico while the task force’s request for information from federal officials was met with silence.<sup>685</sup>

Although federal law enforcement had not provided information about Callahan sufficient to raise concerns, Connecticut investigators were suspicious of his activities and

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<sup>673</sup> Lyn Bixby, *25 Years of Gambling in Connecticut; A Quarter-Century of Gambling, Hidden Costs*, HARTFORD COURANT, Feb. 24, 1997, at A1.

<sup>674</sup> A fronton is a building in which jai alai is played.

<sup>675</sup> Edmund Mahony & Lyn Bixby, *Did the FBI Hinder the Investigation into the 1980s Jai Alai Killings? A Tale of Murder and Frustration*, HARTFORD COURANT, Nov. 9, 1997, at A1.

<sup>676</sup> “Justice Department Misconduct in Boston: Are Legislative Solutions Required?,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 675 (Feb. 27, 2002) (testimony of Austin McGuigan).

<sup>677</sup> *Id.*

<sup>678</sup> *Id.* at 675, 682.

<sup>679</sup> *Id.* at 675.

<sup>680</sup> *Id.* at 676, 682.

<sup>681</sup> *Id.*

<sup>682</sup> *Id.*

<sup>683</sup> *Id.*

<sup>684</sup> *Id.* at 677, 683.

<sup>685</sup> *Id.*

connections. As a result, task force investigators decided to follow Callahan when he left a meeting in Hartford.<sup>686</sup> Callahan had told the task force that he was going directly to Miami after meeting with the task force. McGuigan, however, followed Callahan, who went to Boston instead of Miami.<sup>687</sup> McGuigan mentioned Callahan's name to Chief Prosecutor Tom Dwyer of the Suffolk County Organized Crime Prosecution Unit, and was told that Callahan had "organized crime connections, Winter Hill Gang."<sup>688</sup> Dwyer further told McGuigan that his unit had done surveillance on Callahan and that Callahan "had meetings with the Winter Hill Gang, John Martorano, the Flemmis, Howie Winter, and so forth."<sup>689</sup> McGuigan was puzzled as to how this information was not known to the former FBI agents working in security at World Jai Alai.<sup>690</sup>

The Connecticut task force scheduled a hearing to obtain testimony from Callahan on May 3, 1976.<sup>691</sup> However, Jai Alai Security Director Rico learned of the investigation shortly before the hearing, and Callahan resigned before the task force could secure his testimony. This removed Callahan from the task force's jurisdiction, since he was no longer tied to Connecticut.<sup>692</sup>

World Jai Alai opened its Hartford fronton after Callahan's resignation.<sup>693</sup> Following its opening, the Connecticut task force obtained the first convictions for the fixing of Jai Alai games.<sup>694</sup> The task force's jurisdiction was limited to the State of Connecticut's borders, however, and McGuigan was not aware of a federal agency ever conducting any interstate jai alai investigation.<sup>695</sup>

Roger Wheeler, an Oklahoma businessman, purchased World Jai Alai in 1978. In 1981, however, Wheeler was murdered at the Southern Hills Country Club in Tulsa, Oklahoma.<sup>696</sup> The Connecticut task force opened an investigation to determine whether a link existed between the jai alai skimming allegations, the Winter Hill Gang, and the Wheeler murder.<sup>697</sup> McGuigan and his task force contacted the Dade County Strike Force to interview Callahan.<sup>698</sup> However, the day McGuigan arrived in Miami for the interview, Callahan's body was discovered in the trunk of a car parked at the Miami Airport.<sup>699</sup>

The FBI's treatment of the Connecticut task force during the jai alai investigations provides yet another example of a major failure to cooperate with state law enforcement. Because of the FBI's failure to provide information to the task force, Connecticut law

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<sup>686</sup> *Id.* at 676, 682.

<sup>687</sup> *Id.*

<sup>688</sup> *Id.*

<sup>689</sup> *Id.*

<sup>690</sup> *Id.*

<sup>691</sup> *Id.*

<sup>692</sup> *Id.* at 676-77.

<sup>693</sup> *Id.* at 677, 683.

<sup>694</sup> *Id.*

<sup>695</sup> *Id.*

<sup>696</sup> *Id.* at 677.

<sup>697</sup> *Id.* at 677-78.

<sup>698</sup> *Id.*

<sup>699</sup> *Id.*

enforcement was impeded in its efforts to investigate and prosecute wrongdoing in the jai alai industry.

## 7. Rhode Island

Joseph Barboza was not the only cooperating witness developed by FBI Special Agent H. Paul Rico. Not long after Barboza testified in the Deegan murder prosecution, Rico developed and handled Rhode Island state witness John J. "Red" Kelley in connection with the prosecution of mob boss Raymond Patriarca and four of his associates. In doing so, Rico interfered with state law enforcement. Specifically, the Rhode Island Supreme Court found that Kelley was directed by Rico to commit perjury to protect an informant, to protect and further an ongoing FBI investigation, and to ensure the conviction of the defendants at trial.<sup>700</sup> The court also found that Rico lied under oath to corroborate portions of Kelley's perjury.<sup>701</sup>

On April 20, 1968, Rudolph Marfeo and his associate Anthony Melei were shot to death while shopping at a market in Providence, Rhode Island.<sup>702</sup> These gangland slayings, committed at the behest of Raymond Patriarca, were the culmination of a conspiracy to eliminate Marfeo's involvement in a gambling operation.<sup>703</sup> Seven men were charged with murder, conspiracy to murder, and accessory before the fact to murder.<sup>704</sup> An eighth participant in the murders was John J. "Red" Kelley. However, instead of being charged and standing trial for his role in the murders, Kelley became a government witness.<sup>705</sup>

Patriarca was considered one of the nation's top organized crime leaders, and his conviction would have dealt a severe blow to organized crime in New England.<sup>706</sup> In fact, a Department of Justice memorandum recommending Patriarca's prosecution stated: "[I]t was generally agreed among the FBI, Strike Force Attorneys, and the Rhode Island Attorney General that [the] conviction of Patriarca . . . in this matter would deal a death blow to the Rhode Island LCN" ["La Cosa Nostra"] and "the conviction of Maurice R. 'Pro' Lerner will remove from the scene one of the most vicious and affective [sic] killers in New England."<sup>707</sup>

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<sup>700</sup> See *State v. Patriarca*, 308 A.2d 300, 305 (R.I. 1973).

<sup>701</sup> See *id.*

<sup>702</sup> See *id.*

<sup>703</sup> See *id.*

<sup>704</sup> The seven who were indicted, and the crimes with which they were charged, were as follows: Robert Fairbrothers, Maurice Lerner, and John Rossi were charged with murder and conspiracy. Patriarca, Louis Manocchio, Rudolpho Sciarra, and Frank Vendituoli were charged with accessory to murder and conspiracy. The conspiracy charge against Vendituoli was dismissed, and he was found not guilty of the accessory charges. See *Patriarca*, 308 A.2d at 395; *State v. Manocchio*, 496 A.2d 931 (R.I. 1985).

<sup>705</sup> See *Patriarca*, 308 A.2d at 305-07 (providing a detailed factual account of the murders).

<sup>706</sup> See Letter from Robert F. Kennedy, Attorney General, U.S. Dept. of Justice, to the Honorable Mortimer M. Caplan, Commissioner, IRS (Feb. 13, 1961) (Exhibit 16) (Kennedy lists Raymond Patriarca as one of the 39 top echelon racketeers in the country targeted for investigation and prosecution.)

<sup>707</sup> Memorandum from Gerald McDowell, Attorney, Organized Crime Strike Force, Boston U.S. Dept. of Justice Field Office, to Thomas Kennelly, Deputy Chief, Organized Crime and Racketeering Section, U.S. Dept. of Justice (Aug. 11, 1969) (document is retained by the Justice Department). A senior FBI official later called the convictions "an achievement of major dimension causing telling disruption at organized crime's top-level in New England." FBI Memorandum from J.H. Gale to Mr. DeLoach (Mar. 31, 1970) (Exhibit 308).

Not long after the Marfeo-Melei murders, Special Agent Rico developed John “Red” Kelley as a cooperating witness.<sup>708</sup> In the process, Rico met with Kelley on several occasions to prepare for the Rhode Island prosecution of the murders of Marfeo and Melei.<sup>709</sup> By the time Kelley was turned over to Assistant Rhode Island Attorney General Richard Israel, Kelley was a fully prepared witness.<sup>710</sup> In an interview with the Committee, Israel remarked that he “had no reason to question the FBI” regarding the scope of the promises, rewards, or inducements Kelly was going to receive to testify at the Marfeo/Melei murder trial.<sup>711</sup> Israel continued saying, “[T]hey [we]re handing me a major crime on a silver platter – hell a gold platter and we were going to break down the major element of Patriarca’s unit.”<sup>712</sup>

The trial began for Maurice Lerner, Raymond Patriarca, Robert Fairbrothers, John Rossi, and Rudolpho Sciarra on February 27, 1970 (the “Lerner trial”).<sup>713</sup> Luigi Manocchio, who had also been indicted, earlier fled the jurisdiction and evaded arraignment and prosecution until May of 1983.<sup>714</sup> On March 9, 1970, Kelley took the stand at the Lerner trial as the state’s main witness.<sup>715</sup> Kelley testified as to the planning and execution of the murders, including his own role, and as to the promises, rewards, and inducements he was receiving in exchange for his testimony.<sup>716</sup> Rico also took the stand to corroborate Kelley’s testimony as to the promises, rewards, or inducements Kelley was receiving for testifying.<sup>717</sup> As a result, Lerner was convicted of murder and conspiracy to murder.<sup>718</sup> The other defendants were convicted of conspiring to murder.<sup>719</sup>

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<sup>708</sup> See FBI Memorandum from J.H. Gale to Mr. DeLoach (Mar. 31, 1970) (Exhibit 308). (“Rico was instrumental in the development and handling of notorious Boston hoodlum John Kelley as an informant and witness.”) Rico also likely believed that Kelley’s testimony would solidify the veracity of Barboza’s previous testimony against Patriarca for the conspiracy to murder Rudolph Marfeo’s brother Willie, which would further demonstrate Barboza’s importance as a witness.

<sup>709</sup> Trial Transcript, *State v. Lerner* (R.I. Super. Ct.) at 2571, 2610, 2622, 2623 [“Lerner Trial Transcript”] (Exhibit 302).

<sup>710</sup> See Lerner Trial Transcript at 2550, 2555, 2557-2567, 2571, 2610, 2622-23 (Exhibit 302). Israel told the Committee that he never interviewed Kelley without Rico being present. Israel noted that the FBI was particularly esteemed at the time and Rico’s constant presence never struck him as suspicious. Interview with Richard Israel, former Assistant Attorney General, Rhode Island (Sept. 26, 2001).

<sup>711</sup> Interview with Richard Israel, former Assistant Attorney General, Rhode Island (Sept. 26, 2001).

<sup>712</sup> *Id.*

<sup>713</sup> Docket Sheet, *State v. Lerner* (R.I. Super. Ct.) [“Lerner Docket Sheet”] (Exhibit 294). Kelley was granted immunity in exchange for his testimony. Order, *In re: Application of Attorney General under Chapter 54 of the Public Laws of 1969* (Exhibit 277).

<sup>714</sup> *Manocchio*, 496 A.2d at 931.

<sup>715</sup> See Lerner Trial Transcript at 1994 (Exhibit 296).

<sup>716</sup> Lerner Trial Transcript at 1994-2448 (Exhibit 296); see also *Patriarca*, 308 A.2d at 305-07; *Lerner v. Moran*, 542 A.2d 1089, 1090-91 (R.I. 1988).

<sup>717</sup> Lerner Trial Transcript at 2613-16, 2621-22, 2630-31, 2636 (Exhibit 302); See also *Moran*, 542 A.2d at 1090-91.

<sup>718</sup> Lerner Docket Sheet (Exhibit 306); see also *State v. Lerner*, 308 A.2d 324, 330 (R.I. 1973). Lerner was later sentenced on September 14, 1970, to consecutive life sentences on the murder charges and ten years on the conspiracy charge. See Application for Post-Conviction Relief (Exhibit 771). Patriarca was sentenced to a term of 10 years imprisonment for conspiracy to murder.

<sup>719</sup> Lerner Docket Sheet (Exhibit 306); see also *Lerner*, 308 A.2d at 330. Rico was praised for his “outstanding accomplishments in the development and handling” of Kelley and received an incentive award approved by Director Hoover. See FBI Airtel from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 30, 1970) (Exhibit 307); FBI Memorandum from J.H. Gale to Cartha DeLoach (Mar. 31, 1970) (Exhibit 308); Letter from J. Edgar Hoover, Director, FBI, to H. Paul Rico, Special Agent, Boston FBI Field Office (Apr. 1, 1970) (Exhibit 310).

It was not until 1983 that it was publicly revealed that Kelley and Rico testified falsely at the Lerner trial. In preparing for the trial of Manocchio for his role in the Marfeo/Melei murders, Assistant Attorney General for the State of Rhode Island David Leach looked at the Lerner trial transcript as a "script" for the Manocchio trial.<sup>720</sup> Knowing that Kelley would have to be called as the state's main witness,<sup>721</sup> Leach and Rhode Island Detective Urbano Prignano met with Kelley before he was called as a witness.<sup>722</sup> At that time, Kelley relayed to them that certain portions of his prior testimony at the Lerner trial were false and that Special Agent Rico had instructed him to commit perjury. When asked why he went along with Rico's suggestions, Kelley responded, "Well, my life was in their hands."<sup>723</sup>

At the Manocchio trial, Kelley testified that he had committed perjury during the Lerner trial in three aspects, all at the behest of Rico. First, Kelley testified at the Lerner trial that he cut down a shotgun for use in the murders.<sup>724</sup> However, at the Manocchio trial, Kelley admitted that his armorer actually "cut down" the weapon.<sup>725</sup> Kelley said Rico told him not to mention the armorer's role in the murders because the armorer was an important FBI informant who Rico wanted to keep on the streets in an effort to dismantle the Boston group of the Patriarca crime family.<sup>726</sup>

Second, Kelley testified at the Lerner trial that the gang had a key meeting with Patriarca prior to the murders at a particular restaurant.<sup>727</sup> However, at the Manocchio trial, Kelley admitted that the meeting did not take place at the restaurant he had previously named.<sup>728</sup> In fact, the previously named restaurant had been destroyed by fire by the time of the purported meeting.<sup>729</sup> Kelley stated that Rico wanted him to put the meeting at that particular restaurant to establish a connection between Patriarca and the owner of the restaurant, effectively assisting Rico in his investigation against the restaurant owner.<sup>730</sup> According to Kelley, the FBI had invested millions of dollars in trying to tie the owner of the restaurant to Patriarca, but, up to that point, their investigation had not been successful.<sup>731</sup> Rico apparently believed that Kelley's

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<sup>720</sup> Interview with David Leach, former Assistant Attorney General for Rhode Island (Sept. 25, 2001).

<sup>721</sup> *Id.*

<sup>722</sup> See Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 762).

<sup>723</sup> Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

<sup>724</sup> See *Moran*, 542 A.2d at 1090.

<sup>725</sup> See *id.* See also Karen Ellsworth, *Sciarra Given Term for Contempt*, PROVIDENCE JOURNAL-BULLETIN, June 3, 1983 (Exhibit 765).

<sup>726</sup> See *Moran*, 542 A.2d at 1090. See also Karen Ellsworth, *Sciarra Given Term For Contempt*, PROVIDENCE JOURNAL-BULLETIN, June 3, 1983 (Exhibit 765).

<sup>727</sup> See *Moran*, 542 A.2d at 1090.

<sup>728</sup> See *id.*; Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

<sup>729</sup> Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

<sup>730</sup> *Moran*, 542 A.2d at 1090.

<sup>731</sup> See *Moran*, 542 A.2d at 1090; Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).



testimony about that particular restaurant would produce valuable circumstantial evidence against the restaurant owner.<sup>732</sup>

Third, Kelley testified at the Lerner trial that Rico promised him only immunity and protection for his family in exchange for his testimony and did not promise him income, a new identity, and relocation.<sup>733</sup> Rico under oath then corroborated Kelley's testimony regarding such promises.<sup>734</sup> However, at the Manocchio trial, Kelley testified that Rico did, in fact, promise Kelley income for the rest of his life, a new identity, and relocation.<sup>735</sup> This was buttressed by the state's filing of the Financial Report for Witness Protection Program participant Kelley. That report revealed that Kelley was a member of the witness protection program since May 1970 and that he was receiving alimentionation payments in the form of subsistence, housing, medical, travel, documents, relocation, trial, moving, and miscellaneous expenses from 1971 to 1982.<sup>736</sup> He received no less than \$114,848.06.<sup>737</sup> When asked why he had lied during Lerner's trial about the promises made to him, Kelley stated, "Agent Rico told me I shouldn't tell all of these things because it looked like I was being paid; that I should just do as he said, and everything would come out all right."<sup>738</sup> Shortly afterwards, the Boston FBI office sent a teletype to Washington, stating that Red Kelley testified that he committed perjury at the behest of Special Agent H. Paul Rico.<sup>739</sup>

Following the Manocchio trial, Lerner filed an application for post-conviction relief in Rhode Island Superior Court based on Kelley's perjurious testimony at his trial in 1970.<sup>740</sup> The Superior Court of Rhode Island denied Lerner's application for post conviction relief in January 1987, despite finding that "Kelley committed perjury in the 1970 [Lerner] trial."<sup>741</sup> However, on June 10, 1988, the Rhode Island Supreme Court vacated Lerner's conviction. The court held

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<sup>732</sup>See *Moran*, 542 A.2d at 1090; Sworn Statement of David H. Leach (May 24, 1983) (Exhibit 762); Sworn Statement of Urbano Prignano (May 24, 1983) (Exhibit 763).

<sup>733</sup>Lerner Trial Transcript at 2274, 2275, 2278-81, 2300, 2306 (Exhibit 296); *Moran*, 542 A.2d at 1090.

<sup>734</sup>Lerner Trial Transcript at 2613-16, 2620-22, 2630-31, 2636 (Exhibit 302). Rico testified that he told Kelley that any cooperation Kelley gave to the United States Government would be brought to the attention of the proper authorities and that the United States Government had agreed to give him personal security. However, Rico testified that he never described to Kelley the kind of personal security and protection that he might expect to receive. Rico testified that he spoke with Theodore F. Harrington of the Justice Department regarding the personal security which Kelley would receive. Rico specifically denied that he told Kelley that he would be provided with a new identity and relocation. *Id.*

<sup>735</sup>Trial Transcript, *State v. Manocchio* (R.I. Super. Ct.) at 898, 899, 905-07, 910, 1042-48, 1059-61 ["Manocchio Trial Transcript"] (Exhibit 765).

<sup>736</sup>See Financial Report for Witness Program Participant John "Red" Kelley (Exhibit 764). The report was generated on May 6, 1983, and signed by the Chief of the Witness Security Division of the U.S. Marshal's Service on May 10, 1983.

<sup>737</sup>Financial Report for Witness Program Participant John "Red" Kelley (Exhibit 764).

<sup>738</sup>Manocchio Trial Transcript at 907 (Exhibit 765). Notwithstanding Kelley's admissions of his prior perjury, Manocchio was found guilty on two charges of accessory before the fact and one charge of conspiracy to commit murder. See *Manocchio*, 496 A.2d at 931; Karen Ellsworth, *Manocchio Guilty on All Charges in Mob Murders*, PROVIDENCE JOURNAL-BULLETIN, June 14, 1983 (Exhibit 768). Manocchio's conviction was later reversed on other grounds. *Manocchio*, 496 A.2d at 931.

<sup>739</sup>Teletype from Boston FBI Field Office to J. Edgar Hoover, Director, FBI (June 2, 1983) (Exhibit 767).

Notwithstanding the extensive coverage received by this testimony in New England, Edward Harrington told the Committee that he was unaware of Kelley's testimony regarding his and Rico's perjury.

<sup>740</sup>Application for Post-Conviction Relief (Exhibit 771).

<sup>741</sup>*Lerner v. Moran*, Civil No. PM833005 (R.I. Super. Ct. 1987) (Exhibit 805).

“that Kelley’s perjury at Lerner’s trial relating to the extent of promises made to Kelley by the FBI in exchange for his testimony and Special Agent Rico’s corroboration of that perjury were material to Kelley’s credibility and therefore to the issue of Lerner’s guilt.”<sup>742</sup> The court ruled that “Kelley’s perjury, elicited by the FBI, constituted material exculpatory evidence withheld in violation of the applicant’s due process rights.”<sup>743</sup> In its decision, the court found that FBI Special Agent H. Paul Rico encouraged the state’s main witness, “Red” Kelley, to lie under oath at the Lerner trial to protect an informant, to protect and further an ongoing FBI investigation, and to ensure the conviction of the defendants on trial. The court even found that Rico lied to corroborate portions of Kelley’s perjury.<sup>744</sup>

Other Department of Justice officials may have known of the perjury at the time of the Lerner trial yet remained silent. When interviewed by Committee staff, Judge Edward Harrington, who at the time of the Lerner trial was Deputy Chief of the United States Department of Justice’s Strike Force Against Organized Crime for New England, stated that he knew nothing about Rico’s testimony at the Lerner trial and the Rhode Island Supreme Court’s finding of perjury.<sup>745</sup> Harrington, when asked about the Rhode Island Supreme Court’s finding that Rico committed perjury, said: “It’s a stupid lie. Why would Rico tell him that? It’s ludicrous.”<sup>746</sup> However, Harrington held out with great pride that he “developed such significant accomplice witnesses as . . . ‘Red’ Kelley.”<sup>747</sup> Rico also identified Harrington at the Lerner trial as being the one to whom Rico spoke in connection with providing personal security to Kelley.<sup>748</sup> Moreover, as Head of the Strike Force, Harrington was one of the individuals who decided what terms a witness would receive in exchange for his testimony and, in fact, was instrumental in arranging the terms for Joe “the Animal” Barboza’s testimony in three trials.<sup>749</sup> Likewise, it is quite possible that Harrington decided Kelley’s terms as well. In addition, employees of the U.S. Marshals Service and other Department of Justice officials may have known of the perjury due to their involvement with and protection of Kelley.<sup>750</sup>

In conclusion, Rico’s interference with Rhode Island law enforcement interfered with the administration of justice and resulted in a considerable waste of government resources in

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<sup>742</sup> *Moran*, 542 A.2d at 1091.

<sup>743</sup> *Id.*

<sup>744</sup> *Id.* at 1090-1093. At a hearing before this Committee, Rico denied committing perjury or suborning Kelley’s perjury at the 1970 Lerner trial. “Investigation into Allegations of Justice Department Misconduct in New England,” *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 215 (May 3, 2001) (testimony of H. Paul Rico).

<sup>745</sup> See Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

<sup>746</sup> Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

<sup>747</sup> Letter from Edward Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office, to the Honorable Joseph Biden, United States Senator (Jan. 20, 1988) (Exhibit 813).

<sup>748</sup> Lerner Trial Transcript at 2621-22 (Exhibit 302).

<sup>749</sup> See Letter from Edward Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office, to the Honorable Joseph Biden, United States Senator (Jan. 20, 1988) (Exhibit 813); Interview with Edward F. Harrington, former Attorney in Charge, Organized Crime and Racketeering Section, Boston U.S. Dept. of Justice Field Office (Dec. 20, 2001).

<sup>750</sup> Financial Statement for Witness Program Participant John “Red” Kelley (May 6, 1983) (Exhibit 764). This document was prepared by the U.S. Marshal’s Service of the United States Department of Justice and sets forth what Kelley was receiving as a witness in the Witness Protection Program.

opposing the appeals of guilty defendants. Furthermore, a convicted murderer was released from prison specifically because of the perjury committed by Red Kelley and encouraged by Special Agent Rico. The Rhode Island Supreme Court found that Rico did whatever it took to achieve the ends he desired, which included committing perjury and encouraging the state's main witness to commit perjury. This is just another unfortunate example of the FBI's interference with state law enforcement.

#### **IV. The Use of James "Whitey" Bulger as An Informant Raised Questions About Whether the FBI Used its Authority to Advance or Protect former Massachusetts State Senate President William Bulger**

The revelation that the FBI had used James "Whitey" Bulger as an informant raised serious questions for the Committee regarding whether former Special Agent John Connolly or others used the authority of the FBI to advance or protect James "Whitey" Bulger's brother former Massachusetts State Senate President William Bulger. Accordingly, the Committee sought to take testimony from William Bulger regarding his knowledge of the relationship between the FBI and his brother.

On December 6, 2002, William Bulger appeared before the Committee and asserted his right under the Fifth Amendment to the Constitution not to be compelled to give testimony that may tend to incriminate him.<sup>751</sup> In response to this assertion, the Committee voted 30-1 on April 9, 2003 to grant Bulger immunity. On Thursday, June 19, 2003, the Committee on Government Reform held a public hearing entitled "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger." Massachusetts Representatives William Delahunt and Marty Meehan attended the hearing as guests of the Committee.

The Committee is concerned about the factual accuracy in two areas of William Bulger's testimony before the Committee. Specifically, William Bulger testified concerning the FBI's contacts with him regarding the whereabouts of his brother. William Bulger's testimony regarding contacts with the FBI<sup>752</sup> appeared to conflict with information provided to the press and Committee investigators by former Special Agent John Gamel. A full discussion of that testimony is set forth below.

Second, William Bulger testified that he had informed his lawyer about a telephone call from his brother shortly after his brother's flight and that his lawyer had informed law enforcement authorities. The Committee was unable to substantiate the communication by any lawyer retained by William Bulger. Three lawyers retained by William Bulger who are alive either were not told of the call at the time or if told, did not report it to law enforcement authorities. A fourth lawyer is deceased. A full discussion of this testimony is set forth below as well.

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<sup>751</sup> "The Justice Department's Use of Informants in New England," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 406 (Dec. 6, 2002).

<sup>752</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 5, 76-77, 84-85, 103 (June 19, 2003).

**A. William Bulger's Testimony Before the Committee**

At the Committee hearing, Chairman Davis's first question was as follows:

“Did there come a time when you came to believe that the FBI had protected your brother and that John Connolly may have used his authority to protect you or advance your political career?”<sup>753</sup>

William Bulger responded: “I never asked [Connolly] to interfere in any such procedures. Never.” When asked if he was aware that Connolly may have interfered whether he asked him to or not, William Bulger responded, “No.”<sup>754</sup>

When asked about the FBI's investigation and prosecution of former State Senate Majority Leader Joseph DiCarlo that resulted in William Bulger's rise to leadership in the Massachusetts State Senate,<sup>755</sup> he denied any knowledge of it other than public reports and rumors, and he testified that he had “no recollection of ever speaking of that matter with John Connolly.”<sup>756</sup>

The remaining questioning of William Bulger can be categorized into six topics:

1. The FY82 Massachusetts state budget line item that, if passed, would have forced five State Police Officers into early retirement;
2. The 1985 loan William Bulger received from his law associate, Tom Finnerty, as part of Finnerty's 75 State Street real estate venture;
3. The circumstances surrounding Massachusetts State Police Trooper Billy Johnson's encounter with James “Whitey” Bulger at Boston's Logan International Airport in 1987 and William Bulger's subsequent involvement;
4. William Bulger's relationship with former FBI Special Agent and James “Whitey” Bulger's handler, John Connolly;
5. William Bulger's January 1995 telephone conversation with James “Whitey” Bulger; and
6. The FBI's contact with William Bulger and the Bulger family concerning James “Whitey” Bulger's whereabouts.

**1. FY82 Massachusetts State Budget Line Item**

Prior to 1974, the Public Safety Division of the Massachusetts State Police had two detective bureaus: the uniformed branch and Civil Service.<sup>757</sup> The difference between these bureaus was that the Civil Service Detectives were required to have previous law enforcement experience, pass a written exam, and were permitted to retire at age 65,<sup>758</sup> whereas, the uniformed branch officers were required to retire at age 50.<sup>759</sup> In 1974, the two branches were consolidated.<sup>760</sup> A

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<sup>753</sup> *Id.* at 40.

<sup>754</sup> *Id.*

<sup>755</sup> J.M. Lawrence, *Panel Wanted Info on Bulger-extort link*, BOSTON HERALD, Dec. 10, 2002.

<sup>756</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 41 (June 19, 2003).

<sup>757</sup> Frank Mahoney, *Budget Item Threatens Crime Intelligence Unit*, Boston Globe, July 10, 1981.

<sup>758</sup> *Id.*

<sup>759</sup> *Id.*

grandfather clause was created to ensure that the former Civil Service Detectives would not be forced to retire until the age of 65.<sup>761</sup>

In 1981, a line item was added to the FY82 Massachusetts state budget that, if passed, would have imposed mandatory retirement or a reduction in grade at the age of 50 for all state police, both detectives and the uniformed branch.<sup>762</sup> No sponsor was attributed to the line item.<sup>763</sup> At the time, there were five state police officers who would have been affected by the line item: Lt. Col. John R. O'Donovan, bureau commander Maj. John F. Regan, and Captains Peter Agnes, William Nally, and Robert Zoulas.<sup>764</sup> In 1980, O'Donovan led the Lancaster Street garage investigation that targeted members of the Winter Hill Gang, including James "Whitey" Bulger.<sup>765</sup> Regan served as District Attorney William Delahunt's chief detective.<sup>766</sup> Agnes, Nally, and Zoulas were not involved in the Lancaster Street garage investigation.<sup>767</sup> The line item was ultimately vetoed by the Governor.<sup>768</sup>

Committee Members questioned William Bulger on whether he used his power as the President of the Massachusetts State Senate to introduce the line item anonymously as a tool to penalize members of the state police who were investigating James "Whitey" Bulger. William Bulger testified that he did not recall the line item as part of the FY82 state budget and had no knowledge of its origins.<sup>769</sup> William Bulger further testified that he never discussed the Lancaster Street garage investigation with anyone, including former FBI Special Agent John Connolly.<sup>770</sup>

William Bulger entered affidavits from Nally and Agnes into the record.<sup>771</sup> Both affidavits exerted that they did not investigate James "Whitey" Bulger as part of the Lancaster Street garage investigation.<sup>772</sup> Nally's affidavit stated he knew "of no facts which support the comparatively recent allegations that the budget item was payback for an investigation of 'James "Whitey" Bulger . . . there was no payback message ever delivered to [him] by the Senate President."<sup>773</sup> Agnes' affidavit stated that Agnes "never believed William Bulger to be unfavorably disposed to [him]."<sup>774</sup>

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<sup>760</sup> *Id.*

<sup>761</sup> *Id.*

<sup>762</sup> *Id.*

<sup>763</sup> *Id.*

<sup>764</sup> *Id.*

<sup>765</sup> Interview with William Nally (July 22, 2003)(Exhibit 972).

<sup>766</sup> *Id.*

<sup>767</sup> Affidavit of William C. Nally (June 14, 2003)(Exhibit 972); Affidavit of Peter W. Agnes (June 14, 2003)(Exhibit 973); Interview with Robert Zoulas (July 22, 2003).

<sup>768</sup> Frank Mahoney, *Budget Item Threatens Crime Intelligence Unit*, BOSTON GLOBE, July 10, 1981.

<sup>769</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 47- 48, 51- 52, 108 (June 19, 2003) (testimony of William Bulger).

<sup>770</sup> *Id.* at 47, 51.

<sup>771</sup> *Id.* at 48.

<sup>772</sup> Affidavit of William C. Nally (June 14, 2003)(Exhibit 972); Affidavit of Peter W. Agnes (June 14, 2003)(Exhibit 973).

<sup>773</sup> Affidavit of William C. Nally (June 14, 2003)(Exhibit 972).

<sup>774</sup> Affidavit of Peter W. Agnes (June 14, 2003)(Exhibit 973).

## 2. 75 State Street Real Estate Venture

According to William Bulger's testimony at the hearing, in 1985, he received a \$240,000 payment that he claimed was a loan against advanced fees, from his law associate, Tom Finnerty.<sup>775</sup> The loan money came from the same account into which Finnerty deposited \$500,000 he received from Boston real estate developer, Harold Brown.<sup>776</sup> William Bulger testified that Brown later alleged that Finnerty extorted the \$500,000 as part of the 75 State Street real estate venture.<sup>777</sup> William Bulger subsequently returned the loan to Finnerty.<sup>778</sup> The 75 State Street project was investigated by the federal government and Massachusetts state government.<sup>779</sup> All of the investigations concluded that there was no evidence of involvement by William Bulger in the 75 State Street project.<sup>780</sup>

FBI Special Agent John Morris was the Supervisor of the Public Corruption Crime Unit during the 75 State Street investigation.<sup>781</sup> Morris formerly served as the Supervisor of the Boston Organized Crime Squad.<sup>782</sup> In April 1998, Morris testified under oath to taking gifts and money from James "Whitey" Bulger in 1982, 1984, and 1985.<sup>783</sup> Former Assistant United States Attorney Jonathan Chiel testified at the trial of former FBI Special Agent John Connolly that Connolly sought to gain inside information about the 75 State Street investigation.<sup>784</sup> The Committee Members voiced concern that Morris and Connolly's illegal relationship with James "Whitey" Bulger may have resulted in the FBI and the U.S. Attorney's Office turning a blind eye to William Bulger's involvement in the 75 State Street project.<sup>785</sup>

William Bulger testified that he and Finnerty were former law partners.<sup>786</sup> William Bulger represented brothers, Bruce and Robert Quirk, who had a dispute about property with National Semiconductor.<sup>787</sup> The case was ultimately settled and William Bulger was owed a \$350,000 fee.<sup>788</sup> Finnerty advanced William Bulger \$240,000 of the \$350,000, as the fee was late.<sup>789</sup> When William Bulger discovered that the \$240,000 came from Brown, William Bulger returned

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<sup>775</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 67- 68 (June 19, 2003) (testimony of William Bulger).

<sup>776</sup> *Id.*

<sup>777</sup> *Id.* at 68.

<sup>778</sup> *Id.* at 68, 88-90, 93.

<sup>779</sup> See Statement of Attorney General Scott Harshbarger on the Investigation of the 75 State Street Project (Jan. 29, 1992)

<sup>780</sup> *Id.*

<sup>781</sup> Dick Lehr, *FBI Ties Renew Questions on 75 State Street Scandal*, BOSTON GLOBE, June 14, 1998.

<sup>782</sup> *Id.*

<sup>783</sup> *Id.*

<sup>784</sup> J.M. Lawrence, *Trial: Agent Meddled in 75 State St. Case*, BOSTON HERALD, May 21, 2002.

<sup>785</sup> See "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 41-42, 68, 98-101 (June 19, 2003).

<sup>786</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 67, 88 (June 19, 2003) (testimony of William Bulger).

<sup>787</sup> *Id.* at 67.

<sup>788</sup> *Id.*

<sup>789</sup> *Id.* at 67-68, 89, 90.

the money to Finnerty.<sup>790</sup> William Bulger testified that he knew Brown was in “some kind of trouble.”<sup>791</sup> Therefore, William Bulger returned the money so that no one could misconstrue that a relationship existed between William Bulger and Brown.<sup>792</sup> After the money was returned, Finnerty brought suit against Brown.<sup>793</sup> In his defense, Brown alleged that Finnerty extorted \$500,000.<sup>794</sup>

William Bulger testified that he did not recall ever meeting Morris or discussing 75 State Street with Connolly.<sup>795</sup> William Bulger entered an affidavit from Brown into the Committee record.<sup>796</sup> In the affidavit, Brown stated that William Bulger had “zero” involvement in the 75 State Street project.<sup>797</sup>

### 3. Massachusetts State Police Trooper Billy Johnson’s Encounter with James “Whitey” Bulger at Logan Airport

On September 8, 1987, James “Whitey” Bulger and his girlfriend, Teresa Stanley, were scheduled to fly from Boston to Montreal.<sup>798</sup> Screeners at Logan International Airport identified two bricks of \$100 bills in James “Whitey” Bulger’s carry on baggage.<sup>799</sup> It has been reported that the bag contained at least \$50,000 in cash.<sup>800</sup> James “Whitey” Bulger refused to have the bag searched and gave the bag to Kevin Weeks.<sup>801</sup> Massachusetts State Police Trooper Billy Johnson arrived after Weeks fled the airport with the bag.<sup>802</sup> Johnson confiscated \$9,923 from Stanley and released the couple.<sup>803</sup>

After his encounter with James “Whitey” Bulger, Johnson wrote an incident report.<sup>804</sup> Johnson later claimed that David Davis, the Executive Director of the Massachusetts Port Authority, requested a copy of the report on behalf of William Bulger.<sup>805</sup> Johnson, a decorated officer, was later demoted.<sup>806</sup> After an early retirement, Johnson committed suicide in 1998.<sup>807</sup>

The Committee Members’ questions regarding Trooper Johnson again focused on the concern that William Bulger used his position as the President of the Massachusetts State Senate

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<sup>790</sup> *Id.* at 68, 88-89, 93.

<sup>791</sup> *Id.* at 68.

<sup>792</sup> *Id.*

<sup>793</sup> *Id.*

<sup>794</sup> *Id.*

<sup>795</sup> *Id.* at 41-42, 64, 68, 87, 100.

<sup>796</sup> *Id.* at 42.

<sup>797</sup> Affidavit of Harold Brown (June 16, 2003)(Exhibit 974).

<sup>798</sup> Peter Gelzinis, *Kin Await Vindication for Trooper who Crossed James “Whitey” Bulger*, BOSTON HERALD, June 19, 2003.

<sup>799</sup> *Id.*

<sup>800</sup> Peter Gelzinis, *James “Whitey” Bulger Leaves Surrogate Son Out of the \$ \$ \$*, BOSTON HERALD, Dec. 14, 1999.

<sup>801</sup> Peter Gelzinis, *Kin Await Vindication for Trooper who Crossed James “Whitey” Bulger*, BOSTON HERALD, June 19, 2003.

<sup>802</sup> *Id.*

<sup>803</sup> *Id.*

<sup>804</sup> *Id.*

<sup>805</sup> *Id.*

<sup>806</sup> *Id.*

<sup>807</sup> *Id.*

to penalize a law enforcement officer who may have investigated James “Whitey” Bulger.<sup>808</sup> William Bulger testified that his relationship with Davis was business in nature.<sup>809</sup> William Bulger further stated that he never spoke to Davis regarding the incident or the incident report or sought sanctions against Johnson.<sup>810</sup> William Bulger did not learn of the incident involving James “Whitey” Bulger and Johnson at Logan Airport until it was reported in the newspapers.<sup>811</sup> William Bulger testified that he never saw Johnson’s incident report.<sup>812</sup>

William Bulger introduced an affidavit from Davis into the Committee record.<sup>813</sup> The affidavit stated that at no time did William Bulger, or anyone acting on William Bulger’s behalf, contact Davis regarding the Johnson incident.<sup>814</sup> In addition, Davis never provided a copy of Johnson’s report to William Bulger.<sup>815</sup> The affidavit further stated that no form of sanction was imposed on Johnson regarding the incident with James “Whitey” Bulger.<sup>816</sup>

#### **4. William Bulger’s Relationship with Former FBI Special Agent and James “Whitey” Bulger’s Handler, John Connolly**

According to William Bulger’s testimony, he and James “Whitey” Bulger grew up in the same South Boston neighborhood as former FBI Special Agent John Connolly.<sup>817</sup> As an adult, Connolly worked on William Bulger’s district campaigns.<sup>818</sup> In 1975, Connolly recruited James “Whitey” Bulger as an FBI informant.<sup>819</sup> Connolly served as James “Whitey” Bulger’s FBI handler until 1990, when Connolly retired from the FBI.<sup>820</sup> Connolly was subsequently hired as the head of security for Boston Edison Company.<sup>821</sup> After six years, Connolly took a position as a lobbyist for Boston Edison’s government affairs position.<sup>822</sup>

On December 23, 1999, Connolly was indicted on charges of racketeering, racketeering conspiracy, conspiracy to obstruct justice, and obstruction of justice.<sup>823</sup> Connolly was accused of

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<sup>808</sup> See “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 45, 47, 56, 114 (June 19, 2003).

<sup>809</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 47 (June 19, 2003) (testimony of William Bulger).

<sup>810</sup> *Id.* at 45, 47, 56.

<sup>811</sup> *Id.* at 45.

<sup>812</sup> *Id.* at 108.

<sup>813</sup> *Id.* at 45.

<sup>814</sup> Affidavit of David Davis (June 16, 2003)(Exhibit 975).

<sup>815</sup> *Id.*

<sup>816</sup> *Id.*

<sup>817</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 54 (June 19, 2003) (testimony of William Bulger).

<sup>818</sup> *Id.* at 54, 64.

<sup>819</sup> Ralph Ranalli & Patrick Healy, *Hitman: Connolly Aided Bulger as Favor to Brother*, BOSTON GLOBE, May 14, 2002.

<sup>820</sup> *Id.*

<sup>821</sup> Jonathan Wells, *James “Whitey” Bulger’s Ex-FBI Pal Leaves Job at Nstar*, BOSTON HERALD, Mar. 1, 2001.

<sup>822</sup> *Id.*

<sup>823</sup> Andrea Estes & Jack Sullivan, *Ex-agent Busted – Former FBI man Connolly Indicted for Racketeering*, BOSTON HERALD, Dec. 23, 1999.



tipping off James “Whitey” Bulger, Stephen “the Rifleman” Flemmi, and Francis “Cadillac Frank” Salemme that they would be indicted on racketeering charges in January 1995.<sup>824</sup> Additionally, Connolly was accused of informing James “Whitey” Bulger and Flemmi of ongoing FBI investigations and failing to report James “Whitey” Bulger and Flemmi’s participation in extortion, loansharking and gambling to FBI superiors.<sup>825</sup> Connolly pled innocent to the charges.<sup>826</sup> On May 28, 2002, Connolly was found guilty of obstructing justice, racketeering, and making a false statement.<sup>827</sup> Connolly was sentenced to ten years and one month in prison.<sup>828</sup>

Press reports have alleged that William Bulger used his political position, as well as his relationship with Connolly, to protect James “Whitey” Bulger from prosecution. At Connolly’s trial, former mob hitman, John Martorano, testified that William Bulger asked Connolly to keep James “Whitey” Bulger out of trouble.<sup>829</sup> William Bulger testified that Connolly periodically stopped by his office with new FBI Agents assigned to Boston.<sup>830</sup> In addition, Connolly occasionally met James “Whitey” Bulger and Flemmi at the home of Flemmi’s mother.<sup>831</sup> Mrs. Flemmi lived next door to William Bulger.<sup>832</sup> James Ring, former Supervisor for the Organized Crime Squad, testified that William Bulger walked in on a dinner at Mrs. Flemmi’s house.<sup>833</sup> The dinner was attended by Ring, Connolly, James “Whitey” Bulger, and Flemmi.<sup>834</sup>

William Bulger testified that he and Connolly were not close friends growing up, due to the seven-year age difference.<sup>835</sup> The two men were closer friends as adults.<sup>836</sup> Although he recalled that Connolly brought FBI agents who were new to Boston to the State House, William Bulger did not consider Connolly to be a frequent visitor or telephone caller to his office.<sup>837</sup>

William Bulger testified that he first learned that James “Whitey” Bulger might be an FBI informant from a Boston Globe article.<sup>838</sup> William Bulger stated that he never discussed James “Whitey” Bulger’s possible role as an FBI informant or involvement in illegal activities with

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<sup>824</sup> *Id.*

<sup>825</sup> *Id.*

<sup>826</sup> *Id.*

<sup>827</sup> Jose Martinez, *G-man’s Ties to Bulger Began on Southie Streets*, BOSTON HERALD, May 29, 2002.

<sup>828</sup> Ralph Ranalli, *Sentence for Connolly Outstrips Others*, BOSTON GLOBE, Sept. 17, 2002.

<sup>829</sup> Ralph Ranalli & Patrick Healy, *Hitman: Connolly Aided Bulger as Favor to Brother*, BOSTON GLOBE, May 14, 2002.

<sup>830</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 64, 72, 90, 97 (June 19, 2003) (testimony of William Bulger).

<sup>831</sup> Dick Lehr, *FBI Ties Renew Questions on 75 State Street Scandal*, BOSTON GLOBE, June 14, 1998.

<sup>832</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 112 (2003) (testimony of William Bulger).

<sup>833</sup> Dick Lehr, *FBI Ties Renew Questions on 75 State Street Scandal*, BOSTON GLOBE, June 14, 1998.

<sup>834</sup> *Id.*

<sup>835</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 54 (2003) (testimony of William Bulger).

<sup>836</sup> *Id.* at 94.

<sup>837</sup> *Id.* at 72, 90, 97.

<sup>838</sup> *Id.* at 66, 73, 104-105.

Connolly.<sup>839</sup> In addition, William Bulger never witnessed Connolly in the presence of James “Whitey” Bulger or Flemmi.<sup>840</sup> William Bulger denied ever being present at a dinner at Mrs. Flemmi’s house at which James “Whitey” Bulger, Flemmi, Connolly, or any other FBI agents were in attendance.<sup>841</sup>

William Bulger denied asking Connolly or any law enforcement officer to use his or her position within law enforcement to keep James “Whitey” Bulger out of trouble.<sup>842</sup> William Bulger testified that the only discussion he had with Connolly regarding James “Whitey” Bulger occurred after reading a newspaper article that alleged James “Whitey” Bulger was involved with drugs.<sup>843</sup> William Bulger asked Connolly if he could find out if the report was valid.<sup>844</sup> According to Bulger, Connolly informed William Bulger that the allegations were not true.<sup>845</sup>

William Bulger testified that he believed he sent a letter of recommendation on Connolly’s behalf to Harvard’s Kennedy School of Government.<sup>846</sup> Connolly was accepted by the Kennedy School and earned a master’s degree in Public Administration.<sup>847</sup> William Bulger denied providing any assistance in securing Connolly a position outside the FBI, including at Boston Edison.<sup>848</sup> William Bulger submitted an affidavit signed by Carl Gustin, former Senior Vice President of Boston Edison, into the Committee record.<sup>849</sup> According to the affidavit, Gustin was responsible for hiring Connolly as a lobbyist for Boston Edison.<sup>850</sup> Gustin’s affidavit further stated that Connolly was hired based upon his merits and that no external influences caused him to hire Connolly.<sup>851</sup>

##### **5. William Bulger’s January 1995 Telephone Conversation with James “Whitey” Bulger**

James “Whitey” Bulger fled his January 10, 1995 indictments.<sup>852</sup> William Bulger has admitted to speaking with James “Whitey” Bulger on the telephone in January 1995 after he fled.<sup>853</sup> William Bulger took the telephone call from James “Whitey” Bulger at the home of

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<sup>839</sup> *Id.* at 55, 72-73, 91-92, 105.

<sup>840</sup> *Id.* at 66, 96, 109.

<sup>841</sup> *Id.* at 66, 96.

<sup>842</sup> *Id.* at 55, 57, 106-107.

<sup>843</sup> *Id.* at 91.

<sup>844</sup> *Id.*

<sup>845</sup> *Id.*

<sup>846</sup> *Id.* at 64.

<sup>847</sup> Affidavit of Carl Gustin (June 12, 2003)(Exhibit 976).

<sup>848</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 64, 66, 70-71, 87-88 (June 19, 2003) (testimony of William Bulger).

<sup>849</sup> *Id.* at 64.

<sup>850</sup> Affidavit of Carl Gustin (June 12, 2003)(Exhibit 976).

<sup>851</sup> *Id.*

<sup>852</sup> Ralph Ranalli & Patrick Healy, *Hitman: Connolly Aided Bulger as Favor to Brother*, BOSTON GLOBE, May 14, 2002.

<sup>853</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 33, 58-59, 74, 79, 82-84, 88, 93-95 (June 19, 2003) (testimony of William Bulger).

Edward Phillips, who worked for William Bulger.<sup>854</sup> William Bulger did not personally notify authorities of the telephone call.<sup>855</sup> The phone call did not become public until William Bulger's grand jury testimony was leaked to the media.<sup>856</sup>

Committee Members expressed concern over William Bulger's decision to keep the telephone call with James "Whitey" Bulger a secret from law enforcement officials.<sup>857</sup> William Bulger stated that his telephone call with James "Whitey" Bulger was "brief" and lasted approximately three to four minutes.<sup>858</sup> William Bulger testified that James "Whitey" Bulger told him not to believe everything that was being said about him.<sup>859</sup> In addition, the two brothers did not discuss whether James "Whitey" Bulger should turn himself in and William Bulger did not recommend that James "Whitey" Bulger stay at-large.<sup>860</sup>

William Bulger testified that he "informed [his] attorney just about immediately" after the telephone call and "he [William Bulger's attorney], in turn, told the officials."<sup>861</sup> William Bulger testified to his belief that Massachusetts statute Chapter 274, Section 4 protected his sibling relationship with James "Whitey" Bulger and did not require William Bulger to personally notify law enforcement officials of the telephone call.<sup>862</sup> Furthermore, William Bulger denied taking the telephone call at Phillips' home as a way to avoid telephone taps that may have been placed on William Bulger's home telephone.<sup>863</sup>

After the conclusion of the hearing, William Bulger provided the Committee with a personal affidavit.<sup>864</sup> In the affidavit, William Bulger stated that he informed four attorneys of his telephone conversation with James "Whitey" Bulger: Robert Popeo, Thomas Finnerty, Thomas Kiley, and William Homans, who is now deceased.<sup>865</sup> William Bulger further stated that the attorney to whom he referred during his testimony before the Committee was Popeo.<sup>866</sup>

Affidavits from Popeo, Finnerty, and Kiley were also provided to the Committee. Popeo stated that he did discuss the telephone call from James "Whitey" Bulger with William Bulger.<sup>867</sup> However, Popeo stated that he was not the attorney who contacted the United States Attorney's office regarding the telephone call between William Bulger and James "Whitey" Bulger.<sup>868</sup>

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<sup>854</sup> *Id.* at 83-84, 88.

<sup>855</sup> *Id.* at 58-59, 83,

<sup>856</sup> *Id.* at 33.

<sup>857</sup> See "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 59, 83 (June 19, 2003).

<sup>858</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 33, 58, 79 (June 19, 2003) (testimony of William Bulger).

<sup>859</sup> *Id.* at 58.

<sup>860</sup> *Id.* at 33, 58, 79.

<sup>861</sup> *Id.* at 83.

<sup>862</sup> *Id.* at 59.

<sup>863</sup> *Id.* at 58, 74, 88, 104.

<sup>864</sup> Affidavit of William M. Bulger (July 22, 2003)(Exhibit 977).

<sup>865</sup> *Id.*

<sup>866</sup> *Id.*

<sup>867</sup> Affidavit of R. Robert Popeo (July 17, 2003)(Exhibit 978).

<sup>868</sup> *Id.*

Finnerty's affidavit stated that he was "told virtually immediately about the call."<sup>869</sup> Kiley's affidavit was silent as to William Bulger's communication with him about telephone call with James "Whitey" Bulger shortly after the call.<sup>870</sup>

**6. FBI Contact with William Bulger and the Bulger Family Concerning James "Whitey" Bulger's Whereabouts**

Committee members were interested as to whether the FBI used William Bulger as a source in locating James "Whitey" Bulger, after he fled his January 1995 indictments.<sup>871</sup> After establishing that James "Whitey" Bulger fled in 1995, Mr. Delahunt asked:

So 8 years later the FBI gets around to inquiring of you and your wife, in your case some 6 years as to the whereabouts of your brother?

William Bulger responded: "That is the first direct effort, yes."<sup>872</sup> Mr. Shays questioned William Bulger as to whether the FBI or other law enforcement officers came to his home or office.<sup>873</sup>

Rep. Shays: . . . I am asking whether you gave a signal to the FBI that you did not want to answer their questions, and that they should not ask you and that they should leave.

Mr. Bulger: I don't recall meeting the FBI. I really don't recall it.

Rep. Shays: Did the FBI ever come to your home?

Mr. Bulger: I am told that they did, but I do not recall it.

Rep. Shays: Did the FBI ever come to your offices?

Mr. Bulger: No, I don't think so.

Rep. Shays: Did any other law enforcement people come to your home?

Mr. Bulger: I don't think so.

Rep. Shays: Did any law enforcement people come to your offices to ask you questions?

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<sup>869</sup> Affidavit of Thomas E. Finnerty (July 18, 2003)(Exhibit 979).

<sup>870</sup> Affidavit of Thomas R. Kiley (July 18, 2003)(Exhibit 980).

<sup>871</sup> See "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 5, 76-77, 84-85, 103 (June 19, 2003).

<sup>872</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 77 (June 19, 2003) (testimony of William Bulger).

<sup>873</sup> *Id.* at 84-85.

Mr. Bulger: I don't believe so.<sup>874</sup>

William Bulger testified that the first time he was asked of his telephone call with James "Whitey" Bulger was during his grand jury testimony in 2001.<sup>875</sup>

William Bulger testified that a week before the Committee hearing, two FBI agents, James Stover and J. Michael Doyle, came to his home.<sup>876</sup> The two agents talked to William Bulger's daughter.<sup>877</sup> William Bulger submitted his daughter's written account of her conversation with the agents into the Committee record.<sup>878</sup> This encounter, on June 10, 2003, was the first time William Bulger could recall the FBI visiting his home.<sup>879</sup>

On June 28, 2003, an article entitled "Retired FBI Agent Contradicts Bulger" appeared in the Boston Globe.<sup>880</sup> In the article, former FBI Special Agent John Gamel stated that he spoke to William Bulger regarding his brother James "Whitey" Bulger on January 9, 1995.<sup>881</sup> Gamel stated he paid an unannounced visit to the state house to speak with William Bulger, who was unavailable.<sup>882</sup> Later, Gamel and William Bulger spoke briefly on the telephone.<sup>883</sup>

In William Bulger's affidavit submitted after the Committee hearing, he further addressed his testimony as to whether the FBI contacted him after James "Whitey" Bulger disappeared.<sup>884</sup> William Bulger stated that his former attorney, Popeo, confirmed a January 9, 1995 conversation between the two regarding Gamel's visit to the state house.<sup>885</sup> Popeo's affidavit submitted after the Committee hearing, also confirmed that he and William Bulger discussed William Bulger's conversation with Gamel.<sup>886</sup>

#### **B. Subsequent Investigation of William Bulger's Testimony**

Following the testimony received from William Bulger at the June 19, 2003 Committee hearing entitled "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," Committee staff members traveled to Boston, Massachusetts to substantiate the information and affidavits that were submitted by William Bulger during the Committee's hearing. Committee staff interviewed the following individuals:

- (1) John Gamel, retired FBI Special Agent and case agent for James "Whitey" Bulger;
- (2) Carl Gustin, former Senior Vice President for Boston Edison;
- (3) Captain William Nally, retired Massachusetts State Police;

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<sup>874</sup> *Id.*

<sup>875</sup> *Id.* at 84.

<sup>876</sup> *Id.* at 60-61.

<sup>877</sup> *Id.*

<sup>878</sup> *Id.* at 61-63.

<sup>879</sup> *Id.* at 76-77.

<sup>880</sup> Shelley Murphy, *Retired FBI Agent Contradicts Bulger*, BOSTON GLOBE, June 28, 2003.

<sup>881</sup> *Id.*

<sup>882</sup> *Id.*

<sup>883</sup> *Id.*

<sup>884</sup> Affidavit of William M. Bulger (July 22, 2003)(Exhibit 977).

<sup>885</sup> *Id.*

<sup>886</sup> Affidavit of R. Robert Popeo (July 17, 2003)(Exhibit 978).

(4) Captain Robert Zoulas, retired Massachusetts State Police.

The Committee also contacted Massachusetts State Police Lt. Col. John O'Donovan, and Lt. Col. Peter Agnes.

### 1. Interview of John Gamel

When asked at the Committee's hearing whether he had been "interviewed" by the FBI prior to 2001 regarding the whereabouts of his brother, William Bulger testified: "I don't believe I was." and "I don't think I was."<sup>887</sup> Later in the same questioning, after establishing that James "Whitey" Bulger fled in 1995, Mr. Delahunt asked:

So 8 years later the FBI gets around to inquiring of you and your wife, in your case some 6 years as to the whereabouts of your brother?

Bulger responded: "That is the first direct effort, yes."<sup>888</sup> Similarly, when Mr. Shays asked whether the FBI had ever come to his office, he responded "No. I don't think so."<sup>889</sup> These answers certainly had the potential for leading the Committee to conclude wrongly that the FBI had never contacted William Bulger in its effort to find James "Whitey" Bulger. Several days later, Special Agent John Gamel, a retired FBI case agent who was assigned to investigate James "Whitey" Bulger from 1990 to 1995 appeared to contradict this testimony in an interview with the press.<sup>890</sup>

On July 21, 2003, Committee staff interviewed Special Agent Gamel about his contacts with William Bulger, and other Bulger family members. Assistant U.S. Attorney Joshua Levy was also present to monitor the interview on behalf of the Department of Justice. Gamel recalled the case started in July 1990, when Tim Connelly was referred to the FBI by Tom Riley, a private attorney.<sup>891</sup> Connelly was a mortgage broker who prepared fraudulent mortgage schemes for associates of James "Whitey" Bulger.<sup>892</sup> Connelly informed the FBI that James "Whitey" Bulger had personally extorted \$50,000 from him and that he had been "shook down" in the backroom of a liquor store with a knife to his chest.<sup>893</sup>

At that time, Gamel was working for Richard Watson, head of FBI's Counter-Terrorism Unit in Boston.<sup>894</sup> According to Gamel, he was assigned to the case because Watson knew

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<sup>887</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 76 (June 19, 2003) (statement of William Bulger).

<sup>888</sup> *Id.* at 77.

<sup>889</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 84 (June 19, 2003) (statement of William Bulger).

<sup>890</sup> Shelley Murphy, *Retired FBI Agent Contradicts Bulger*, BOSTON GLOBE, June 28, 2003.

<sup>891</sup> Interview with John Gamel, retired FBI Special Agent (July 21, 2003).

<sup>892</sup> *Id.*

<sup>893</sup> *Id.*

<sup>894</sup> *Id.*

James “Whitey” Bulger was an FBI informant and wanted to isolate the case from James “Whitey” Bulger’s involvement with the Organized Crime Squad.<sup>895</sup> In March 1992, Gamel was transferred to the Organized Crime Squad where he continued as the case agent for the James “Whitey” Bulger investigation.<sup>896</sup> After James “Whitey” Bulger was indicted on January 5, 1995 and became a fugitive, the case was transferred from the Organized Crime Unit to the Fugitive Squad.<sup>897</sup>

According to Gamel, on January 9, 1995, Gamel and Special Agent Joseph Hanigan went to the Massachusetts State House to speak with Senate President William Bulger regarding the whereabouts of his brother.<sup>898</sup> Gamel said the receptionist at the Senate President’s Office told them that William Bulger was unavailable, and after a short wait, they provided their business cards and left.<sup>899</sup> Later that day, William Bulger called Gamel and they spoke for about forty-five seconds where he denied any recent contact with his brother.<sup>900</sup> According to Gamel’s interview report, William Bulger also stated that he “. . . did not wish to be interviewed by the FBI, nor answer any questions posed to him by the interviewing Agent.”<sup>901</sup>

In the summer of 1995, Assistant U.S. Attorney Richard Hoffman seized lottery winnings of James “Whitey” Bulger, valued at about \$119,000 a year.<sup>902</sup> James “Whitey” Bulger’s siblings filed a case with the Norfolk Probate Court to protect these lottery winnings.<sup>903</sup> As a result of the seizure and subsequent lawsuit, Gamel and Special Agent Walter Seffens attempted to contact all the Bulger siblings regarding the whereabouts of James “Whitey” Bulger.<sup>904</sup> Gamel and Seffens were only able to speak with John Bulger and Jean Bulger Holland.<sup>905</sup> John Bulger and Holland were informed of the Harboring Act.<sup>906</sup>

In response to questions, Gamel said the FBI had given him “carte blanche” to conduct his investigation and denied that anyone tried to hinder his efforts in locating James “Whitey” Bulger.<sup>907</sup> Gamel explained that he made a professional decision not to follow up on his efforts in reaching William Bulger because, in his experience, a family member would either immediately give up or never give up a fugitive.<sup>908</sup> Gamel stated that he was unaware of the January 1995 phone call between William Bulger and James “Whitey” Bulger until it became public knowledge.<sup>909</sup>

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<sup>895</sup> *Id.*

<sup>896</sup> *Id.*

<sup>897</sup> *Id.*

<sup>898</sup> *Id.*

<sup>899</sup> *Id.*

<sup>900</sup> *Id.*

<sup>901</sup> Special Agent John Gamel, Interview Report, FBI Form 302 (Jan. 9, 1995)(Exhibit 981).

<sup>902</sup> Interview with John Gamel, retired FBI Special Agent (July 21, 2003).

<sup>903</sup> *Id.*

<sup>904</sup> *Id.*

<sup>905</sup> *Id.*

<sup>906</sup> *Id.*

<sup>907</sup> *Id.*

<sup>908</sup> *Id.*

<sup>909</sup> *Id.*

In January 1996, Gamel became the supervisor for the Organized Crime Unit and stopped being a case agent in the James “Whitey” Bulger investigation.<sup>910</sup> Subsequently, the investigation was worked on by Special Agents Jan Galbreath, Robert Walther, and Charles Gianturco.<sup>911</sup>

William Bulger’s lawyer, Tom Kiley, sought to respond to the apparent inconsistency between William Bulger’s testimony and Gamel’s statements that the FBI had tried to talk to him about his brother on January 9, 1995. In an affidavit submitted to the Committee, he notes that Gamel’s contact could not have been in furtherance of the fugitive investigation after the January 10, 1995 indictment but was a contact in furtherance of executing arrest warrants under the January 4, 1995 conspiracy complaint.<sup>912</sup> He asserts that he reviewed the criminal docket, recites the docket entries, notes that Judge Wolf wrote that the FBI opened a fugitive investigation of James “Whitey” Bulger after the January 10, 1995 indictment, and concludes that “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 [sic] indictment had not yet been returned.”<sup>913</sup>

Even if it is true that a fugitive investigation had not been opened, there is no evidence that William Bulger actually knew the information that Kiley researched or that he actually used that information in the course of his testimony to distinguish between the types of contacts. Indeed, Agent Gamel’s interview report expressly states that William Bulger was expressly informed of the existence of a fugitive investigation: “Gamel advised [William Bulger] that his brother was the subject of a Federal fugitive investigation that would not end until he was captured.”<sup>914</sup>

## 2. Interview of Carl Gustin

During the Committee hearing, William Bulger responded “No,” when asked whether he helped former FBI Special Agent John Connolly get a job at Boston Edison.<sup>915</sup> William Bulger also submitted an affidavit signed by Carl Gustin, former Senior Vice President of Boston Edison, who hired Connolly as a lobbyist in 1995, from his position as head of security.<sup>916</sup> Gustin’s affidavit stated that the rumors that former Senate President William Bulger got Connolly his job at Boston Edison are false and “When I tapped John Connolly for the government affairs position, there was no intercession from William Bulger or anyone in his office.”<sup>917</sup>

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<sup>910</sup> *Id.*

<sup>911</sup> *Id.*

<sup>912</sup> Affidavit of Thomas R. Kiley (July 18, 2003)(Exhibit 980).

<sup>913</sup> *Id.*

<sup>914</sup> Special Agent John Gamel, Interview Report, FBI Form 302 (Jan. 9, 1995)(emphasis supplied)(Exhibit 981).

<sup>915</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 64, 66, 88 (June 19, 2003) (statement of William Bulger).

<sup>916</sup> *Id.* at 64.

<sup>917</sup> Affidavit of Carl Gustin (June 12, 2003)(Exhibit 976).



On July 21, 2003, Committee staff interviewed Gustin to determine the circumstance surround the hiring of Connolly at Boston Edison. Gustin stated that he did not know Connolly before he was hired as the head of security and did not play a role in his initial hiring in 1990.<sup>918</sup> Gustin said that John Higgins, Vice President for Human Resources, hired Connolly based upon a strong recommendation from Jack Keough, who was the outgoing head of security at Boston Edison.<sup>919</sup> Gustin understood that Keough had a prior relationship with Connolly and was familiar with his qualifications.<sup>920</sup> As head of security, Connolly's responsibilities included working with local public safety officials and protecting Boston Edison's facilities and the safety of its 4,000 employees.<sup>921</sup>

As part of a corporate restructuring in 1995, Gustin hired Connolly as a lobbyist for Boston Edison's Government Affairs Division.<sup>922</sup> Gustin asserted that he received no outside influence about hiring Connolly for the lobbyist position.<sup>923</sup> The policy then was to fill the position internally due to the extensive layoffs and downsizing of personnel.<sup>924</sup> Gustin said he discussed Connolly's qualifications with Higgins.<sup>925</sup> Gustin hired Connolly because he was the internal candidate with the most experience and maturity.<sup>926</sup> Connolly had a Masters in Public Administration from Harvard and was a highly decorated FBI agent.<sup>927</sup> In addition, Connolly was well known in Boston and had extensive contacts in the city and State legislature.<sup>928</sup> Gustin said he initiated the contact with Connolly about the position, he did not recall Connolly applying for the position.<sup>929</sup> Gustin believed Connolly was hired based on his merits and that no one had exerted external influences on him to hire Connolly.<sup>930</sup> Gustin added that the hiring was considered a lateral transfer and may have included a slight increase in salary.<sup>931</sup> Connolly managed a staff of five to six people who were assigned to oversee community relations at various towns around Boston.<sup>932</sup>

According to Gustin, he met with Connolly about every two weeks to discuss ongoing projects.<sup>933</sup> Gustin was aware that Connolly and William Bulger were friends and speculated that they would have shared information about activities at the State Senate.<sup>934</sup> Gustin recalled that Connolly and William Bulger had a professional interaction during the electric utility restructuring.<sup>935</sup> In particular, Gustin remembered that Boston Edison was receiving

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<sup>918</sup> Interview with Carl Gustin, former Senior Vice President of Boston Edison (July 21, 2003).

<sup>919</sup> *Id.*

<sup>920</sup> *Id.*

<sup>921</sup> *Id.*

<sup>922</sup> *Id.*

<sup>923</sup> *Id.*

<sup>924</sup> *Id.*

<sup>925</sup> *Id.*

<sup>926</sup> *Id.*

<sup>927</sup> *Id.*

<sup>928</sup> *Id.*

<sup>929</sup> *Id.*

<sup>930</sup> *Id.*

<sup>931</sup> *Id.*

<sup>932</sup> *Id.*

<sup>933</sup> *Id.*

<sup>934</sup> *Id.*

<sup>935</sup> *Id.*

environmental pressures about power plant emissions in South Boston.<sup>936</sup> Gustin said that Connolly participated in the efforts between Boston Edison and William Bulger in seeking a modification of an environmental order from EPA.<sup>937</sup>

Gustin never heard Connolly talk about James “Whitey” Bulger prior to the public disclosure of their relationship.<sup>938</sup> Gustin recalled that he had to field numerous press inquiries before Connolly’s indictment.<sup>939</sup> Although Connolly professed his innocence, he was forced to take a leave of absence.<sup>940</sup> Gustin was unsure if Connolly was ultimately fired or retired.<sup>941</sup> Gustin left Boston Edison at the end of 2000.<sup>942</sup>

According to Gustin, he spoke with Higgins after allegations began to surface that William Bulger interceded in Connolly’s hiring at Boston Edison.<sup>943</sup> Higgins told Gustin that William Bulger had nothing to do with Connolly being hired.<sup>944</sup> According to Higgins, Connolly had numerous job opportunities after retiring from the FBI.<sup>945</sup> Higgins said he respected Keough’s judgment and seriously considered his recommendation in hiring Connolly.<sup>946</sup> Finally, Gustin said he did not recall ever asking Jack Keough about the relationship between John Connolly and William Bulger.<sup>947</sup>

### 3. Interview of William Nally

During the Committee hearing, in response to questions regarding the introduction of FY82 Appropriations Bill budget line item that, if passed, would have caused the early retirement or demotion of five Massachusetts State Police officers, William Bulger testified: “I have never sought to punish anyone who was in law enforcement and was in pursuit of my brother.”<sup>948</sup> One of the five officers had participated in the Lancaster Street Garage investigation involving James “Whitey” Bulger and other leaders of the Boston mob.<sup>949</sup> William Bulger submitted an affidavit signed by retired Massachusetts State Police Major William Nally.<sup>950</sup> Nally, who was a Captain in 1981, would have been affected by the state budget line item.<sup>951</sup> Nally’s affidavit stated that he played no role in the Lancaster Street garage matter and

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<sup>936</sup> *Id.*

<sup>937</sup> *Id.*

<sup>938</sup> *Id.*

<sup>939</sup> *Id.*

<sup>940</sup> *Id.*

<sup>941</sup> *Id.*

<sup>942</sup> *Id.*

<sup>943</sup> *Id.*

<sup>944</sup> *Id.*

<sup>945</sup> *Id.*

<sup>946</sup> *Id.*

<sup>947</sup> *Id.*

<sup>948</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 52 (June 19, 2003) (testimony of William Bulger).

<sup>949</sup> Fox Butterfield, *Subpoena for UMass Leader Over Brothers Crime Role*, N.Y. TIMES, Nov. 30, 2002.

<sup>950</sup> “The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger,” *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 48 (June 19, 2003) (testimony of William Bulger)(Exhibit 972).

<sup>951</sup> Affidavit of William Nally (June 14, 2003).

stated, "I know of no facts which support the comparatively recent allegations that the budget item was payback for an investigation of "Whitey" Bulger."<sup>952</sup>

On July 22, 2003, Committee staff interviewed Nally. He explained that in the 1960s, the Department of Public Safety had two competing branches of police detectives.<sup>953</sup> The state detectives were civil service employees with retirement at age 65.<sup>954</sup> The state uniformed officers were not civil service employees and retired at age 50.<sup>955</sup> The state detectives were paid a higher salary than the state uniform officers.<sup>956</sup> In order to become a state detective, an individual was required to obtain a rank of police sergeant, have ten years in the FBI or Secret Service, or pass a competitive law exam and physical.<sup>957</sup>

Nally said that in 1974, when the Department of Public Safety was reorganized, a division of state detectives and uniformed officers named CPacks was created to work in the District Attorneys' offices.<sup>958</sup> However, the uniformed officers had to retire from the CPacks at age 50 or return to the uniform division.<sup>959</sup> Around 1998 or 1999, the law was changed to give state detectives and uniformed officers equal status, which allowed uniformed officers to stay in CPacks as long as they desired.<sup>960</sup> Lt. Col. John O'Donovan was responsible for the uniformed officers within the CPacks.<sup>961</sup>

Nally said he first learned of the state budget line item from Major John Regan, a few days before the measure went to the Governor for signature.<sup>962</sup> Nally recalled Regan and O'Donovan were concerned about the budget line item. Nally doubted that the measure would ever be passed.<sup>963</sup>

Nally provided two possible motives for the budget line item. First, the union had sufficient influence to get the item introduced to equalize treatment of the uniformed officers and detectives – the union was concerned that uniformed officers had difficulty passing the state detective exam and could not otherwise escape the mandatory retirement at age 50.<sup>964</sup> Second, the District Attorneys also had enough influence to have used the budget line item as a means to retaliate against O'Donovan for the way he managed CPacks.<sup>965</sup>

Nally expressed doubt that William Bulger attempted to use the budget line item as a way to punish the officers who investigated Lancaster Street.<sup>966</sup> Nally said he never met William

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<sup>952</sup> *Id.*

<sup>953</sup> Interview with William Nally, retired Massachusetts State Police Major (July 22, 2003).

<sup>954</sup> *Id.*

<sup>955</sup> *Id.*

<sup>956</sup> *Id.*

<sup>957</sup> *Id.*

<sup>958</sup> *Id.*

<sup>959</sup> *Id.*

<sup>960</sup> *Id.*

<sup>961</sup> *Id.*

<sup>962</sup> *Id.*

<sup>963</sup> *Id.*

<sup>964</sup> *Id.*

<sup>965</sup> *Id.*

<sup>966</sup> *Id.*

Bulger or investigated James “Whitey” Bulger.<sup>967</sup> Nally first learned of the Lancaster Street investigation when he questioned O’Donovan’s overtime submissions.<sup>968</sup> At that time, the Lancaster Street investigation was already closed, and O’Donovan showed him the books and pictures regarding the investigation.<sup>969</sup>

#### 4. Interview of Robert Zoulas

On July 22, 2003, Committee staff interviewed retired Massachusetts State Police Captain Robert Zoulas. Zoulas was a state detective who would have been affected by the State budget line item. Zoulas was not asked by William Bulger to sign an affidavit for the Committee hearing.

Zoulas stated that he first learned of the budget line item from Nally a few days before the Governor vetoed the measure.<sup>970</sup> Zoulas suggested three theories as to who was responsible for the budget line item. The first theory was that the union was responsible.<sup>971</sup> The union would benefit because five younger officers would advance into higher positions.<sup>972</sup> The second theory was that the District Attorneys were responsible because they were unhappy with the organizational setup within law enforcement.<sup>973</sup> The third theory, and in his mind the least credible, was that there was an ulterior motive to upset the State Police.<sup>974</sup> Zoulas stated he has no specific idea of who introduced the budget line item.<sup>975</sup>

Zoulas was not involved in the Lancaster Street investigation and never investigated James “Whitey” Bulger.<sup>976</sup> Zoulas did not recall any discussion that William Bulger was responsible for the budget line item.<sup>977</sup>

#### 5. Contact with John O’Donovan

On July 21, 2003, Committee staff contacted retired Massachusetts State Police Lt. Col. John O’Donovan. O’Donovan would have been affected by the state budget line item. O’Donovan was not asked by William Bulger to sign an affidavit for the Committee hearing.

O’Donovan asked Committee staff to call back the next day so he could have time to consider the interview request.<sup>978</sup> On July 22, 2003, O’Donovan agreed to an interview but due

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<sup>967</sup> *Id.*

<sup>968</sup> *Id.*

<sup>969</sup> *Id.*

<sup>970</sup> Interview with Robert Zoulas, retired Massachusetts State Police Captain (July 22, 2003).

<sup>971</sup> *Id.*

<sup>972</sup> *Id.*

<sup>973</sup> *Id.*

<sup>974</sup> *Id.*

<sup>975</sup> *Id.*

<sup>976</sup> *Id.*

<sup>977</sup> *Id.*

<sup>978</sup> Telephone call with John O’Donovan, retired Massachusetts State Police Lt. Col. (July 21, 2003).

to prior commitments, the Committee staff could not meet with him on that day.<sup>979</sup> O'Donovan then stated he would be available for a conference call the following week.<sup>980</sup>

On August 14, 2003, in a follow-up attempt to interview O'Donovan, he advised that he was a uniformed police officer and passed a civil service exam to become a Lieutenant Detective.<sup>981</sup> He stated that the budget line item never became law and therefore had no affect on his career.<sup>982</sup> O'Donovan said, however, the effort to reorganize the State Police that precipitated the budget line item had decimated his detective division.<sup>983</sup> He said he believes that he was a "target" of the state budget line item and claimed the Committee knows the identity of the "suspect" or instigator of the budget line item.<sup>984</sup>

## 6. Contact with Peter Agnes

During the Committee hearing, William Bulger submitted an affidavit signed by retired Massachusetts State Police Lt. Col. Peter Agnes, who would have been affected by the state budget line item.<sup>985</sup> Agnes's affidavit stated: "I am aware of the 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."<sup>986</sup>

On July 15, 2003, Committee staff contacted Agnes who referred them to Eileen Agnes, his attorney and daughter-in-law.<sup>987</sup> On July 16, 2003, Committee staff spoke with Ms. Agnes, who stated that she assisted Agnes in preparing his affidavit that was submitted to the Committee.<sup>988</sup> She stated that Agnes was assigned to the Massachusetts State Police's Homicide and Auto Theft Divisions and never investigated James "Whitey" Bulger.<sup>989</sup>

## 7. Research at Massachusetts State House and Library

In July 2003, Committee staff also visited the Massachusetts State House and Library. The purpose was to determine if William Bulger, as the Senate President, participated in the introduction of a budget line item to the 1982 Appropriations Bill that would have required Massachusetts civil service detectives, over 50 years of age, to take a demotion in grade or early

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<sup>979</sup> *Id.* (July 22, 2003).

<sup>980</sup> *Id.*

<sup>981</sup> *Id.* (Aug. 14, 2003).

<sup>982</sup> *Id.*

<sup>983</sup> *Id.*

<sup>984</sup> *Id.*

<sup>985</sup> "The Next Step in the Investigation of the Use of Informants by the Department of Justice: The Testimony of William Bulger," *Hearing Before the Comm. on Govt. Reform*, 108<sup>th</sup> Cong. 48 (June 19, 2003) (testimony of William Bulger).

<sup>986</sup> Affidavit of Peter W. Agnes (June 14, 2003)(Exhibit 973).

<sup>987</sup> Telephone call with Peter Agnes, retired Massachusetts State Police Lt. Col. (July 16, 2003).

<sup>988</sup> Telephone call with Eileen Agnes, counsel to Peter Agnes (July 16, 2003).

<sup>989</sup> *Id.*

retirement. The budget line item was identified as Section 99 in the House Bill(s) and as Section 108 in the Senate Bill(s). Both sections contained the following language:

Section 6 of chapter 639 of the act of 1974, added by section 3 of chapter 389 of the acts of 1976, is hereby amended by inserting after the word “rights”, in line 6, the words:- “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.<sup>990</sup>

A search of the legislative history on the budget line item provided the following chronology:

June 4 and 5, 1981 – Earliest record of the language as Section 99 was found in House Bill H6969 from the House Ways and Means Committee.<sup>991</sup> The record did not indicate when or who introduced the language, section and bill.

June 17, 1981 -- Earliest record of the language as Section 108 was found in Senate Bill S2222 from the Senate Ways and Means Committee.<sup>992</sup> The record did not indicate when or who introduced the language, section and bill.

June 17, 1981 – The text of House Bill H6969 was inserted in place of Senate Bill S2222 upon recommendation by Mr. Atkin and Ms. Buckley from the Senate Ways and Means Committee.<sup>993</sup>

June 17, 1981 – On motion of William Bulger, House Bill H6969 was ordered to be printed as amended.<sup>994</sup>

June 20, 1981 -- House Bill H6969 was enacted as Senate Bill S2254 by the Senate and House of Representatives in General Court assembled.<sup>995</sup> Senate Bill S2254 incorporated the language in House Section 99 as Senate Section 108.<sup>996</sup> The record did not indicate who voted on the enactment.

July 21, 1981 – Governor King disapproved certain unidentified sections in the Appropriation Bill.<sup>997</sup> Subsequent House records indicated that House Section 99 was vetoed by the Governor.<sup>998</sup>

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<sup>990</sup> S. Bill S2254, (Mass. 1981).

<sup>991</sup> H.R. Bill H6929, (Mass. 1981).

<sup>992</sup> S. Bill S2222, (Mass. 1981).

<sup>993</sup> Journal of the Senate, at 59, (Mass. 1981).

<sup>994</sup> *Id.* at 801.

<sup>995</sup> 1981 Mass. Acts 351.

<sup>996</sup> S. Bill S2254, (Mass. 1981).

<sup>997</sup> Journal of the House, at 2968, (Mass. 1981).

<sup>998</sup> *Id.* at 2970.

September 15, 1981 -- The House Journal indicated that "Section 99, which had been vetoed by the Governor, was considered as follows: . . . notwithstanding the objections of His Excellency the Governor, was determined by yeas and nays; and the roll call 0 members voted in the affirmative and 149 in the negative."<sup>999</sup>

Committee staff also contacted Massachusetts Representative Brad Jones, House Minority Leader, and his legal counsel Fred Van Magness, for their assistance in locating any information that would indicate who introduced the budget line item to the 1982 Appropriations Bill. Representative Jones explained that the House Ways and Means Committee usually introduced the Appropriations Bill as House Bill No.1, sometimes in the month of May.<sup>1000</sup> The Committee staff and Representative Jones then reviewed the 1981 Bulletin of Committee Work and concluded that the original House Bill already contained Section 99 when it came out of the House Means and Ways Committee.<sup>1001</sup> Representative Jones explained that any legislator could introduce the provision, even verbally, anywhere along the bill's progression with no recordation of who made the introduction.<sup>1002</sup>

On July 29, 2003, Van Magness said that after thorough research, the legislative history confirmed for him that the budget line item first appeared from House Bill H6969 in June 1981.<sup>1003</sup> He explained that a line item, unlike a bill, did not require a sponsor and any member could introduce the amendment without leaving a documented trail.<sup>1004</sup> He said the then leadership of the House Ways and Means Committee should have personal knowledge of who inserted the language into the bill.<sup>1005</sup> However, he doubted if after 20 years, anyone would recall the circumstances surrounding its introduction.<sup>1006</sup>

Committee staff contacted the Massachusetts House Clerk's office. The receptionist stated that the Clerk's office does not maintain any historical logs or journals and referred the Committee staff to the State Archive office. Similar responses were received from the Senate and House Ways and Means Committees.

After the Committee hearing, Thomas Kiley, counsel to William Bulger, provided an affidavit that was signed by him on July 18, 2003.<sup>1007</sup> The Committee reviewed the affidavit and found no inconsistencies regarding the subject matter. The affidavit in part contained the following statements:

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<sup>999</sup> Journal of the House, at 1383, (Mass. 1981).

<sup>1000</sup> Discussion with Massachusetts Representative Brad Jones, House Minority Leader (July 22, 2003).

<sup>1001</sup> *Id.*

<sup>1002</sup> *Id.*

<sup>1003</sup> Telephone call with Fred Van Magness, legal counsel to Massachusetts House Minority Leader (July 29, 2003).

<sup>1004</sup> *Id.*

<sup>1005</sup> *Id.*

<sup>1006</sup> *Id.*

<sup>1007</sup> Affidavit of Thomas R. Kiley (July 18, 2003)(Exhibit 980).

I have since researched the matter and concluded...the budget rider was inserted while the budget was in the Massachusetts House of Representatives in June of 1981.<sup>1008</sup>

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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.<sup>1009</sup>

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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 . . . 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 the 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 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. The story ends, or so it ought to.<sup>1010</sup>

## V. Institutional Reluctance to Accept Oversight

### A. Congressional Oversight

It is hard to understand why it was so difficult to conduct a thorough investigation of the FBI's use of informants in New England. In hindsight, a statement made by a senior FBI official provides a glimpse of what may have been happening. In early 2001, just as the Committee was beginning to focus on the FBI's use of informants in New England, Charles Prouty – then the Special Agent in Charge of the Boston office – made the following statements about the Deegan case: “The FBI was forthcoming. We didn't conceal the information. We didn't attempt to frame anyone.”<sup>1011</sup> In retrospect, Mr. Prouty's assertion appears ill-considered. Indeed, its contrast with a statement made by FBI Director Louis Freeh just a few months later is stark. 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.”<sup>1012</sup>

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<sup>1008</sup> *Id.*

<sup>1009</sup> *Id.*

<sup>1010</sup> *Id.*

<sup>1011</sup> Shelley Murphy, *FBI Says Documents Clear It of Wrongdoing in '65 Case*, BOSTON GLOBE, Feb. 15, 2001.

<sup>1012</sup> *Hearing Before the House Appropriations Subcommittee on Commerce, Justice, State and Judiciary*, 107<sup>th</sup> Cong. 47 (testimony of Louis Freeh) (2001 WL 518397).



In support of his statement, Mr. Prouty cited a document created just after the Deegan murder was committed. A memorandum from the Director of the FBI to the Special Agent in Charge, dated just four days after the Deegan murder, states: "You should advise appropriate authorities of the identities of the possible perpetrators of the murders of Sacrimone and Deegan."<sup>1013</sup> A handwritten annotation on one copy of this document indicates that information regarding the Deegan murder was provided to "Renfrew Chelsea PD" on March 15, 1965.<sup>1014</sup>

The Committee has searched for other indications that the FBI provided exculpatory evidence to the Deegan prosecutors. Thus far, none has been located. Suffice it to say, however, that local prosecutors were never made aware of significant exculpatory information. For example:

- Local prosecutors were not aware that Joseph Barboza and Jimmy Flemmi went to Patriarca to request permission to murder Deegan just days before the crime occurred. Furthermore, they were not aware that the source of this information was microphone surveillance, a form of information more reliable than most informant information.
- Local prosecutors were not aware that the FBI had evidence that Jimmy Flemmi had a motive for killing Deegan, and that this motive conflicted with the motive Barboza provided in sworn testimony.
- Local prosecutors were not aware that Barboza had told federal law enforcement personnel that he would not provide information that would allow Jimmy Flemmi to "fry."
- Local prosecutors were not aware that both Jimmy Flemmi and Stephen Flemmi were government informants.

At a minimum, the FBI failed to provide exculpatory evidence in a death penalty case. More important, however, is the likelihood that the FBI shared information when there was no reason to keep it covered up, but, at a time when Barboza was readying himself to tell a story that benefited the goals of federal law enforcement, federal officials kept exculpatory information from state law enforcement officials.

At the outset of its investigation, the Committee requested that it be permitted to speak with the head of a Justice Department task force investigating many of the same matters of interest to the Committee. The stated purpose of this proposed line of communication was to ensure that Congress was receiving everything it was entitled to receive and to help the Committee refrain from taking steps that might harm ongoing criminal prosecutions. The Justice Department did not accede to this request. The Committee also made a request to speak to the Department about the identities of certain informants and the significance of information

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<sup>1013</sup> Airtel from J. Edgar Hoover, Director, FBI, to Special Agent in Charge, Boston FBI Field Office (Mar. 16, 1965) (Exhibit 83).

<sup>1014</sup> *Id.*; FBI Boston Gangland Murders Report by John F. Kehoe, Jr., Special Agent, Boston FBI Field Office (Jan. 14, 1966) (Exhibit 116); Memorandum from H. Paul Rico, Special Agent, to Special Agent in Charge, [Redacted] (Mar. 15, 1965) (Exhibit 82).

provided by these informants. It took well over one year for a meeting on this subject to be arranged. On December 2, 2002, almost two years into the Committee's investigation, the Justice Department did convene a meeting to address the Committee's request about informants. This meeting was of particular significance for three reasons. First, it became clear that critical documents had been withheld from Congress. Second, the Justice Department simply refused to provide Congress with essential information about informants, including information that had previously been made available to civil litigants during *U.S. v. Salemme*. Finally, the meeting confirmed the general sense that the Justice Department has failed to understand the seriousness of the Committee's investigation.

While it is true that the Department has assigned people of unimpeachable integrity to spearhead its own investigation, it also appears true that it has failed to understand that Congress has not only a legitimate right to investigate the matters covered in this report, but that Congress also has a right to expect the Justice Department to do everything in its power to ensure that Congress is able to discharge its own constitutional responsibilities.

Unfortunately, the relationship between the executive branch and the legislative branch – particularly where oversight is concerned – is often more adversarial than collegial. This has proved to be the case during the Committee's investigation of the Justice Department's use of informants in New England. Congress cannot discharge its responsibilities if information is not provided or dilatory tactics are employed.

Throughout the Committee's investigation, it encountered an institutional reluctance to accept oversight. Executive privilege was claimed over certain documents, redactions were used in such a way that it was difficult to understand the significance of information, and some categories of documents that should have been turned over to Congress were withheld. Indeed, the Committee was left with the general sense that the specter of a subpoena or the threat of compelled testimony was necessary to make any progress at all.

The following three examples provide a sense of why the Committee has concluded that the Justice Department failed to take its responsibilities to assist Congress as seriously as it should have.

### **1. The Patriarca Microphone Surveillance Logs**

The single most important category of information needed by the Committee to conduct its investigation of the use of Joseph Barboza as a cooperating witness was that derived from microphone surveillance of Raymond Patriarca. On June 5, 2001, the Committee asked 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 Island 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 finally produced to the Committee, although legible copies of the most important pages were not received until March 25, 2003. The handwritten logs contained significant information that had not previously been provided to Congress.

## **2. Documents Pertaining to Robert Daddeico**

Robert Daddeico participated in a number of criminal activities in the 1960s. He was close to Stephen Flemmi and was used as a cooperating government witness in the car bombing of attorney John Fitzgerald. He also had first hand knowledge of the William Bennett murder.

The Committee requested documents pertaining to Daddeico on April 16, 2002. Four months later, on August 20, 2002, Committee staff were told that the Justice Department needed more information to be able to identify "Robert Daddeico" in Justice Department files. This statement was particularly curious. There are five clear reasons why the Justice Department should have had no trouble deciding which "Robert Daddeico" the Committee was interested in: (1) a Justice Department employee contacted Daddeico to inform him that the Committee wanted to interview him;<sup>1015</sup> (2) a few days before the Committee interviewed Daddeico the FBI offered him a payment of \$15,000;<sup>1016</sup> (3) a number of currently employed Justice Department personnel have personally interviewed Daddeico;<sup>1017</sup> (4) in the last few years Daddeico has been in personal contact with the FBI's former number two official;<sup>1018</sup> and, finally, (5) Daddeico has been living for 30 years under an assumed name known to the government and he had maintained frequent contact with FBI officials.<sup>1019</sup> It is hardly unreasonable for the Committee to expect prompt production of documents related to Robert Daddeico, and it is hard to believe, given all of these facts, that the Justice Department was uncertain which "Robert Daddeico" the Committee was interested in.<sup>1020</sup> The failure to produce this information in a timely fashion is inexcusable.

## **3. U.S. Attorney's Office Gangland Murder Summaries**

On March 30, 2001, the Committee requested "all records relating to the March 12, 1965, murder of Edward 'Teddy' Deegan." On December 2, 2002, Justice Department Task Force Supervisor John Durham mentioned a January 14, 1966, memorandum which discusses gangland murders. This document was prepared for the Boston U.S. Attorney's Office and discusses the Deegan murder. It had not been provided to the Committee.

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<sup>1015</sup> Robert Daddeico Agreement (Oct. 1, 2001) and Message (Sept. 13, 2001) (Exhibit 950).

<sup>1016</sup> *Id.*

<sup>1017</sup> Interview with Robert Daddeico (Oct. 17-18, 2001).

<sup>1018</sup> *Id.*

<sup>1019</sup> *Id.*

<sup>1020</sup> Daddeico also provided the Committee with a check from a local prosecutor for \$500. This check, drawn on a personal bank account, was allegedly provided at a time when the FBI was contacting Daddeico to assist in an ongoing investigation. Daddeico claims that the individual who provided this check once attempted to coach him to provide false testimony in the trial for the car bombing of attorney John Fitzgerald.

On December 9, 2002, Justice Department officials indicated that although the document was not responsive to Committee requests, it would be produced. Based on the description of the document provided by John Durham, it is difficult to understand how it was not responsive to a request for documents relating to the Deegan murder.

On December 16, 2002, the Justice Department finally produced this document to the Committee. The fact that this document was not provided to the Committee earlier is significant for a number of reasons. First, it could not be used in Committee hearings or most interviews. Second, it leads to the concern that there are other significant documents that have been withheld from the Committee. Additionally, this document is of particular interest because it is a document prepared for prosecutors, and it potentially shifts blame for what happened in the Deegan prosecution towards prosecutors.

Although the Justice Department has provided many documents from the files of the FBI, it has been reluctant to shed light on the possible misconduct of its prosecutors. This was first seen in the claim of executive privilege over prosecution memoranda, and it appears to have resurfaced with the gangland murders summary. It was also particularly apparent when the Committee staff asked for a list of Boston U.S. Attorneys from the 1960s until the present. Although a staff member of the Executive Office of United States Attorneys indicated the information was readily available, a list was never provided to the Committee.

## **B. Institutional Oversight**

The FBI's office of Professional Responsibility ("OPR") conducted its own investigation of possible improper law enforcement conduct in 1997.<sup>1021</sup> This investigation "uncovered no evidence that any potentially criminal acts were part of a continuing crime which would bring the acts within the statute of limitations."<sup>1022</sup> Thus, former FBI Special Agent John Connolly – now serving a ten year sentence in federal prison – was given a free pass by internal investigators. The investigation did, however find "a number of violations of FBI rules and regulations which would have warranted administrative action if those employees were still employed by the FBI."<sup>1023</sup> The investigation also determined that "no current FBI employees . . . [were] in violation of FBI policies."<sup>1024</sup>

One conclusion reached by the OPR investigation, however, should be considered in light of information obtained by the Committee. The OPR report on its investigation states:

We also looked for instances in which [James "Whitey"] Bulger and [Stephen] Flemmi were under investigation by a law enforcement agency and in which the USAO or DOJ exercised

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<sup>1021</sup> FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) (Exhibit 887).

<sup>1022</sup> *Id.* at 2; see also "Justice Department Misconduct in Boston: Are Legislative Solutions Required?," *Hearing Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 641-747 (Feb. 27, 2002) (discussing proposed changes to the statute of limitations).

<sup>1023</sup> FBI Office of Professional Responsibility Report by Joshua Hochberg and Charles S. Prouty (Aug. 13, 1997) at 2 (Exhibit 887).

<sup>1024</sup> *Id.*

prosecutorial discretion in their favor due to the value of information provided by Bulger and Flemmi. There is no evidence that prosecutorial discretion was exercised on behalf of Bulger and/or Flemmi.<sup>1025</sup>

This conclusion is troubling in light of a document obtained by the Committee. After a protracted battle with the executive branch over specific documents – during which the President claimed executive privilege over the documents sought – the Committee ultimately was able to determine that prosecutorial discretion had been exercised on behalf of Bulger and Flemmi.

A memorandum dated January 29, 1979, from Boston federal prosecutor Gerald E. McDowell to supervisors in Washington, and also brought to the attention of then-United States Attorney Jeremiah O’Sullivan, recommends prosecution of 21 individuals for a major conspiracy to fix the outcomes of more than 200 horse racing contests, in over five states, with profits in excess of two million dollars.<sup>1026</sup> At the center of the criminal activity were both Stephen Flemmi and James “Whitey” Bulger.

Notwithstanding the knowledge that Bulger and Flemmi were involved, and notwithstanding the fact that the government had a cooperating witness prepared to testify against Bulger and Flemmi, the memorandum specifically indicates that the two would not be prosecuted with 21 other co-conspirators. The memorandum indicates that Bulger and Flemmi would not be prosecuted because “the cases against them rest, in most instances, solely on the testimony of Anthony Ciulla.”<sup>1027</sup>

Two points are worth noting. First, the use of the term “in most instances.” A close reading of the memorandum indicates that there was other evidence against Bulger and Flemmi. Thus, it is inexplicable, given the details provided by the memorandum, that Bulger and Flemmi were not prosecuted, while others who were less involved in the criminal enterprise were prosecuted. Second, others were indicted solely on the testimony of Ciulla. For example, the memorandum states: “James L. Sims – The case against Sims rests solely on Ciulla’s testimony.”<sup>1028</sup> Sims was subsequently indicted and convicted. Thus, Bulger and Flemmi did receive preferential treatment.

When former U.S. Attorney Jeremiah O’Sullivan was asked specifically about whether Bulger and Flemmi benefited from prosecutorial discretion, he stated clearly that they had.<sup>1029</sup> It is, therefore, troubling that the FBI’s OPR investigation failed to develop this information. Perhaps more troubling, however, is the concern that the Justice Department attempted to keep

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<sup>1025</sup> *Id.* at 13. In reaching this conclusion, the OPR report states that “all reasonable and apparent leads have been covered.” *Id.* at 3.

<sup>1026</sup> Gerald E. McDowell, Attorney in Charge, and Jeremiah T. O’Sullivan, Prosecutor, Organized Crime & Racketeering Section, Boston U.S. Dept. of Justice Field Office, to Gerald T. McGuire, Deputy Chief, Organized Crime & Racketeering Section, U.S. Dept. of Justice (Jan. 29, 1979) (document is retained by the Justice Department).

<sup>1027</sup> *Id.* at 62.

<sup>1028</sup> *Id.* at 55.

<sup>1029</sup> “The Justice Department’s Use of Informants in New England,” *Hearings Before the Comm. on Govt. Reform*, 107<sup>th</sup> Cong. 308, 335 (Dec. 5, 2002) (testimony of Jeremiah O’Sullivan).

such an important piece of information from the Committee. Indeed, it appears that Justice Department investigators had failed to pursue this line of inquiry prior to the Committee's request. But for the Committee's perseverance, the final word on prosecutorial discretion pertaining to Stephen Flemmi and James Bulger would have been the incorrect 1997 OPR report.

### **C. The Claim of Executive Privilege Over Key Documents**

The Committee's investigation was delayed for months by President Bush's assertion of executive privilege over a number of key documents. While the Committee was ultimately able to obtain access to the documents it needed, the President's privilege claim was regrettable and unnecessary.

#### **1. The Committee's Request for the Documents**

On September 6, 2001, the Committee issued a subpoena for a number of prosecution and declination memoranda relating to the Committee's investigation of the handling of confidential informants in New England.<sup>1030</sup> The Justice Department made it clear that it would not comply with the Committee's subpoena. Senior Administration personnel, including the White House Counsel, the Attorney General, and two Assistant Attorneys General, explained to the Chairman and Committee staff that the Administration wished to establish an inflexible policy to withhold from Congress all deliberative prosecutorial documents. The Committee scheduled a hearing for September 13, 2001, and invited the Attorney General to testify at this hearing to explain his refusal to provide the subpoenaed documents to the Committee. Of course, just two days before the scheduled hearings, terrorists launched the September 11 attacks. The Committee canceled the hearing and postponed any discussion of the subpoena for several months.

#### **2. The President's Claim of Executive Privilege**

In December 2001, the Committee renewed its request for the subpoenaed documents, and called as a witness Michael Horowitz, the Chief of Staff for the Justice Department's Criminal Division. On December 12, 2001, the day before the Committee's hearing, President Bush invoked executive privilege over the subpoenaed documents. In a memorandum to Attorney General Ashcroft, President Bush stated that disclosure of the documents to Congress would:

Inhibit the candor necessary to the effectiveness of the deliberative processes by which the Department makes prosecutorial decisions. Moreover, I am concerned that congressional access to prosecutorial decisionmaking documents of this kind threatens to politicize the criminal justice process. . . . Because I believe that congressional access to these documents would be contrary to the national interest, I have decided to assert executive privilege with

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<sup>1030</sup> Also included in this subpoena were requests related to the Committee's campaign finance investigation.

respect to the documents and to instruct you not to release them or otherwise make them available to the Committee.<sup>1031</sup>

The President's claim of privilege was a surprise in that during the three months between the Committee's issuance of the subpoena for the prosecutorial memoranda and the President's claim of executive privilege, the Justice Department had never had a single discussion with the Committee regarding the Committee's need for the documents. Therefore, the claim could not have relied upon any consideration of the Committee's need for the documents. Given the Committee's previous discussions with the White House and Justice department officials and the assertion of privilege without consideration of the Committee's need for the documents, it was clear that the Administration sought to establish a new restrictive policy regarding prosecutorial documents and that no demonstration of need by the Committee would be sufficient for the Justice Department to produce the documents.

### **3. The Justice Department's Shifting Explanations**

In the weeks following the President's claim of executive privilege, the Administration made a number of attempts to explain the President's actions to a skeptical Committee and public. In Committee hearings and in correspondence with the Committee, the Justice Department and the White House frequently distorted the facts to try to justify the President's claim of privilege. These statements had the effect of prolonging the negotiations with the Committee and delaying the resolution of this dispute.

#### **i. The Administration's Denial that it Was Creating an Inflexible Policy**

Immediately after the President's claim of privilege, the Justice Department began to move away from its earlier assertions that it was attempting to implement an inflexible new policy regarding Congressional access to deliberative prosecutorial documents. Certainly, prior to the President's claim of privilege, this fact was plain enough. In separate meetings with Chairman Burton, Attorney General Ashcroft, and White House Counsel Gonzales announced such a policy. However, the Justice Department's witness at the first hearing regarding the claim of executive privilege, Michael Horowitz, denied that the Department was implementing such a policy at all. Rather, he claimed that the Department was using a case-by-case analysis which weighed the Congressional need for the documents against the Administration's need to keep the documents secret. However, as a number of members at the hearing pointed out, the claims of a case-by-case analysis were seriously undermined by the fact that the Justice Department had never had a discussion with the Committee about the Committee's need for the documents. If the Department did not understand the Committee's need for the documents, it could hardly weigh that need against the need to keep the documents secret.

#### **ii. The Administration's Failure to Compromise with the Committee**

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<sup>1031</sup> Memorandum from President George W. Bush to John Ashcroft, Attorney General, U.S. Dept. of Justice (Dec. 12, 2001) (Appendix I).

A second and related point which was raised by the December 13, 2001, hearing was the failure of the Justice Department to engage in a reasonable process of compromise with the Committee. Before the Committee had even issued its subpoena for the Boston-related prosecution and declination memoranda, it was clear that the Justice Department was intent on establishing a restrictive new document policy. It was not until January – four months after the issuance of the subpoena – that the Administration even offered a compromise to the Committee. On January 10, 2002, White House Counsel Alberto Gonzales wrote to offer to have Justice Department staff brief the Committee staff regarding the contents of the deliberative memoranda. Chairman Burton responded to Judge Gonzales's offer by stating that he would be pleased to receive a briefing regarding the documents, but only in conjunction with a review of the documents by Committee staff. This offer was initially rejected by the Justice Department.

**iii. The Administration's Misrepresentations  
Regarding Historical Precedent**

The third issue which was raised at the December 13, 2001, hearing was the fact that there was little precedent for the President's decision to withhold the subpoenaed documents. Michael Horowitz asserted that the executive privilege claim was consistent with longstanding Justice Department policy, and in a letter shortly after the hearing, White House Counsel Alberto Gonzales made much the same claim:

Absent unusual circumstances, the Executive Branch has traditionally protected those highly sensitive deliberative documents against public or congressional disclosure. This traditional Executive Branch practice is based on the compelling need to protect both the candor of the deliberative processes by which the Department of Justice decides to prosecute individuals and the privacy interests and reputations of uncharged individuals named in such documents.<sup>1032</sup>

Despite these and a number of other similar assertions, the President's claim of executive privilege was a drastic departure from the longstanding history of Congressional access to precisely the types of documents sought by the Committee. In fact, at a hearing of the Committee on February 6, 2002, Assistant Attorney General Dan Bryant acknowledged that Congress had been given access to these types of documents on multiple occasions. In one letter leading up to the February 6 hearing, Mr. Bryant stated that "the Department has often provided Congress with access to deliberative documents of one sort or another. Consequently, it would be impossible to catalogue all of the occasions in which that has occurred."<sup>1033</sup>

In short, over a period of six months, the Justice Department's position had retracted its claim that Congress had never received prosecution and declination memoranda prior to the Clinton Administration and replaced it with the claim that it happened so frequently that it is

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<sup>1032</sup> Letter from Alberto Gonzales, Counsel to the President, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Jan. 10, 2002) (Appendix I).

<sup>1033</sup> Letter from Daniel J. Bryant, Assistant Attorney General, U.S. Dept. of Justice, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 1, 2002) (Appendix I).



impossible to provide an accurate number. At the Committee's February 6, 2002, hearing, the Committee established that on dozens of occasions over the previous eighty years, Congress had received access to documents precisely like those sought by the Committee. It was also clear that the Committee's need for the documents under subpoena was at least as great as Congress's need for the documents in any of those other cases.

#### **4. The Justice Department Finally Provided the Committee with Access to the Subpoenaed Documents**

The five-month stalemate over the subpoenaed documents finally broke when the Committee scheduled a hearing to hear testimony from Judge Edward Harrington. When the Justice Department learned that Judge Harrington was scheduled to testify, Justice Department personnel informed the Committee that one of the documents sought by the Committee was a prosecution memorandum drafted by then-Assistant U.S. Attorney Harrington which contained information about the Deegan murder. Chairman Burton wrote to the Department and demanded access to the Harrington memorandum:

Judge Harrington is testifying before the Committee on February 14, and the Committee has a great interest in knowing what Judge Harrington knew about the evidence in the Deegan murder case, including, but not limited to, the evidence in the case, the reliability of witnesses in the case, and whether key witnesses in the case were government informants. Perhaps as important, Judge Harrington was a prosecutor in a 1968 trial of Raymond Patriarca, and it is important to understand the facts pertaining to this prosecution as well. It appears that the Justice Department agrees that it is essential that the Committee receive the Harrington memorandum in advance of the February 14 hearing, and that the Committee can clearly meet even the high threshold of proof being demanded (inappropriately, in my view) by the Justice Department. If that is the case, please provide the Committee with access to the document now, without a briefing.

While I appreciate the fact that the Justice Department has admitted that one of the 10 withheld documents has great relevance to the Committee's upcoming hearing, the Department's admission reveals the flaws with its approach to this entire matter. The Justice Department only recognized the importance of the Harrington document once the Committee announced that Judge Harrington was testifying at an upcoming hearing. The Department did not know that Committee staff interviewed Judge Harrington almost two months ago, and did not have the benefit of the Harrington memorandum for that interview. The other nine memoranda being withheld by the Justice Department likely have just as much relevance to the Committee's investigation as the Harrington memorandum, except that the Justice Department is unwilling to recognize that fact.

I believe that the Committee's investigation of Justice Department corruption in Boston is far too important to be wasting time with procedural gamesmanship. Rather than seeing this as an opportunity to establish precedents to place roadblocks in the way of Congressional oversight, the Justice Department should

see this case as an opportunity to come clean and right past wrongs. I hope you will agree, and that you will provide the Committee with access to the subpoenaed Boston documents.<sup>1034</sup>

The following day, Assistant Attorney General Bryant wrote that the Committee had “demonstrated a particular and critical need for access to the one Harrington memorandum sufficient to satisfy constitutional standards and we are prepared to meet with you and make it available for your review in advance of the hearing.”<sup>1035</sup> Of course, the Committee did not provide any additional information to the Department which it had not provided months earlier. Informing the Justice Department that Judge Harrington had once been a federal prosecutor and that the Committee was requesting his testimony at an upcoming hearing hardly constituted demonstration of “a particular and critical need.”

On February 26, 2002, Committee staff met with Assistant Attorney General Michael Chertoff to discuss Committee access to the remaining memoranda being withheld under the President’s claim of executive privilege. Assistant Attorney General Chertoff described the documents, and Committee staff agreed that four of the subpoenaed memoranda were not relevant to the Committee’s investigation. Assistant Attorney General Chertoff agreed to provide the Committee with access to the remaining five memoranda. Committee staff reviewed the memoranda, took notes regarding their contents, and used the memoranda to question witnesses in interviews and public hearings.

##### **5. The Documents Which Were Withheld Contained Vital Information**

The documents withheld from the Committee for over five months contained vital information. The President’s claim of executive privilege delayed the Committee’s investigation, and distracted the Committee from pursuing a number of issues relating to the use of confidential informants. The following is a summary of some of the key information which was contained in the memoranda withheld from the Committee:

- The 1967 Marfeo prosecution memorandum contains information about the murder of Teddy Deegan. According to Judge Harrington’s testimony, the information was deemed reliable and included in the memorandum to show that Joseph Barboza was a reliable witness because it proved his contention that he had access to Raymond Patriarca. This is significant because the following year, in a capital murder trial, Barboza did not provide the information that had been considered so important by federal prosecutors. This raises the possibility that federal prosecutors were aware that Barboza was committing perjury in the Deegan murder prosecution. Indeed, there are two fundamentally incompatible facts:

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<sup>1034</sup> Letter from the Honorable Dan Burton, Chairman, Comm. on Govt. Reform, to John Ashcroft, Attorney General, U.S. Dept. of Justice (Feb. 12, 2002) (Appendix I).

<sup>1035</sup> Letter from Daniel J. Bryant, Assistant Attorney General, U.S. Dept. of Justice, to the Honorable Dan Burton, Chairman, Comm. on Govt. Reform (Feb. 13, 2002) (Appendix I).

1. Barboza's credibility in the eyes of federal personnel was bolstered by microphone surveillance evidence of the request made by Flemmi and Barboza to murder Teddy Deegan.
2. Barboza was considered credible even though he omitted the evidence about the request to murder Deegan, and even though this was the foundation of his being considered credible in the first place.

These two contradictory facts simply cannot be reconciled.

- The 1967 Marfeo prosecution memorandum states that the electronic surveillance of Barboza proves that "his testimony is true[,] and this is "of special significance." Thus, federal prosecutors were convinced that the microphone surveillance provided accurate information. This weakens their claims that his Deegan testimony was unremarkable.
- The 1967 Marfeo prosecution memorandum states that "[Barboza's] testimony will be corroborated in certain parts by Patrick Fabiano's testimony with respect to the fact that [Barboza] had been well acquainted with Tameleo prior to the offenses charged here and that both Tameleo and [Barboza] had conferred together on numerous occasions at the Ebb Tide Club in Revere, Massachusetts." This is potentially significant because three months earlier FBI Director Hoover's office had been informed that, in order to save himself, Barboza "may try to intimidate Fabiano into testifying to something he may not be a witness to."<sup>1036</sup> This information appears to have been left out of the prosecution memorandum.
- The 1979 Ciulla race-fixing prosecution memorandum provides extremely important information about how prosecutorial discretion was exercised to benefit FBI informants James "Whitey" Bulger and Stephen Flemmi. It demonstrates that former U.S. Attorney Jeremiah O'Sullivan's testimony before the Committee is subject to question. Perhaps more important, it shows that a 1997 FBI Office of Professional Responsibility conclusion that prosecutorial discretion had never been exercised by the federal government on behalf of James Bulger and Stephen Flemmi was not correct.

As these observations make clear, these documents have been very important to the Committee's investigation. It is regrettable that the Committee's good faith effort to investigate Justice Department corruption in New England was impeded by the Justice Department's refusal to negotiate over these documents.

## **VI. Conclusions and Recommendations**

Democracy succeeds in the United States when the rule of law is respected. When the government strays from the rule of law, the harm outweighs the benefit. In Boston, this is what happened. As a result, men died in prison – and spent their lives in prison – for crimes they did not commit. A number of men were murdered because they came to the government with

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<sup>1036</sup> Memorandum from Special Agent in Charge, Boston FBI Field Office, to J. Edgar Hoover, Director, FBI (Mar. 28, 1967) (Exhibit 134).

information incriminating informants. Government officials also became corrupted. The legacy of the Justice Department's use of informants in New England is a lack of confidence in those charged with administering our laws, families torn apart by a government that permitted murders and unjust prison terms, and exposure of the government to civil liability that could amount to billions of dollars.

The Committee on Government Reform is committed to ensuring that these abuses are not repeated. As a result of the Committee's investigation, the Committee has received numerous letters and other materials alleging misconduct by the FBI. The Committee intends to examine these allegations closely to determine whether the FBI handled them appropriately and to consider whether further investigation is warranted.

The Committee also recommends further review of the FBI's human source program. The Committee has been informed by the FBI that following the revelations regarding the misuse of informants, FBI Director Robert Mueller has undertaken re-engineering the administration and operation of human sources. This effort includes the centralization of the administration of all human sources, development of a "Risk Factor Model," and, for certain categories of human sources, implementation of a validation process. Each FBI Field office has at least one human source coordinator, and 34 offices have two coordinators. Inspections and on-site assessments are conducted. Files are reviewed by Supervisory Special Agents and Assistant Special Agents in Charge at least every 60 days, and in some cases every 90 days. The FBI has implemented significant new training requirements in connection with its informant program.

Other measures have been undertaken that may also prevent FBI misuse of informants. Director Mueller has undertaken a review of the Office of Professional Responsibility to ensure that the system of internal discipline is effective. The FBI is also seeking to enhance oversight and accountability of human source management in the wake of the revelations as a result of undertaking a new internal security program following the allegations against former Agent James Smith and his source Katrina Leung regarding the loss of classified information. In January 2001, the Department of Justice revised its Confidential Informant Guidelines that, among other things, established a Criminal Informant Review Committee consisting of senior FBI and Department officials. Finally, the Department of Justice's Inspector General now also has authority to investigate allegations of misconduct against employees of the FBI.

The Committee will examine these reforms to ensure that they are being implemented and to ensure that, as implemented, they are effective.