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HEARINGS

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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THE CALIFORNIA MURDER TRIAL OF JOE "THE ANIMAL" BARBOZA: DID THE FEDERAL GOVERNMENT SUPPORT THE RELEASE OF A DANGEROUS MAFIA ASSASSIN?

WEDNESDAY, FEBRUARY 13, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:49 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Barr, Morella, Horn, LaTourette, Duncan, Waxman, Kucinich, Norton, Cummings, Tierney, Clay, Watson, and Delahunt.

Staff present: Kevin Binger, staff director; James C. Wilson, chief counsel; David A. Kass, deputy chief counsel; Mark Corallo, Director of Communications; Thomas Bowman, senior counsel; Chad Bungard and James J. Schumann, counsels; Robert A. Briggs, chief clerk; Robin Butler, office manager; Elizabeth Frigola, deputy communications director; Joshua E. Gillespie, deputy chief clerk; Nicholis Mutton, assistant to chief counsel; Corinne Zaccagnini, systems administrator; Phil Barnett, minority chief counsel; Jon Bouker, minority counsel; Michael Yeager, minority deputy chief counsel; Ellen Rayner, minority chief clerk; and Earley Green, minority assistant clerk.

Mr. BURTON. The Committee on Government Reform will come to order. I ask unanimous consent that all Members and witnesses' written and opening statements be included in the record. Without objection, it is so ordered.

I ask unanimous consent that all articles, exhibits, extraneous or tabular material referred to be included in the record and without objection it's so ordered.

I ask unanimous consent that a binder of exhibits for this hearing be included in the record and without objection it's so ordered. I also ask unanimous consent that questioning on the manner under consideration proceed under clause 2J(2) of House rule XI and committee rule 14 in which the chairman and ranking minority member allocate time to committee counsel as they deem appropriate for extended questioning, not to exceed 60 minutes divided equally between the majority and the minority. Without objection, it's so ordered.

I also ask unanimous consent that Representatives Frank, Delahunt and Meehan be permitted to participate in today's hear-

ing. Without objection it's so ordered. The reason for that, of course, is that they are from the region in question and they are very knowledgeable about this issue. Since it affects their constituency, we think it's appropriate for them to be here.

I want to start off by repeating a few sentences from my opening statement before last week's hearing. The U.S. Department of Justice allowed a lying witness to send men to death row. It stood by idly while innocent men spent decades behind bars. It permitted informants to commit murder.

The U.S. Department of Justice and the FBI tipped off killers so they could flee before they were caught. It interfered with local investigations of drug dealing and arms smuggling. Then when people went to the authorities with evidence about murders, some of them ended up dead.

Now, those are strong accusations and the thing that is so bad about it is it is true. We know of at least three or four people who were innocent of murders that spent time in jail. Mr. Salvati spent 30 years in jail for a crime he didn't commit. All the way up to the head of the FBI, Mr. Hoover, knew it.

He got the death penalty. Nobody said a word. And his sentence was commuted to life imprisonment. Finally, after 30 years, thanks to his hard efforts, his wife and his lawyer, who are here with us today, he was released. But 30 years is something you can't give back.

There was a man in Rhode Island, we understand, who spent 18 years in prison for a crime he did not commit. It is just unbelievable.

What I said was word for word of what I said last week. And the Justice Department official sat in front of this committee and they nodded their heads. They said they would cooperate with the committee's investigation and then they hung tough and said we could not see the documents relative to the investigation that we subpoenaed.

We are in the middle of an elaborate shell game. The Justice Department knows we are justified in wanting to see the documents that we subpoenaed. The Justice Department knows that we have good reason to review the documents. They know that if we don't our investigation will be harmed. If they were doing an investigation, they would want to review the same documents themselves. They would insist on it, for the same reason we have to insist on it.

I want to digress just a minute and say that I have this horrible feeling in my gut that there are other people in prison who are innocent of crimes like Mr. Salvati, who are still there. A more horrible feeling is that some of those people were put to death who were innocent and the Justice Department knew it. The reason I am very concerned is because we can't get the Justice Department to cooperate with us. They won't let us see documents.

That means we are not going to be able to find out if there are people who were in prison who are innocent or who died who were innocent or who may still be there. We need to find out if there are rogue FBI agents who were involved in these kinds of atrocities who are still working for the Justice Department. We need to find out who people were who were putting innocent people in jail, who

knew they were innocent, and make sure they are held accountable.

That is the only way the criminal justice system in this country can be cleaned up and make sure that these sorts of things never happen again. This is America. This is not Soviet Russia. This is not some Third World country. This is the United States, the land of the free and the home of the brave. We believe in fairness, equality and in justice. When we find out innocent people are being sent to jail and the authorities that put them in jail know they are innocent and even give them the death penalty to protect mafia and underworld informants, that in itself is more than criminal, in my opinion.

For decades Federal law enforcement did terrible things up in New England and they were successful in covering it up. Now, the Justice Department today, in 2002, continues to make it hard to find out what happened. We are not going to tolerate that. I want to emphasize two important points. First, the Justice Department has never said that our review of these documents would harm an ongoing investigation.

Second, the Justice Department has never said that our review of these documents would compromise secret Grand Jury information. The simple fact of the matter is, they don't want us to see these documents for possibly a number of reasons, some of which I just alluded to, and that's unacceptable.

I am not going to belabor the point about how unhappy I am with the Justice Department. They just don't seem to care that they are putting hurdles before the committee. Rest assured, we will do everything we can to get to the bottom of what happened. I just hope at some point the Attorney General and the President who are getting really bad advice, will do the right thing and tell their staffs to cooperate with the Congress of the United States which has oversight responsibilities.

Last year we held a hearing about the 1965 murder of Teddy Deegan. Joe "The Animal" Barboza lied on the witness stand and innocent men got the death penalty, including Mr. Salvati. Only a Supreme Court ruling in another case prevented the death penalty from being carried out. Otherwise, Mr. Salvati wouldn't be here today.

Still two men died in prison. Another served 34 years before he was cleared. Mr. Salvati served 30 years before he was exonerated. The FBI knew Barboza was lying and they covered it up.

Today, we are going to focus on a second chapter in the life of Joe "The Animal" Barboza. By the mid-1960's, Barboza was an accomplished killer. The Justice Department believed he had murdered at least 26 people. Barboza was described by FBI Director Hoover as "a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in New England to be the most dangerous individual known." And yet they were working with this guy, putting innocent people in jail.

The FBI knew what kind of man Barboza was from microphone surveillance of mob figures. For example, here is a story passed along to FBI Director Hoover. He was told that Barboza was going to kill a man by burning down the man's house. Either the fire

would do the job or he would shoot the man as he ran from the burning building.

When Barboza was told the man's aged mother lived in the house and would also be killed, Barboza said that it wasn't his fault and he didn't care. After Barboza lied in the Deegan murder prosecution the FBI created the Witness Protection Program specifically for him. He was moved to Santa Rosa, CA.

Predictably enough, he killed again. For a while he got away with the murder. Shortly after the murder in California Barboza went back to Massachusetts. He got into another legal problem and was put into Walpole Penitentiary. While he was there he told a career criminal in the cell next to him about the murder that he committed in California.

That inmate proceeded to tell people about the latest murder, but the Justice Department did not care. It was OK for Barboza to get away with murder, literally. In fact, the Federal Government wanted to cover up Barboza's involvement in the murder in California.

The man Barboza confided in, William Geraway, did write one letter to the District Attorney in Santa Rosa. That is how he finally got caught. Investigators were sent from California to Massachusetts. In fact, Mr. Cameron who is here with us today was one of those investigators. While the Justice Department didn't seem to care much about the murder committed by their star witness, the community of Santa Rosa cared.

Geraway provided the names of eyewitnesses, the location of the body and other critical details. Santa Rosa prosecutors were able to indict Joe "The Animal" Barboza in spite of the opposition and obstruction of the Federal Government.

Today we will hear from three men who were involved in this tragic episode. They are here to help us understand something about what happened a long time ago. It's my understanding that when my staff contacted today's witnesses, some said they had been waiting for 30 years for someone to call about this. No one ever had, so you probably weren't holding your breath any more. But we did call, better late than never.

I just want to say that I am really grateful to all three of you for being here. Sorry you had to wait so long. You have been cooperative. You tried to help us as much as possible. You dug up old documents, made time for our questions and voluntarily came to Washington to testify. I really want to thank you for that.

Marteen Miller was the most experienced public defender in Santa Rosa, CA. In 1971, when California decided to prosecute Joe "The Animal" Barboza for murder, the case was assigned to Mr. Miller. You probably never thought you would have a client like him, did you?

Mr. MILLER. No, I did not, sir.

Mr. BURTON. Ed Cameron was the investigator for the Sonoma County District Attorney during the Barboza case. Mr. Cameron was part of everything that was happening during the Barboza investigation and trial. I know you had some health problems recently and I appreciate your being here with us.

Tim Brown was a detective sergeant with the Sonoma County Sheriff's Office. He also played a prominent role in the Barboza murder investigation and he learned some important facts from

local FBI agents that the Boston FBI did not want him to know. We appreciate you being here as well.

What they told us already was enough for me to call this hearing. So far, we have learned that, one, the Federal Government went to extraordinary lengths to help Barboza get away with the California murder.

Two, all of tomorrow's witnesses, each an important Federal Government official, testified on Barboza's behalf at his trial for the California murder. Former FBI supervisor, Chuck Hiner, who was interviewed, told us that he got a call from Dennis Condon, one of the FBI agents up in Boston and he told us that Denny said he would be a character witness for this murderer, Barboza.

Barboza's defense lawyer was helped by the Federal Government. The prosecutors were snubbed when they sought help. The murder weapon was given to the FBI for analysis. It was conveniently lost for a period of time. The FBI in Boston was told that two of the witnesses against Barboza were going to be assassinated. The FBI in Boston showed no interest in helping to prevent the murders from being carried out. Fortunately, they were not carried out.

Investigator Ed Cameron flew out to Boston to talk to the Justice Department officials. The climate was so hostile he stored his papers in a hotel safe. He later came to believe that someone broke into his room and searched his briefcase. Barboza ultimately took a plea bargain for the Wilson murder because he was pretty sure he was going to be found guilty.

He served less than 4 years for the murder, even though he had committed dozens of murders and killed while he was in the Witness Protection Program.

Tapes were made of Barboza's conversations when he was in jail in Santa Rosa. These tapes, which helped solve at least one additional murder, were given to the FBI. The FBI either lost these tapes or will not provide them to the committee. Doug Ahlstrom, the FBI agent who was given these tapes, will not cooperate with this committee.

Everyone on this committee understands that when you are fighting organized crime you won't be working with angels. Witnesses will often be untrustworthy. They may be killers themselves. Well, we might have to work with the underworld, but we don't have to sell our souls to the devil. We can't let the FBI become complacent in putting innocent people in prison.

If we help a witness who has cooperated, we certainly can't tolerate further murders. Nothing should ever give a government informant or a witness a license to kill. That, however, is what seems to have happened in the case of Joe "The Animal" Barboza and in the case of Vincent Flemmi and in the case of Whitey Bulger as well. Mr. Bulger is still on the 10 most wanted list.

In the case of Stevie Flemmi, that was the rifleman, wasn't it? Stevie "The Rifleman" Flemmi who loved killing as well. For 30 years the Justice Department turned a blind eye to witnesses and informants who committed murder.

After he lied and sent Joe Salvati and others to prison for life, the animal got dumped on an unsuspecting community in California. He then killed someone else. From that time forward the

United States didn't owe him anything. It certainly didn't owe him enough to help him get away with murder.

To come to any other conclusion would be to turn our back on everything that this system we, this system of justice, stands for. Congress recently gave the administration sweeping new powers to deal with the terrorists who committed the atrocities of September 11th. We were all deeply touched by this tragedy.

A former lawyer on this committee, one of my former lawyers, was in one of those planes and was killed. I don't regret for a minute giving the government the powers that it asked for after September 11th. But with power comes responsibility. It has to be used wisely.

The Justice Department has the power to protect, but it also has the power to destroy people's lives, people like Joe Salvati. I think every person in a position to wield these new powers standards should take a few hours to sit down and think about what happened to Joe Salvati, his wife Marie and their four children. Thirty years were taken out of all their lives. They should take some time and reflect on today's testimony and the things we are going to talk about tomorrow.

They should think about secrecy. They should consider the words of Federal District Court Judge Wolfe that he used in Boston when he forced the government to admit its treacherous use of Whitey Bulger and Stevie Flemmi as informants.

Judge Wolfe quoted Lord Acton when he said, "Everything secret degenerates, even the administration of justice."

Thirty years ago it would have been unthinkable for the Federal Government to knowingly try to put men in the electric chair for crimes they didn't commit, just as it's unthinkable that the same thing could happen today. But it does happen. Our laws are administered by human beings.

I hope everyone that follows these hearings understands what we are doing today is not an exercise in academics. We don't want there to ever be another case like Joe Salvati's.

I would just like to end by saying that the American people and the media have only partially focused on this. We have a lot of things that are going on right now that are very important, the Enron Investigation. We have campaign finance reform on the floor. We've got the war going on.

But in my opinion there's nothing more important than making sure that Americans are treated fairly in the criminal justice system. If any part of our government is putting innocent people in jail for life or giving them the death penalty knowing they are innocent, then my gosh, we've got to correct that and we have to correct it quickly.

I think, in my opinion, that's just as important as the terrorist problems we are facing right now because in fact it's terrorism being fostered on American citizens who are innocent and that's something we can't tolerate.

Mr. Waxman.

[The prepared statement of Hon. Dan Burton follows:]

OPENING STATEMENT OF CHAIRMAN DAN BURTON
COMMITTEE ON GOVERNMENT REFORM

"The California Murder Trial of Joe "The Animal" Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?"

FEBRUARY 13, 2002

I want to repeat a few sentences from my opening statement before last week's hearing.

The United States Department of Justice allowed a lying witness to send men to death row. It stood by idly while innocent men spent decades behind bars. It permitted informants to commit murder. It tipped off killers so they could flee before they were caught. It interfered with local investigations of drug dealing and arms smuggling. And then, when people went to the Justice Department with evidence about murders, some of them ended up dead.

This, word for word, is what I said last week. And Justice Department officials sat in front of the Committee, and they nodded their heads. They said they would cooperate with the Committee's investigation, and then they hung tough and said we couldn't see documents we subpoenaed.

We are in the middle of an elaborate shell game. The Justice Department knows we are justified in wanting to see the documents we subpoenaed. The Justice Department knows we have good reason to review the documents. They know that if we don't, our investigation will be harmed. If they were doing an investigation, they would want to review the same documents themselves. They would insist on it. For the same reason, we have to insist on it.

For decades, federal law enforcement did terrible things up in New England, and they were successful in covering it up. And now the Justice Department, today, in 2002, continues to make it hard to find out what happened. We're not going to tolerate that.

I want to emphasize two important points. First, the Justice Department has never said that our review of these documents would harm an ongoing investigation. Second, the Justice Department has never said that our review of these documents would compromise secret grand jury information. The simple fact of the matter is that they don't want us to see these documents. That's unacceptable.

I'm not going to belabor the point about how unhappy I am with the Justice Department. They just don't seem to care that they are putting hurdles before the Committee. Rest assured, we'll do everything we can to get to the bottom of what happened. I just hope that at some point, the Attorney General and the President – who are getting really bad advice – will do the right thing and tell their staff to cooperate with Congress.

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building. When Barboza was told that the man's aged mother lived in the house and would also be killed, Barboza said that it wasn't his fault and he didn't care.

After Barboza lied in the Deegan murder prosecution, the FBI created the Witness Protection Program for him. He was moved to Santa Rosa, California. Predictably enough, he killed again. For awhile, he got away with the murder.

Shortly after the murder in California, Barboza went back to Massachusetts. He got into another legal problem and was put in Walpole Penitentiary. While he was there, he told a career criminal in the cell next to him about the murder that he had committed in California. That inmate proceeded to tell people about the latest murder. But the Justice Department didn't care. It was okay for Barboza to get away with murder -- literally. In fact, the federal government wanted to cover-up Barboza's involvement in the murder.

The man Barboza confided in, William Geraway, did write one letter to the District Attorney in Santa Rosa. That's how he finally got caught. Investigators were sent from California to Massachusetts. In fact, Mr. Cameron, who is with us today, was one of those investigators. While the Justice Department didn't seem to care much about the murder committed by their star witness, the community of Santa Rosa cared. Geraway provided the names of eyewitnesses, the location of the body and other critical details. Santa Rosa prosecutors were able to indict Joe "The Animal" Barboza – in spite of the opposition and obstruction of the federal government.

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Tim Brown was a Detective Sergeant with the Sonoma County Sheriff's Office. He also played a prominent role in the Barboza murder investigation, and he learned some important facts from local FBI agents that the Boston FBI didn't want him to know.

What they have told us already was enough for me to call this hearing. So far, we have learned that:

- The federal government went to extraordinary lengths to help Barboza get away with the California murder.
- All of tomorrow's witnesses – each an important federal government official – testified on Barboza's behalf at his trial for the California murder. Former FBI Supervisor Chuck Hiner, who we interviewed, told us that he got a call from Dennis Condon. He told us: "Denny said they would be character witnesses for Barboza."
- Barboza's defense lawyer was helped by the federal government. The prosecutors were snubbed when they sought help.
- The murder weapon was given to the FBI for analysis. It was "conveniently" lost for a period of time.
- The FBI in Boston was told that two of the witnesses against Barboza were going to be assassinated. The FBI in Boston showed no interest in helping to prevent the murders from being carried out. Fortunately, they weren't carried out.
- Investigator Ed Cameron flew out to Boston to talk to Justice Department officials. The climate was so hostile he stored his papers in a hotel safe. He later came to believe that someone broke into his room to search his briefcase.

- Barboza ultimately took a plea bargain for the Wilson murder He served less than four years, even though he had committed dozens of murders and killed while he was in the Witness Protection Program.

- Tapes were made of Barboza's conversations when he was in jail in Santa Rosa. These tapes, which helped solve at least one additional homicide, were given to the FBI. The FBI either lost these tapes or will not provide them to the Committee. Doug Ahlstrom, the FBI agent who was given these tapes, won't cooperate with us.

Everyone on this Committee understands that when you're fighting organized crime, you won't be working with angels. Witnesses will often be untrustworthy. They might be killers themselves. Well, we might have to work with the underworld, but we don't have to sell our souls to the devil. We can't let the FBI be complicit in putting innocent people in prison. If we help a witness who has cooperated, we certainly can't tolerate further murders. Nothing should ever give a government informant or witness a license to kill. That, however, is what seems to have happened in the case of Joe Barboza. And in the case of Vincent Flemmi. And in the case of Whitey Bulger. And in the case of Stevie Flemmi. For thirty years, the Justice Department turned a blind eye to witnesses and informants who committed murder.

After he lied and sent Joe Salvati and others to prison for life, "The Animal" got dumped on an unsuspecting community in California. He then killed someone else. From that time forward, the United States didn't owe him anything. It certainly didn't owe him enough to help him get away with murder. To come to any other conclusion would be to turn our back on everything that our system of justice stands for.

Congress recently gave the Administration sweeping new powers to deal with the terrorists who committed the atrocities of September 11. We were all deeply touched by this tragedy. A former lawyer on this Committee's staff was killed on one of the airplanes. I don't regret for a minute giving the government the powers that it asked for after September 11. But with power comes responsibility. It has to be used wisely. The Justice Department has the power to protect, but it also has the power to destroy people's lives. People like Joe Salvati. I think every person in a position to wield these new

powers should take a few hours to sit down and think about what happened to Joe Salvati, his wife Marie, and their four children. They should take some time and reflect on today's testimony and on the things we'll talk about tomorrow. And they should think about secrecy. They should consider the words Federal District Court Judge Wolf used in Boston when he forced the government to admit its treacherous use of Whitey Bulger and Stevie Flemmi as informants. Judge Wolfe quoted Lord Acton: "Every thing secret degenerates, even the administration of justice."

Thirty years ago, it would have been unthinkable for the federal government to knowingly try to put men in the electric chair for crimes they didn't commit. Just as it is unthinkable that the same thing would happen today. But it does happen. Our laws are administered by human beings. I hope everyone that follows these hearings understands that what we are doing today is not an academic exercise. We don't want there to ever be another case like Joe Salvati's.

Mr. WAXMAN. Thank you very much, Mr. Chairman. I want to start where you left off. There are a lot of things happening in the world. I want to commend you for making sure that we investigate any perversion of justice because what this country has always stood for is fairness and justice.

We are today examining allegations of FBI and Justice Department misconduct in their dealings with Joseph Barboza, a violent criminal who turned State's evidence in several high profile organized crime prosecutions in New England. I very much welcome this hearing.

In the 1960's Joseph Barboza was well known to the FBI and law enforcement authorities in Massachusetts. He worked as an enforcer and killer for organized crime groups in New England. To avoid a lengthy prison sentence, he decided to work with the government in major Federal and State organized crime prosecutions.

Mr. Barboza's testimony led to the conviction of some of the most notorious mafia figures in New England at the time, including a mafia boss, Raymond Patriarca, as well as two of his top lieutenants and other members of the mafia.

The Federal and State prosecutors involved in the prosecutions won great praise for their work. J. Edgar Hoover gave personal commendations to the agents who helped develop the cases. At the time, the convictions won by way of Joseph Barboza were a mark of professional accomplishment, and they established practices in the Boston office of the FBI that lasted for decades.

Today the history of the Federal Government's dealings with Joseph Barboza no longer stands as an achievement, but as an egregious example of law enforcement abuses.

From this committee's investigation and materials uncovered by the Justice Department Task Force investigating related allegations, several things are clear. Mr. Barboza gave false testimony in the trial of six defendants in 1968 for the murder of Edward Deegan. This resulted in the wrongful conviction of Joseph Salvati and possibly others.

The FBI agents who worked with Mr. Barboza in connection with that State prosecution knew or should have known that his testimony was false. Federal officials withheld crucial exculpatory evidence in the Edward Deegan murder trial and denied the defendants in that case a fair trial.

After the trial, the Justice Department relocated Mr. Barboza to California where he killed again. During his trial for murder in California, the Justice Department and the FBI worked on Mr. Barboza's behalf to assist in his defense. With the assistance of the Justice Department, Mr. Barboza made a plea agreement that minimized the term of his imprisonment and allowed him back on the streets.

I think all of us on this committee would agree that the Justice Department and the FBI lost their way. No ends, not even the laudable goal of eliminating organized crime, justify these means.

Before Robert Mueller was confirmed as Director of the FBI, he told a Senate committee that, "The measure of an institution is how it responds to its mistakes." He went on to say that it was his highest priority to restore public confidence in the FBI. I commend Mr. Mueller for his commitment to this priority, but I do not un-

derstand why the Justice Department and President Bush continue to impede this committee's investigation into these matters by asserting executive privilege over potentially important documents.

I urge President Bush to reverse course and to direct his administration to cooperate fully with this committee. That's the only way that we in the Congress and the general public can understand this unfortunate episode.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Henry A. Waxman follows:]

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INDEPENDENT

Statement of Rep. Henry Waxman
Government Reform Committee Hearing on
"The California Murder Trial of Joe 'The Animal' Barboza:
Did the Federal Government Support the Release of a Dangerous Mafia Assassin?"

February 13, 2002

We are here today to examine allegations of FBI and Justice Department misconduct in their dealings with Joseph Barboza, a violent criminal who turned state's evidence in several high profile organized crime prosecutions in New England. I welcome this hearing.

In the late 1960s, Joseph Barboza was well known to the FBI and law enforcement authorities in Massachusetts. He worked as an enforcer and killer for organized crime groups in New England. To avoid a lengthy prison sentence, he decided to work with the government in major federal and state organized crime prosecutions.

Mr. Barboza's testimony led to the conviction of some of the most notorious mafia figures in New England at the time, including a mafia boss -- Raymond Patriarca – as well as two of his top lieutenants and other members of the mafia. The federal and state prosecutors involved in the prosecutions won great praise for their work. J. Edgar Hoover gave personal commendations to the agents who helped develop the cases. At the time, the convictions won by way of Joseph Barboza were a mark of professional accomplishment, and they established practices in the Boston office of the FBI that lasted for decades.

Today, the history of the federal government's dealings with Joseph Barboza no longer stands as an achievement, but as an egregious example of law enforcement abuses. From this Committee's investigation and materials uncovered by the Justice Department task force investigating related allegations, several things are clear:

- Mr. Barboza gave false testimony in the trial of six defendants in 1968 for the murder of Edward Deegan. This resulted in the wrongful conviction of Joseph Salvati and possibly others.

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- The FBI agents who worked with Mr. Barboza in connection with that state prosecution knew or should have known that his testimony was false.

- Federal officials withheld crucial exculpatory evidence in the Edward Deegan murder trial and denied the defendants in that a case a fair trial.

- After the trial, the Justice Department relocated Mr. Barboza to California, where he killed again.

- During his trial for murder in California, the Justice Department and the FBI worked on Mr. Barboza's behalf to assist in his defense.

- With the assistance of the Justice Department, Mr. Barboza made a plea agreement that minimized the term of his imprisonment and allowed him back on the streets.

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Mr. BURTON. Thank you, Mr. Waxman.

Mr. Horn, do you have an opening statement?

Mr. HORN. I don't want an opening statement. I would like to get to the questions.

Mr. BURTON. OK. Well, we will get to those very, very quickly then.

Mr. Duncan.

Mr. DUNCAN. Mr. Chairman, let me say once again how much I appreciate your courage and persistence in having hearings on this matter. I will say once again, as I said last week, when you opened up your statement last week and you repeated this opening paragraph again today, I serve on three full committees and six subcommittees. This is my 14th year in the Congress. I have participated in probably several thousand committee and subcommittee hearings during that time.

I said last week I have never heard a more shocking statement made in any committee or subcommittee hearing that I have ever participated in than your opening paragraph.

In case anybody here, in case they did not hear that or their minds were some place else, I want to repeat that. The chairman said, "The U.S. Department of Justice allowed a lying witness to send men to death row. They stood by idly while innocent men spend decades behind bars. They permitted informants to commit murder. It tipped off killers so they could flee before they were caught. It interfered with local investigations of drug dealing and arms smuggling.

"Then when people went to the Justice Department with evidence about murders, some of them ended up dead."

I can tell you this: I spent 7½ years as a criminal court judge trying felony criminal cases. I mentioned that in here before. The first year I ran for Congress, 302 out of 309 of the Knoxville City Police Department officers ran an ad endorsing me for election. The Knox County Sheriff's Department did the same thing. I think that I have supported law enforcement as much as anybody possibly could.

But there's a reason why our founding fathers wanted most of our law enforcement to be local and there's a reason why most or many people who have thought about this do not want us to create a Federal police state.

You know, our lowest paid law enforcement officials are our local police officers. Next are the State and then our highest paid law enforcement officials are the Federal officials. Many of them never see a real criminal unless they are mugged on the way to their cars after work.

We give the lowest pay to our people who are out there fighting the street crime, the real crime that people want fought. Then when we read about cases such as this Barboza case that we are going to hear about today where the Special Agent in Charge of the Boston office told J. Edgar Hoover, "I Barboza was a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement representatives in New England to be the most dangerous individual known."

Then we had Barboza taking a plea agreement for a murder in California and serving less than 4 years, even though he had com-

mitted dozens of murders, dozens of murders. His own lawyer called him, "one of the worse men on the face of the earth." When asked about the short prison term for Barboza of less than 4 years, his lawyer said that was pretty amazing. "I figured out that was how it worked when you had friends in the FBI."

That's really sad, that when you have friends in the FBI you can commit dozens of murders and get out with a sentence of less than 4 years.

But a man who has done nothing at all and who is totally innocent has to serve 30 years. I do not believe that the people of this country feel that the Justice Department was set up to protect murderers like Barboza. I am totally amazed at what I am hearing at these hearings. I am more than amazed. I am shocked. I am going to do what I can in my small way to call attention to this.

I am going to go on C-Span and I am going to talk about this. I am really embarrassed and ashamed and saddened that the Justice Department is continuing to try to withhold documents from the chairman and from this committee and try to continue this cover-up. The whole thing is just shocking.

I appreciate your calling these hearings and letting me participate. Thank you, Mr. Chairman.

[The prepared statement of Hon. John J. Duncan follows:]

Government Reform Hearing
February 13, 2002

Hon. John J. Duncan, Jr.
Opening Statement

Mr. Chairman,

First I would like to express my great appreciation and respect to you for your persistent interest in this matter. The Boston murders reek of injustice and corruption, and I am glad this Committee is bringing light to the terrible things that happened.

As a former criminal court judge, I am continually shocked with all I am learning in these hearings. It seems like the more we hear, the more unbelievable it is.

It is almost unthinkable that the federal government, whose job it is to enforce laws, went to extraordinary measures to help Barboza get away with the California murder.

Barboza's own defense attorney was assisted by the federal government. Not to mention the fact that when Investigator Cameron, who I look forward to hearing from today, asked for help, he was snubbed every time.

It is also upsetting that the United States Witness Protection Program was created for Mr. Barboza, a man who committed dozens of murders and continued to murder even after he was in the Program.

We are talking about a man whose own lawyer called him "one of the worst men on the face of the earth."

Our Justice Department was not created to help thugs like Barboza. It was created to promote Justice -- fairness for all. But as we are seeing, at times it has not done its job. Not only did it sit idly by while injustices occurred, as we have heard from these hearings and continue to hear, the Justice Department played an active, involved role in tampering in the investigations and murder trials.

I look forward to hearing the testimony of the witnesses today. I am glad that the Committee is

bringing light to this corruption. We need to make sure injustices like this do not continue to happen.

Thank you, again, Chairman Burton, for your continued interest in this very important matter.

Mr. BURTON. Thank you, Judge Duncan.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. With your permission and that of the other members of the committee, I would like unanimous consent to just put my remarks on the record so we can get to the witnesses.

Mr. BURTON. Without objection, it's so ordered.

[The prepared statement of Hon. John F. Tierney follows:]

Mr. Chairman, we have spent a great deal of time in this committee reviewing the travesties of justice that were perpetrated by members of the FBI in Boston beginning in the 1960s. Last week, we heard from legal experts about this committee's right to documents pertaining to this case. But no testimony has been more compelling than what we heard last May during our first hearing on this subject.

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In May, we heard from Joseph Salvati and his family about the 30 years he spent in jail, several of them on death row. We also heard from H. Paul Rico, who was the FBI agent tasked with cultivating Boston's mob informants. Mr. Salvati and his wife emotionally told this committee about the miscarriage of justice that ruined their lives. And just moments later, Mr. Rico, when asked if he felt remorse about the role he played in sending several innocent men to jail, replied, "What do you want from me, tears?"

Well, we're not interested in tears. We are interested in justice.

Today, we are continuing this effort by examining the relationship between the FBI and Joe Barboza. Barboza might easily be one of the luckiest members of organized crime to ever have lived. Field agents and others on up to FBI director J. Edgar Hoover knew that Barboza was a violent and dangerous criminal. They knew that he was one of the men responsible for the 1965 death of Teddy Deegan in Boston.

And yet, they used Barboza's testimony to convict 6 other men for that murder, including Joe Salvati. As a reward, the FBI created the witness protection program for their star informant. Barboza was sent to live comfortably in California.

In 1971, Barboza shot and killed yet another man. And again, the FBI was Barboza's savior. Rico and his partner Dennis Condon traveled out to California to speak in Barboza's defense.

And thanks to the help of the FBI, Joe Barboza, was sentenced to a mere 5 years in prison for murder.

Despite all the good fortune that seems to have befallen Barboza, it probably wasn't just luck. Maybe what allowed Barboza to live in California and avoid the death penalty for the murders he committed was that he knew about the FBI's role in jailing innocent men.

The FBI seems to have been willing to take care of Barboza in exchange for his continued cooperation in suppressing the truth.

I hope that during these two days of hearings, we will be able to clarify how the FBI acted to protect itself and discouraged Barboza from recanting the false testimony he gave at the Deegan trial. I doubt we will ever be able to comprehend the sheer lack of humanity that led to these decisions. But I hope that this hearing will in some way discourage future miscarriages of justice.

Mr. BURTON. Mr. Delahunt.

Mr. DELAHUNT. I thank you, Mr. Chairman. Again, as I have stated on previous occasions, let me commend you for moving forward with this. Also, let me commend the witnesses. I am sure they are here with some ambivalence. But what you are doing today is very important.

We don't have a democracy if we have a justice system whose integrity is at risk. What you experienced and what I anticipate your testimony will reveal, your experience in California in the late 1960's and early 1970's did not stop then. It continued. It continued in the Boston area and at some level I presume elsewhere all over this country, in the 1970's, in the 1980's and the 1990's.

Again, a justice system that has integrity is so critical to a healthy vibrant democracy. In the notice put out by the committee, and maybe I could inquire through the chair to Mr. Wilson, chief counsel. There was an indication that possibly a representative of the Department of Justice would be here. If I could inquire, is there a representative of the Department of Justice here?

Mr. BURTON. We'll have the department here for testimony tomorrow. The other case you were talking about, which we might as well bring up at this time was that one of the agents that was involved in the case at hand couldn't be here, he said, because of health problems.

We subpoenaed him and he will submit to a sworn deposition next week, so we will get his testimony as well.

Mr. DELAHUNT. Again, the question I would pose to the Department of Justice is many of these documents which we have been provided with have names and possibly important information redacted.

I think the Department of Justice has the obligation to inform the committee of the rationale for the redaction. I think that's important that we can further realize what we are dealing with here. I think I do see a representative of the Department of Justice in the audience. Maybe at some point in time he can respond to that question. Who is responsible for the redaction of some materials and names in the documents that were presented and provided to the committee?

Mr. BURTON. If he is not prepared for that today, we will try to get that information tomorrow and you can ask that question then.

Ms. Watson, did you have any comments?

Ms. WATSON. I just want to say that I am pleased to be part of this committee that continues to search for truth and justice at a time when our integrity is being questioned and there are tremendous scandals and cover-ups, I think we have to do everything we can publicly to dig it out, bring it forward and clear it up and let justice prevail.

I just came back from Cuba. This weekend I had maybe a 5 or 6 hour meeting with President Fidel Castro. When our "Ambassador" used a hard line, we repeated the language to him and he said, well, America appears to be hypocritical and gave us the names of five, as he called them, innocent Cubans that are in Federal prisons. He pointed out that one of them was in Lompoc in the State that I represent.

What can you say? You sit there in a chagrin fashion. We must clear these issues up. We must bring them public. We must reform. If we are going to be the leader of the free world, we need to model a kind of behavior that says these kinds of crimes and cover-ups cannot exist in America.

Thank you so much, Mr. Chairman.

Mr. BURTON. The gentle lady yields back her time.

We will now hear testimony from our witnesses who are here today. We want to thank you once again for coming all the way from out in sunny California to be here. You all live in southern California, don't you? You all have nice tans. You look good. Oh, one of you is living in Nevada? Well, it is warm there, too.

Mr. Marteen Miller, Mr. Edwin Cameron and Tim Brown, would you please rise and be sworn?

[Witnesses sworn.]

Mr. BURTON. I think we will start at my left. Mr. Miller, would you like to make an opening statement?

STATEMENTS OF MARTEEN MILLER, FORMER PUBLIC DEFENDER; EDWIN CAMERON, FORMER INVESTIGATOR; AND TIM BROWN, FORMER DETECTIVE SERGEANT, SOMONA COUNTY SHERIFF'S OFFICE

Mr. MILLER. No, sir. I will waive that.

Mr. BURTON. OK. Well, you can answer questions.

Mr. Cameron, do you have an opening statement?

Mr. CAMERON. No. I will waive that.

Mr. BURTON. Just answer questions, OK.

Mr. Brown.

Mr. BROWN. No, sir. I will waive that.

Mr. BURTON. Very well, we will get on with the questions then. I think this is one of the first panels we have ever had that did not have an opening statement. That's why I wasn't ready for the questions.

OK, we will proceed under the 5-minute rule today. Mr. Cameron, you were the police officer and the investigator for the Sonoma County District Attorney's office. If that correct?

Mr. CAMERON. Yes, sir.

Mr. BURTON. Is it fair to say that when you were investigating a murder committed by Joseph Barboza the FBI and the Justice Department did not help you very much? Is that correct?

Mr. CAMERON. It would be more than fair to say that we did not get any cooperation from the Federal Government.

Mr. BURTON. From the FBI?

Mr. CAMERON. The FBI.

Mr. BURTON. When you began your investigation, did you know that Joe "The Animal" Barboza had been described to J. Edgar Hoover as a professional assassin responsible for numerous homicides and acknowledged by all professional law enforcement to be the most dangerous individual known?

Mr. CAMERON. When we originally got the letter telling us that we had a body in California? No, I did not know that.

Mr. BURTON. Mr. Brown, did you know when you started that was how the FBI described Mr. Barboza?

Mr. BROWN. No, sir, not at the time that it began.

Mr. BURTON. Did you know that the FBI, Mr. Cameron, believed that he committed at least 26 murders?

Mr. CAMERON. Not when we began. Later I found that out.

Mr. BURTON. So, at the beginning none of you knew that?

Mr. CAMERON. No, sir.

Mr. BURTON. Mr. Miller, when you started the case the prosecution had two eyewitnesses, another witness who had all the facts right, a body and a client with a very bloody past. I think you told our lawyers that you thought it would take the jury about 2 minutes and that the prosecution's case was a lead pipe cinch. Do you recall telling us that?

Mr. MILLER. That's substantially correct. I did not have too much hope at the beginning of the trial, but sometimes things go poorly for you and sometimes they break for you. I think we rolled 7s and 11s in that case.

Mr. BURTON. So, you thought that this was potentially a death penalty case for Mr. Barboza?

Mr. MILLER. It was a death penalty case, yes.

Mr. BURTON. And you did not hold out much hope for him because of the evidence involved.

Mr. MILLER. Well, there is always hope, but I have to address reality.

Mr. BURTON. Mr. Brown, you were a detective sergeant with the Sonoma County Sheriff's office. Is that right?

Mr. BROWN. Yes, sir.

Mr. BURTON. Joe Barboza was alleged to have killed someone outside of Santa Rosa. We'll get into the specifics later, but from our interview of you it sounds as though the Justice Department didn't really want Barboza to go to prison for the murder he committed. Is that right?

Mr. BROWN. Yes. That's correct.

Mr. BURTON. At the time of the Barboza prosecution, you were the public defender, Mr. Miller?

Mr. MILLER. Yes, sir.

Mr. BURTON. And as the most experienced attorney in the office, you handled all the murder cases, correct?

Mr. MILLER. That's correct.

Mr. BURTON. Did the FBI provide significant help in your defenses of Barboza?

Mr. MILLER. Well, they were very friendly to me when I went back to Massachusetts as far as getting into Walpole and so on, and telling me where to stay and so on, and offering any assistance that they could give. But the evidence in the case, realizing that they had an individual to whom Mr. Barboza had made a statement about the case. They had two eyewitnesses to the case. The body was found exactly where Mr. Geraway said it would be found.

The trauma was exactly the way Mr. Geraway described it and the witnesses that testified in that trial also said that they witnessed the case. So, there was no real evidentiary help that the FBI could have given me in relation to that case.

If I may add gratuitously, I think what you should be looking at, I think, is what happened post-trial. In my 40 years as a criminal defenses lawyer, I have never seen a situation where someone goes

into prison with a second degree murder charge getting out in as short a time as he did.

Obviously, I asked if they could appear, just for color's sake. There was nothing in their testimony in relation to the actual killing in the case. The 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.

Mr. BURTON. Did they agree to appear as "character witnesses?"

Mr. MILLER. Well, I wouldn't say character witness. My apologies, Mr. Cameron, I know you weren't the attorney, but I was surprised that there was an objection made by the prosecution asking what the relevancy was. All I wanted to do was place before the jury the color of the FBI in my favor, in any way I could.

Mr. BURTON. But the FBI did agree to testify in support of, to a degree, Mr. Barboza?

Mr. MILLER. Oh, well, sure, yes. May I continue just for a moment?

Mr. BURTON. Sure.

Mr. MILLER. I think it may clear something. Maybe I was naive, but I knew that the FBI did not want Mr. Barboza to get the death penalty. They were absolutely fearful of that. My rationale was they were afraid that if he got the death penalty he would have nothing to lose, he would then recant his testimony and the payoff for the mafia would be remuneration financial to his ex-wife and his children. So, maybe there's a lot more to it, after your opening statement, and there probably was. But at the time my feeling was that the FBI's interest in this case was solely to keep Mr. Barboza from recanting his testimony and I had no reason to believe other than recanting against people that were actually guilty.

Mr. BURTON. Well, we are trying our best to get to the bottom of that. That's why we are working so hard to get the documents in question.

Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman. Let me broaden out the question a little bit with the hope that you can give us some help. Starting with you, Mr. Cameron, your recollection back on this period of time, what would you tell us about your observations as to whether or not any of the law enforcement people involved, the Federal law enforcement people that were involved in that case at that time did anything that could be perceived to have obstructed the pursuit of justice in that particular case.

Mr. CAMERON. Our office, I called. It has been a number of years ago. I am the one who said, "Why has it taken 30 years to get to this place?" I waited that long. We called back for background information. We got that information which was publicly known at the time.

Whenever we asked them for any help, in our case to buck it up, I would call back and make a request. I don't know how many times I called, but I would say numerous. I never ever got a return telephone call, once ever.

Mr. TIERNEY. Do you remember the names of any particular agents that you were trying to reach at that time?

Mr. CAMERON. When I would call? No. The two fellows we were attempting to deal with were Condon and Rico.

Mr. TIERNEY. And that's the sum total of what you can tell us about specifics with regard to possible obstructions or interferences with your prosecution of that case?

Mr. CAMERON. I can only tell you what happened to me. I didn't like the feeling. You know, you are a cop long enough, you get gut feelings. I had never had a gut feeling in a law enforcement establishment before. When I got back to Boston on one of the trips, I put my papers in the hotel safe and I fixed my briefcase with a hair to see is somebody would open it. We left, I came back and somebody had opened it.

Now you have to keep in mind that we are dealing with the mafia and the FBI. I am not here to damn them because they are brother law enforcement officers. I don't like being here because I am going to do that, I think. But I don't know who opened it, but something opened it.

Mr. TIERNEY. You had no idea who had access to your room?

Mr. CAMERON. Nobody should have.

Mr. TIERNEY. Mr. Miller, some of the information that staff put together before this indicated that at one time you believe that one of the Federal officers, either Rico or Condon, offered to testify and you were uncomfortable with the nature of that testimony. You thought that they were perhaps not going to be as straightforward as they should have?

Mr. MILLER. No. That was probably my mistake in talking with them. You know, in 40 years as a criminal defense lawyer, you get involved with all spectrums, both sides of the fence. What I was trying to get at is that it is kind of common knowledge among criminal defense lawyers and even prosecutors that sometimes when the Federal Bureau of Investigation witness gets into trouble, I am not saying that he is going to perjure himself, but he gets into trouble where his answers may not be helpful to him and he will announce that he wants to go into chambers and then will claim that to answer that question would be a breach of national security. So, that was the import of that. But not, there was no offer by any of the agents that I called to proffer anything other than the truth.

Mr. TIERNEY. Was there any occasion when any of those agents refused to testify about a particular matter, claiming that it was an issue of either national security or——

Mr. MILLER. Yes. I think it was on an insignificant point. I think it was Mr. Hyland that asked, I think it was Mr. Condon, asked him about the Deegan matter, some specifics, and he declined to answer on the basis of advice from the Attorney General.

Mr. TIERNEY. Mr. Miller, what was the plea that was finally entered?

Mr. BURTON. Excuse me, I want to make sure that we don't miss anything on that point. There was some question about national security or something that dealt with the law enforcement at the FBI level regarding the Deegan murder that they didn't want brought out in court?

Mr. MILLER. That's correct. However, he did not use, the transcript did not use the words "national security" but the import would be, in further questioning that's what he would have said.

He said that he would not answer that question based upon the advice of the attorney general.

Mr. BURTON. Regarding the Deegan murder?

Mr. MILLER. Any specifics in that regard.

Mr. BURTON. I thank the gentlemen for yielding.

Mr. TIERNEY. Let me ask, have any of you gentlemen been contacted by the Federal Bureau of Investigation or any of its officers or agents prior to this hearing, since you were subpoenaed or asked to come here to testify?

Mr. MILLER. No, sir.

Mr. CAMERON. No.

Mr. TIERNEY. Mr. Miller, I started to ask you just briefly, what were the terms of the plea agreement that was finally entered in that case in terms of disposition?

Mr. MILLER. Well, we were along in the case, a few months in the case. I felt that we were on top of the case, however you never really know what can happen. It was a death penalty case. I think the prosecution, especially Mr. Hyland, was very experienced and saw what might be happening.

So, we had a discussion. I offered to plead Mr. Barboza to second degree murder and I think it was an in determinant sentence at that time, 5 years up and so on. He had parole to do in Massachusetts. So, I figured he would do his parole time and we would run it concurrent so he would have little if any time to do in the California penal system.

Mr. Hyland agreed to that. Then, lo and behold, I guess he doesn't do any time in Massachusetts and he comes to California, and to be perfectly honest, was calling my office from time to time from prison, just like he owned it, and was released very early. So, in my personal opinion, if there was any impropriety with the FBI it was only in terms of the amount of time, but again——

Mr. TIERNEY. Let me ask you, what happened between the beginning of the case when your assessment of the case was that the prosecution had a very strong case and the client was in trouble and that point in time when the prosecution was all ready to dive into a second degree murder with short time in California?

What were the circumstances during the trial that would have, in your judgment as an attorney, led a seasoned prosecutor to decide to fold?

Mr. MILLER. Well, No. 1, I think Mr. Geraway became very emotional on the stand because of a question I asked him and lost a lot of credibility.

No. 2, there was two eye witnesses who made three separate tape recording statements to the police or the investigators. Naturally, they were probably afraid of Mr. Barboza, so they were trying to protect themselves in the first tape. Then there was the third tape where they said exactly what Mr. Geraway said.

I think where the prosecution made an egregious error they allowed me to cross-examine extensively on the first tape, then on the second tape and then on the third tape. I think I cross-examined the witnesses for over 3 or 4 days. So, the jury is sitting there saying, what is going on there? How can they change their stories and so on?

Mr. TIERNEY. And this was a seasoned prosecutor?

Mr. MILLER. Well, I'll tell you that I was examining one of the witnesses and one of the prosecutors objected and Mr. Cameron objected on the basis that I was trying to proffer something that wasn't even real.

Mr. Cameron, as I recall, tapped him on the shoulder and gave him a copy of the police report.

Mr. TIERNEY. Do you recall that, Mr. Cameron?

Mr. CAMERON. Yes, I do.

Mr. TIERNEY. Give me your impression of the qualifications of the prosecutor during that trial if you would.

Mr. CAMERON. I work for a lot of attorneys and I work for him specifically. That was my duty. I wasn't assigned to anybody else but the D.A. He is probably the finest, toughest guy I ever worked for. You asked why we took the second degree. I can tell you why we took the second degree. We didn't have as witnesses a bus full of nuns that witnessed the killing. They weren't the best in the world, two convicted murders or two ladies.

But we did have a pretty dead bang capital murder case. We were going to call the FBI. For some reason we found out that they were going to testify for the defense. That happened and we had a meeting shortly after they testified. I wanted a first degree on Barboza but realistically our office knew that we weren't going to get it.

You have to keep in mind this was in the early 1970's. Everybody had nothing but the highest respect for the FBI.

Mr. TIERNEY. Can I take one or two more questions on this? Thank you. When is it that you became aware that the FBI would not testify for the prosecution but would testify for the defense?

Mr. CAMERON. During the trial. Sometime during the trial.

Mr. TIERNEY. Were you privy to the conversations between the prosecutor and the agents?

Mr. CAMERON. I'm not sure that we had more than a very brief meeting yes, I was privy to it, but it was a very brief conversation with them.

Mr. TIERNEY. What were your expectations of the testimony?

Mr. CAMERON. Oh, we expected they were going to tell us about the background of Barboza, what he was about, what kind of a man he was. He had testified for them and we expected that. We didn't expect him to say yeah, everything he had ever said was truthful and righteous.

What effect that testimony had on us is that when we came back and Mr. Fahey and myself and Mr. Hyland, the District Attorney, thought we had better take a second degree murder because they had injured us that badly with their testimony.

Mr. TIERNEY. In all of your experience before that trial and since that trial, have you ever seen an occasion where the FBI agents take the stand and serve essentially as character witnesses to a man charged with murder.

Mr. CAMERON. Absolutely not.

Mr. TIERNEY. Thank you. Thank you for your indulgence.

Mr. BURTON. Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman. We left off with Mr. Burton. Mr. Miller, I might add, was public defender for Mr. Barboza in the Clay Wilson murder trial. The question that was really not

quite put out was, the FBI, did they give you significant help in your defense when you went back to Boston?

I think you told our staff that the FBI did buy you a lobster dinner. Is that right, Mr. Miller?

Mr. MILLER. That is true. That is correct.

Mr. HORN. Now, Mr. Cameron, you were the prosecution. You were working. Did you get a lobster dinner out of the Justice Department also?

Mr. CAMERON. Yes.

Mr. HORN. Now were you getting the facts that you wanted out of the FBI?

Mr. CAMERON. No, sir. We got romanced but never kissed.

Mr. HORN. And it was a tough lobster, I take it.

Mr. CAMERON. I remember it as being good. It didn't cost me anything.

Mr. HORN. Now, do you feel they were just unhelpful or did you press them on what you wanted and did they just say, "We can't do it" or did they just stonewall you?

Mr. CAMERON. They would tell us what was public knowledge and that was about it. Of course, we did not know anything about Mr. Salvati and the Deegan murder case at the time. I could not figure out why we were not getting any help from another law enforcement agency.

I can understand having a Witness Protection Program. I understand the reason for it. Every good investigator that I have ever met draws a line in the sand when dealing with informants. I know that every good investigator that I have ever met will help a petty thief if he is willing to give you somebody better, up to, my line in the sand was I would never help a child molester or a murderer.

I could never understand in this case why the FBI, the epitome of everything that I thought was good about law enforcement, crossed the line that I drew, my personal line in the sand, which was helping those fellows, and they did.

Mr. HORN. Did you feel when you got back there, you are saying they didn't really interfere, they just sort of didn't help. Did any of them help and which were they? Were they one or two or three members?

Mr. CAMERON. The most help we got was—but I don't believe he was an FBI agent, his name was Reagan. I think he was a State policeman. I would say I got the majority of my information from him, outside of that which was public knowledge.

Mr. HORN. When you thought through what you needed in the California prosecution, is that probably the most memorable case you had or were there others?

Mr. CAMERON. Oh no, that's why I remember it as clearly as I do 30 years later.

Mr. HORN. Mr. Brown, is that Barboza case the most memorable you ever had?

Mr. BROWN. Yes, beyond a doubt.

Mr. HORN. Now, you had a murder victim in Sonoma County and that was Clay Wilson. You had what you thought was the murder weapon, isn't that right?

Mr. BROWN. Yes, sir.

Mr. HORN. And it was a handgun?

Mr. BROWN. Yes.

Mr. HORN. And who did you give the handgun to for testing?

Mr. BROWN. We sent it to the FBI laboratory, with slugs, if I might add. We dug up the slugs that we thought came from that gun. It had the victim's hair on the slugs, both of them. That was all sent to the FBI Crime Laboratory.

Mr. HORN. Well, what happened to your handgun that you sent to the FBI laboratory?

Mr. BROWN. It got lost.

Mr. HORN. Did they ever tell you what happened?

Mr. BROWN. Yes. It was recovered somehow, I think just before the trial.

Mr. HORN. So, what kind of evidence did they have before the trial, even though it was later missing?

Mr. BROWN. Well, we had the gun, but we were concerned with the chain. I mean, how do you lose a gun in the laboratory? But it all worked out. It worked out as the trial began.

Mr. HORN. I think it was pretty delicate. Did that play a real—I mean they didn't say that this handgun was damaged or anything and we can't determine that the slugs and everything came off that handgun? What did they give you that you could use and what didn't they give you?

Mr. BROWN. You know, I can't tell you. I can't remember that. I don't remember how it came about as far as—you know, I don't remember.

Mr. HORN. Mr. Cameron, during your investigation you traveled to Boston, as we saw. One of the purposes of the trip was to get information about Barboza that would help your case. Is that correct?

Mr. CAMERON. Yes, sir.

Mr. HORN. Instead of getting information, you became suspicious of the FBI, didn't you?

Mr. CAMERON. I was uncomfortable with them, yes, sir.

Mr. HORN. In fact, you became so suspicious that you did something with your briefcase?

Mr. CAMERON. I did.

Mr. HORN. Tell us what you did with your briefcase.

Mr. CAMERON. We talked about that a moment ago. I had this terribly uncomfortable feeling, so when I left the hotel I took a hair and wrapped it around the lock and left it there. I did not lock it. I just closed the hasps.

When I returned, someone was in it.

Mr. HORN. And you put a hair set to show whether anyone tampered with it, but when you returned later it was broken?

Mr. CAMERON. It was broken.

Mr. HORN. Now, the Wilson murder was discovered because William Geraway, a prisoner who was in the cell next to Barboza wrote a letter to authorities saying Barboza confessed to the murder. After Geraway's letter was received, your office decided that you would go the Massachusetts. Is that correct?

Mr. CAMERON. Yes, sir. When we got the letter, yes.

Mr. HORN. Once you were in Massachusetts, did you meet with FBI Agent Dennis Condon?

Mr. CAMERON. We did.

Mr. HORN. Was the meeting with Agent Condon unusual and how so?

Mr. CAMERON. No, I don't believe it was unusual at the time. We had no reason to—we were asking them for help, what was Barboza about? Is this in fact a good—you know before you go out and talk to somebody in Walpole Prison, you want to find out what is going on and can they help you? They filled us in because we were completely ignorant about Joe Baron. We had no knowledge of him at all.

Mr. BURTON. Would the gentlemen yield?

Mr. HORN. Yes.

Mr. BURTON. In the notes that we have from our legal staff, that first meeting you had with Condon, you indicated that it was kind of a strained meeting. Do you recall saying that?

Mr. CAMERON. I felt tension. I felt that you would ask a direct question and you get—that is what I meant by being romanced without being kissed. I felt that they were giving us exactly what they wanted to give us and not anything more. I don't know why I felt that. It proved to be true, of course.

Maybe my 30 years of hindsight has reinforced my original uneasy feeling.

Mr. BURTON. Why don't you ask a couple more questions, Mr. Horn?

Mr. HORN. In your experience now, and we have that already for the record, were law enforcement agencies usually helpful if one of their witnesses or informants were accused of a crime, particularly murder?

So, what your feeling was, as the chairman says, you were strained about this and maybe a little worried about what you were going to get and you didn't seem to get it. Is that correct?

Mr. CAMERON. We just didn't know what we were going to get. We got what we thought we wanted, but it was not an open and free discussion, I think.

Mr. HORN. You didn't feel that it was cooperative with what you wanted to have done, I take it.

Mr. CAMERON. I didn't feel like we were getting the whole story.

Mr. HORN. At one point, your office asked Agent Condon for records. What happened? What was his response?

Mr. CAMERON. To my knowledge, sir, we asked the FBI on more than one occasions for records. We never received one that I can remember.

Mr. HORN. Did you ask them and they said, "Sorry, we can't do it?"

Mr. CAMERON. I would call and ask for records. I never so much as got a return telephone call.

Mr. BURTON. We will come back here in just a minute, Mr. Horn.

Mr. Delahunt.

Mr. DELAHUNT. Mr. Cameron, don't feel like you are a member of an exclusive club in terms of not receiving records. You should be aware that this committee has requested records and has not received them.

Let me direct this question to Mr. Cameron and Mr. Brown, if you have knowledge. I think I just heard you say, Mr. Cameron, that you had no knowledge of Joe Barboza.

Mr. CAMERON. No, sir. We did not know he was in town. I did not know who he was. I had no knowledge of him.

Mr. DELAHUNT. You didn't know that he had committed 26 murders, according to a senior FBI official?

Mr. CAMERON. Prior to going back to Boston, when we got the letter we had no idea we had a murderer of that ilk in Santa Rosa, CA, no, sir.

Mr. DELAHUNT. You were never notified that you had one of the most dangerous criminals of that generation living in your community?

Mr. CAMERON. We had no idea. Our law enforcement community had no idea.

Mr. DELAHUNT. No one that you were aware of at the local or State or county level in terms of law enforcement was ever notified or ever informed regarding the fact that pursuant to a deal, Mr. Barboza was relocated to your community?

Mr. CAMERON. We had no idea.

Mr. DELAHUNT. Mr. Brown.

Mr. BROWN. No official notification. I had seen him. I was with Agent Ahlstrom on a few occasions and I was told by Agent Ahlstrom, his words were he is taking care of him and babysitting this man. I mean, we had no idea who he was, what were the circumstances. That was before we had our homicide.

Mr. DELAHUNT. Before the homicide?

Mr. BROWN. Yes, sir.

Mr. DELAHUNT. So, you received no notification whatsoever from the Federal Government?

Mr. BROWN. No.

Mr. DELAHUNT. Given your experience in local and State law enforcement, if you had been notified, would you have conducted any surveillance? Would you have taken any measures to monitor the conduct of Mr. Barboza given what you now know in terms of his background?

Mr. CAMERON. I would hope so. We had a young man missing, Clay Wilson, who had been missing for some time. We later found out that they knew that he was hanging around this guy. As backward a policeman as maybe I was in Santa Rosa, CA, I could figure out that if we had a guy who killed 26 people in Boston and we had a young man missing in California, I would think that any cop worth his salt could at least put that piece of the puzzle together.

Mr. DELAHUNT. You could have deduced that he had a proclivity to murder?

Mr. CAMERON. I would think that if one killed 26 people he would.

Mr. DELAHUNT. Twenty-seven wouldn't be all that difficult.

Mr. CAMERON. Not at all that difficult.

Mr. DELAHUNT. Mr. Brown.

Mr. BROWN. At the time period you are after prior to our knowledge of Barboza living in Santa Rosa he had been involved in several things with our victim, Clay Wilson, at the time. There was an ongoing activity as far as some bonds that were stolen and weapons.

But at that time we had no knowledge of what was going on with Barboza. But life was the same for him. He was continuing his

former course of conduct before he came under the Witness Protection Program.

Mr. DELAHUNT. During that timeframe, did you have conversation with Agent Ahlstrom of the FBI regarding Mr. Barboza? You said he indicated to you that he was babysitting him?

Mr. BROWN. Yes, he told me 1 day, we were having lunch or whatever, and he says, "I'm taking care of this guy" or I'm babysitting him. It was just kind of a trivial little remark. I never thought much of it. I mean I really didn't think anything of it.

Mr. DELAHUNT. Was this prior to the Wilson homicide?

Mr. BROWN. Yes, sir, yes.

Mr. DELAHUNT. Did he ever indicate to you that Mr. Barboza was one of the most dangerous criminals in the annals of crime in America?

Mr. BROWN. No, he didn't. He never discussed it again. I saw him. We were together. He talked to him and that was it. We never discussed it. I was with Agent Ahlstrom on many occasions, but it never came up.

Mr. DELAHUNT. In the aftermath of the Wilson homicide, did you have any conversation with Agent Ahlstrom or did he offer any opinion?

Mr. BROWN. Yes. We were talking regularly, daily, after things happened.

Mr. DELAHUNT. What did he say to you? Of course you had a missing person, until you received the information from an inmate in Walpole, not from any law enforcement source.

Mr. BROWN. Yes. You know, I want to apologize. After we had our body and the thing was rolling along, that is when we had our daily meetings. Well, we would meet three or four times a week in the meetings and just discuss what was going on. He would assist me with certain things, up to a point.

Mr. DELAHUNT. Up to a point? Did he give you an opinion as to the veracity of the Geraway statement regarding the commission of the murder by Barboza?

Mr. BROWN. OK, before we charged Barboza, are you after? Is that the time period?

Mr. DELAHUNT. Right.

Mr. BROWN. When things started rolling along, when Mr. Cameron went back to Boston, things started moving, as far as activity with Agent Ahlstrom. But I never really knew the magnitude until we had our body. I mean, that's when things blossomed and all this information came out.

Mr. DELAHUNT. That is when you came to a certain realization.

Mr. BROWN. Yes, that's when things started to happen.

Mr. DELAHUNT. But something was really funny here.

Mr. BROWN. Yeah.

Mr. BURTON. The gentleman's time has expired. Judge Duncan?

Mr. DUNCAN. Thank you very much, Mr. Chairman. Let me apologize. I had to slip out and participate in a meeting on the subcommittee on which I chair, so I didn't get to hear a lot of the questions. But I understand I have been told some of the questions that were asked.

Mr. Miller, let me ask you this: You spent 40 years as a criminal defense lawyer. I can tell you that from my experience I think

that's about the most difficult kind of law that anybody can practice.

The Barboza case was potentially a death penalty case, as I understand it.

Mr. MILLER. More than potentially. At the outset, as I said before, I had little optimism but things just developed. May I interject, because something was stated, I think Mr. Hyland, the main prosecutor there, was probably the finest prosecutor that I have ever known and gone against.

The assistant, Fahey, is not too bad either. So, I just wanted to clear that up. Go ahead, sir.

Mr. DUNCAN. I can tell you that I have been involved in several, in fact quite a few death penalty cases. I am just wondering, I am told by the staff that these two FBI agents, Rico and Condon and Edward Harrington who was the head of the Organized Crime Task Force at the time that they all testified for Barboza. Is that correct?

Mr. MILLER. Well, they were subpoenaed by me, called by me as witnesses and responded to my questions, yes, sir.

Mr. DUNCAN. Had you ever had a Justice Department attorney testify for a client facing a murder charge before or an FBI agent?

Mr. MILLER. I am really being serious and thinking about it. I have had lots and lots of murder cases. I don't think so, but maybe. I do not recall, no, sir.

Mr. DUNCAN. I can tell you I handled several murder cases also. It is very unusual.

Mr. MILLER. Yes.

Mr. DUNCAN. That is an understatement or that is putting it lightly.

Mr. MILLER. I agree with you.

Mr. DUNCAN. I understand, Mr. Cameron, that you and Mr. Brown both, separately, went to Massachusetts and met with the FBI.

Mr. CAMERON. Yes.

Mr. DUNCAN. Would you tell me, before you went there did you think that you would get help or assistance or at least cooperation from the FBI and would you tell me what your reactions were, your feelings were after you had been there, both of you?

Mr. CAMERON. I certainly thought we were going to get help and more background information, possibly to use it as testimony in our trial, if we could get it in. We didn't get any help or much help. Like I said, we got romanced but not kissed.

Mr. DUNCAN. Mr. Brown.

Mr. BROWN. There was an agent at the New Bedford field office, I believe it was the New Bedford field office, that assisted us when we brought Barboza back to California. I didn't have any real contact with the FBI as far as Boston was concerned, up to that point. But that agent, and I cannot remember his name, he was more than cooperative. I mean that man helped us. I mean I can't say enough about him positive. But he did assist us in getting Barboza out of town.

Mr. CAMERON. We did get assistance from a fellow by the name of Reagan, but I believe he was a State policeman. He was terrific.

Mr. DUNCAN. Did you get the impression, though, that the FBI did not want Barboza to be prosecuted to the fullest extent possible?

Mr. CAMERON. At the initial contact, no, I can't say that I got that impression. I got the impression that something was definitely wrong. You know, it is a little odd to get a letter from a prisoner, convicted murderer, saying, I want to freely tell you about a conversation another murderer had with him.

So, I thought that was strange and I wondered what he was supposedly going to get out of it. You know, it is a give and take.

Mr. DUNCAN. Let me ask you this, Mr. Brown: I understand that you had an Agent Ahlstrom of the Santa Rose FBI office who did tell you at some point that Barboza had killed 26 people. Is that correct?

Mr. BROWN. Yes, sir. That's correct.

Mr. DUNCAN. Did that shock you or surprise you at the time?

Mr. BROWN. Well, yeah. I mean it is a shock. He is living there. In fact at one time I lived about three blocks from where his house was. His children went to school. I mean he lived a regular life on appearances. Yes, it was a shock. In fact I would like to say on behalf of Agent Ahlstrom I probably learned more through him about things than I did from any other source. The day he told me that, I mean it knocked my socks off.

I thought, "How come we didn't know?" Then you understand, well, it is a bigger picture than what we had.

Mr. DUNCAN. My time is up. Let me just ask one last question: How do you gentlemen feel now knowing that this man who committed 26 murders, I mean it is almost mind boggling, was protected or assisted and a man who was innocent was kept in prison for 30 years? Does that not shock you? I mean where is the justice?

Mr. BROWN. You know, it is a shocking thing, but I think what you men are doing here is going to iron things out a little bit. As far as that man doing prison time, we had no knowledge of that, but Barboza's lifestyle and his history of things and moving to our area, back in the 1970's it was a podunk place, nice place to live, nice place to raise your family and they brought him there, which is probably a good thing for them, but to put him in our environment that we had there, it is an atrocity, with no knowledge of it.

If they would have sat with him and monitored him, maybe this would not have happened.

Mr. DUNCAN. Mr. Cameron, as a man who spent your life in law enforcement, how do you feel about what you are hearing here today and about this whole situation?

Mr. CAMERON. I was privileged to watch Mr. Salvati testify before this is committee. I think that's a terrible, terrible thing. How we in law enforcement could let that happen is atrocious.

Mr. BURTON. The gentleman's time has expired. Mr. Clay.

Mr. CLAY. Mr. Chairman, I prefer to ask unanimous consent to put an opening statement into the record.

Mr. BURTON. Without objection, it is so ordered.

[The prepared statement of Hon. Wm. Lacy Clay follows:]

Statement of the Honorable Wm. Lacy Clay

Testimony before the Committee on Government Reform

Hearing on "The California Murder Trail of Joe 'The Animal' Barboza: Did the Federal Government Support the Release of a Dangerous Mafia Assassin?"

February 13, 2002

Mr. Chairman, members of the Committee, thank you for holding this important hearing, and for your continued interest in this issue.

Today's hearing reflects much more than an examination into the life of a Mafia hit man. This hearing is a long over due introspection of all that can go awry when law enforcement deems itself above the law.

I am left to wonder what the effectiveness of our law enforcement system is when I hear terms such as: false testimony, concealment, miscarriage of justice, conspiracy, lenient sentencing, and yes Mr. Chairman even murder in a hearing before Congress.

Like most members of this committee I have questions. I am sure my questions will be answered one way or another during this hearing. Like my colleagues what I want to hear is the truth. No more lies, no more cover-ups, just the truth.

The primary question is "Did the Federal Government Support the Release of a Dangerous Mafia Assassin?" I believe the answer is yes. My second question is to what degree was the government involved? My third and final question is this an on-going situation?

If these three questions can be answered truthfully I can be assured that we have made progress. If not, then we have achieved nothing more than deception.

Mr. Chairman, I ask unanimous consent to place my statement into the record.

Mr. CLAY. Thank you, Mr. Chairman. Mr. Chairman, I just sit here in utter amazement listening to your testimony. I really want to hear more. So for that reason I would like to yield the balance of my time to Mr. Delahunt, if I may. Thank you.

Mr. DELAHUNT. I thank the gentleman for yielding. When we talk about the sharing of information, if we pause and reflect for a moment, and I think you responded, Mr. Cameron, that if you had this information maybe Clay Wilson would have been alive today. Mr. Brown. Mr. Wilson.

Mr. CAMERON. He might have been, however, I don't know that we would have stayed with him 24 hours a day. The sheriff's office certainly couldn't have and our office, the District Attorney's Investigator staff couldn't have. However, we could have put two and two together after Clay Wilson came up missing. Had we known Mr. Barboza had done these things? Of course we would have put it together then. I hope we would have.

Mr. DELAHUNT. Well, there's the possibility of prevention. That's the point. You know, again, various States now are, for example, passing legislation creating a registry of sexual offenders. Would you concur that it is appropriate when witnesses, particularly those with history of violent behavior are relocated to localities and venues where they have the potential to wreck violence within a community, that it is incumbent upon the Federal Government to notify local and State authorities?

Mr. CAMERON. Well, I totally recognize there has to be a Witness Protection Program of some kind. I totally understand it. What I don't understand and what I haven't understood for 30 years is why in the world wasn't someone in local law enforcement told that we have a guy who killed 26 people living amongst our citizens?

Mr. DELAHUNT. That's exactly my point. I don't think it is something that has to receive publicity, but clearly at a minimum, local and State law enforcement, public safety officials have to be notified. Mr. Brown.

Mr. BROWN. I would like to go back to that podunk statement. I am sorry I said that. I didn't mean that in a derogatory term. It was a very nice place to live. But anyway, we had a system set up within a department as far as kind of a need to know basis. I certainly concur, somebody needs to know when you have a subject like Mr. Barboza living in your neighborhood.

But it was again on the basis of need to know, certain people. And if you needed to know it. But he didn't go around telling everybody about it. But like if the District Attorneys' office, somebody should have had knowledge because when things start to occur, hopefully before you have a homicide, if there's activity around this person you may be able to not have a homicide.

Mr. DELAHUNT. The question of information sharing, now I think it was you, Mr. Cameron, that stated to the committee that when you requested documents that they were not forth coming. The phone didn't ring.

Mr. CAMERON. No, sir. I can truthfully say I never saw——

Mr. DELAHUNT. Let me just pose this to all three of you, including you, Mr. Miller, that have an excellent reputation as a trial lawyer. Documents can be utilized to impeach the credibility of wit-

nesses. I don't know if, you know, whether you had any intention to put Barboza on the stand.

Mr. MILLER. I absolutely did have the intention, which I did.

Mr. DELAHUNT. Well, I can assure you that if you had access to the documents in the possession of this committee, particularly as it relates to Salvati and others, you would have had an abundance of information to impeach the credibility of Mr. Barboza, if you happened to be the prosecutor in this case.

So, again, the need for the Federal Bureau of Investigation and the Department of Justice to share this information is important at many different levels in terms of the ability to proceed and successfully prosecute those that are guilty and at the same time hopefully to secure the safety of those members of a community where an individual who is described by the Federal Bureau of Investigation as one of the most dangerous criminals ever. This is what happens when we don't provide that information. I see my time is up. But I look forward to an additional round.

Mr. BURTON. Mrs. Morella.

Mrs. MORELLA. Thank you, Mr. Chairman. Thank you for your perseverance on this very important issue.

I guess I will start off with Mr. Miller. Mr. Miller, as Barboza's attorney, you also went to Massachusetts, correct?

Mr. MILLER. That is correct.

Mrs. MORELLA. You seem to have had a different experience in Boston than Mr. Cameron. You had lots of contact with the FBI and they were very friendly, correct?

Mr. MILLER. Correct.

Mrs. MORELLA. They took you out to dinner every night on their expense account, didn't they?

Mr. MILLER. I assume every night, yes.

Mrs. MORELLA. You said that Agent Condon took you under his wing. How did he do that?

Mr. MILLER. Well, I think he was the one I was in contact with more, more friendly with. He showed me around Boston. I think he even told me where Walpole was and the best way to get there.

Mrs. MORELLA. He told you all the "ins" and "outs?"

Mr. MILLER. I didn't find that unusual.

Mrs. MORELLA. I wondered, why did agents Condon and Rico say they were willing to help Barboza on the California murder charge?

Mr. MILLER. Well, again, you weren't here at the time I expressed how naive I probably was, but they were afraid, in my mind, that if Mr. Barboza was given the death penalty that he would recant his testimony and therefore guilty men would be released from incarceration.

So, that was my take. So, they were going to help me ethically, I thought, in any way they could, not necessarily to prevent him going to prison, but to prevent his getting the ultimate punishment, which is the death penalty because he would have absolutely nothing to lose in that situation.

Mrs. MORELLA. I had heard that you had said that agents Rico and Condon told you that when somebody did them a favor they would not back down or wouldn't back off?

Mr. MILLER. Well, if I understand your question that if someone does a favor for them in relation to having some bad guy convicted,

that they would take care of them in the witness program. Is that what you meant?

Mrs. MORELLA. Kind of.

Mr. MILLER. And further, the better that they treat the ones on the Witness Protection Program, the more incentive someone would have to become an informant and then take advantage of the Witness Protection Program. They made that very clear.

Mrs. MORELLA. Mr. Brown, you got word that your two eye- witnesses might be the targets of an assassination attempt, didn't you?

Mr. BROWN. Yes ma'am.

Mrs. MORELLA. When you flew to Boston, you sought help from the FBI so that you could prevent your witnesses from being murdered; is that correct?

Mr. BROWN. No. That happened way after my trips to Boston. It happened after we had Barboza back in California. We were told by a man that was in our jail in Sonoma County that people were being sent from the East Coast to Santa Rosa to shoot our witnesses. Is that what you are after?

Mrs. MORELLA. Yes. Did you seek help from the FBI?

Mr. BROWN. OK. So, normally we would help, you know. So, we contacted the FBI agent, Ahlstrom. Things were in the mill but time was going and after several days time is moving and we did not get any help.

Mrs. MORELLA. So, you got no help, really, which is kind of what I am getting at.

Mr. BROWN. Yes, that is right.

Mr. BURTON. Would the gentlelady yield?

Mrs. MORELLA. Did this surprise you? Yes, I will certainly yield.

Mr. BURTON. What I would like to know about that is the person in jail that told you there were going to be hit men out there, assassins to kill two witnesses, was he credible?

Mr. BROWN. It was Geraway who started this whole thing with his letter to the District Attorney's Office.

Mr. BURTON. He is the one that said that?

Mr. BROWN. Yes, sir.

Mr. BURTON. And he had heard that from whom? From Barboza?

Mr. BROWN. No. We kept them apart.

Mr. BURTON. Where did he get that information?

Mr. BROWN. You know, I don't know. I don't know how it happened. I really don't. I can't remember.

Mr. BURTON. But it was Geraway that told you that there was going to be a hit?

Mr. BROWN. I am 90 percent sure it was Geraway.

Mr. BURTON. I thank the gentlelady.

Mrs. MORELLA. Picking up on that, Barboza's murder of Wilson surfaced in a letter sent by William Geraway, a prisoner who said that Barboza confessed to him in jail back in Massachusetts. After you received Geraway's letter, did Agent Ahlstrom start coming around more and asking questions, sir?

Mr. BROWN. Mr. Cameron, his office, received the letter, and yes, that's true. As things started to develop, I saw Agent Ahlstrom regularly.

Mrs. MORELLA. Did Agent Ahlstrom seem concerned by Geraway's letter?

Mr. BROWN. You know, I imagine he was concerned, you know. But I don't mean this in a derogatory way, but the FBI, they get other information. I mean their information source, which is their job, and Agent Ahlstrom was gathering. That is how I took it at the time.

Mrs. MORELLA. So he was concerned about the letter?

Mr. BROWN. Yes.

Mr. BURTON. May I interrupt once more?

Mrs. MORELLA. Yes, Mr. Chairman.

Mr. BURTON. In your testimony at the deposition before this committee, you said that Ahlstrom told you that he was bothered by the fact that Harrington, Rico and Condon were coming out to help Barboza.

Mr. BROWN. He said that.

Mr. BURTON. Now, in what context did he say that? I mean, did he say, "We have FBI agents and U.S. Attorneys coming out to support this guy." Why are they doing that? How did he say it?

Mr. BROWN. Agent Ahlstrom was concerned that those individuals would be helping the defense. We were sitting in the office talking. My opinion of his statement, he is concerned that his agency was going to assist the man we were trying to prosecute. And that's how I took it.

Mr. BURTON. Was he vehement or what did he say, "I am ticked off about this?"

Mr. BROWN. He was unhappy.

Mr. BURTON. Stronger language than that?

Mr. BROWN. Well, he wasn't swearing, but he was unhappy. He was unhappy.

Mr. BURTON. The gentlelady.

Mrs. MORELLA. Maybe I have time for one more question, Mr. Chairman. Actually, once Barboza was in custody in California awaiting trial, did you begin meeting with Agent Ahlstrom regularly to discuss Barboza?

Mr. BROWN. Yes.

Mrs. MORELLA. I wanted to note that the committee staff interviewed Chuck Hiner who was the agent in charge of the—said that wasn't normal procedure and it was very unusual.

Mr. BROWN. I agree with that. Agent Ahlstrom felt the same way and Chuck Hiner was kind of the connection to the East Coast through Agent Ahlstrom and to myself. That's how it kind of worked. When we needed something, I would talk to Doug Ahlstrom. He would talk to Chuck Hiner. The next day Ahlstrom would get back to me.

Mrs. MORELLA. My time has expired. Thank you.

Mr. BURTON. I thank the gentlelady.

Mr. MILLER. Mr. Chairman, could we take about a 1-minute break, a lavatory break?

Mr. BURTON. If I could make one statement, then we will take the break. OK?

Mr. MILLER. OK.

Mr. BURTON. I want to make sure that this point that was made by the gentlelady is really emblazoned on people's minds because

here you had the agent in charge of the San Francisco FBI, Mr. Hiner, saying that it was not normal procedure for the FBI to allow two FBI agents from the East Coast to come out and testify on behalf of a man who committed 26 murders, and it was very unusual.

So, this had to be something that was cleared at a higher up level and they couldn't figure out why it was. Ahlstrom felt the same way.

We will take about a 5-minute break and then we will be right back and go to Mr. Tierney.

[Recess.]

Mr. BURTON. The committee will come to order again.

You see, Mr. Miller, we really don't dislike trial attorneys. We want to help you guys out. In fact, Mr. Tierney, I think you were a trial attorney; weren't you?

Mr. TIERNEY. I was.

Mr. BURTON. So, we have a couple of you here in the room. Mr. Tierney.

Mr. TIERNEY. Thank you, Mr. Chairman.

Mr. Miller, to your knowledge at that time, were you of the opinion that your client had something on the FBI that he was holding or harboring some information that would make them more favorably disposed to being kind to him than otherwise might be the case?

Mr. MILLER. That wasn't posed in that manner, but Mr. Wilson, some months ago in our dialog brought that up. I forget what I said, something innocuous probably, but then thinking about this over and over, I do recall no specificity, but I do recall, "They owe me and they had better." At the time I didn't give too much thought about that, but now with the revelations forthcoming, that was probably what he had in mind, I guess.

Mr. TIERNEY. Your best recollection was that Barboza told you that "They owe me, they'd better?"

Mr. MILLER. Yes. He slammed his hand down and said, "They owe me and they better do it."

I thought, well, they owe him for his testimony he gave against Patriarca and——

Mr. BURTON. If the gentleman will yield very briefly—but he did say "They'd better."

Mr. MILLER. Yes.

Mr. BURTON. So, that was an implied threat. He was speaking rhetorically, but he was saying——

Mr. MILLER. Well, if you dealt with him the way I did over those months, I mean he was doing that every minute. This was a joke. I assume that my investigator, a very young man, would be just talking about the case and he would reach over, very strong, and grab him and lift him up in the air, and say, "Another word out of you and you are finished."

I mean that is the kind of a guy he was. He was banging things around. Obviously, he didn't mean that, you know, he was just playing with this investigator.

Mr. TIERNEY. Whose idea was it to have Mr. Harrington and Mr. Rico and Mr. Condon testify on behalf of Mr. Barboza?

Mr. MILLER. I am guilty.

Mr. TIERNEY. Now, did you just get that on your own or how did you come to that conclusion? It was probably not something you did a lot of in the course of your defense work is ask for one of the high ranking members of the Justice Department to testify on behalf of a murder client.

Mr. MILLER. Well, as a trial lawyer, you understand, you do everything you possibly can for the benefit of your client. I though it was beneficial to call the FBI man who had nothing relevant to testify to but just the color of their office. That's what I wanted and I think I got.

Mr. TIERNEY. The reason you went to that is that you were aware from your client that he had a relationship with him?

Mr. MILLER. Of course, I knew he was in the witness program.

Mr. TIERNEY. It wasn't your client who said to you I'll talk to them and they said they will testify or something of that nature?

Mr. MILLER. No.

Mr. TIERNEY. Now, Mr. Cameron, at some point you see in the exhibits, exhibit 2 in particular, where the prosecutor in the case sent the letter both to Attorney General Mitchell and to Mr. Hoover of the FBI explaining that this was unusual. He thought it would be a house divided if the testimony of those three individuals came in, and then asking if the individual, Mr. Harrington in particular, was going to testify, you would give the courtesy to the prosecutor of at least first speaking to him.

Do you know whether or not that courtesy was ever extended?

[Exhibit 2 follows:]

Office of the District Attorney
County of Sonoma
HALL OF JUSTICE
2555 MENDOCINO AVENUE
SANTA ROSA, CALIFORNIA 95401

KIERNAN R. HYLAND
DISTRICT ATTORNEY

JOHN W. HAWKES
ASSISTANT DISTRICT ATTORNEY

~~HARRINGTON~~

October 26, 1971

73A 1023
#77

RECEIVED
NOV 1 1971
CRIMINAL DIVISION

John Mitchell, U.S. Attorney General
United States Department of Justice
Washington, D.C.

Attention: Director of Organized Crime Division

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Very truly yours,

KIERNAN R. HYLAND
District Attorney

KRH:hn
Enclosure

123-66
DEPARTMENT OF JUSTICE
OCT 28 1971
R.A.C.
CRIMINAL DIVISION
Organized Crime and Racketeering Section

EXHIBIT
2

FBI/BOS-CRM-00007

THE DEFENSE STRATEGY:

10-24-71

Mafia Planned To Kill Baron

By BONY SALUDES

A crime-busting government attorney will reveal aspects of the intriguing subculture of the underworld at the murder trial of gangland informer Joseph Baroza Baron.

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Mr. Miller said he plans to call Mr. Harrington and two FBI agents from the East to support Mr. Baron's contention he killed Mr. Wilson in self defense.

He said the government officials, among other things, will explain why Mr. Baron carried a gun in spite of the fact he was on parole from Massachusetts and it was illegal for him to carry guns.

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The public defender has referred to Mr. Harrington in court only as a "government attorney." He has not mentioned him by name, but in answer to a reporter's question, he confirmed he was talking about Mr. Harrington.

Mr. Miller has disclosed to the jurors at this early stage h...

(Continued on Page 6A, Col. 6)

ENCLOSURE

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Mr. CAMERON. I don't believe it was. Mr. Harrington, now this is 30 years ago and as best that I recall, through the Sheriff's Department, through Tim or the jail staff, our office was informed that Mr. Harrington was there to see Mr. Barboza before coming to see us.

I recall a very brief meeting with Ken Hyland, our District Attorney, and myself and Ron Fahey, one of the senior deputies, in our office with Mr. Harrington. My boss was unhappy, to say the least. He went to the jail to visit Mr. Barboza prior to coming to see us. It was very brief.

Mr. TIERNEY. Your meeting with Mr. Harrington?

Mr. CAMERON. Mr. Harrington, yes.

Mr. TIERNEY. Mr. Miller, when you were meeting with Mr. Harrington, Mr. Rico and Mr. Condon prior to their testimony, in preparation for it, was their attitude one of reluctance that they had been subpoenaed to testify or were they fully cooperative? Were they eager? How would you categorize it?

Mr. MILLER. Fully cooperative, yes.

Mr. TIERNEY. Did they offer suggestions to you as to what their testimony might be?

Mr. MILLER. No. I was responsible for that.

Mr. TIERNEY. Now, you agree, don't you, that nothing they had to say weighed at all on the issue of mafia or organized crime involvement with Mr. Barboza?

Mr. MILLER. Yes, I think it did. What I was saying is that their testimony did not relate to any of the evidence in issue at the trial.

Mr. TIERNEY. No connection at all?

Mr. MILLER. None.

Mr. TIERNEY. My time is up. Thank you.

Mr. BURTON. The gentleman from Ohio.

Mr. LATOURETTE. Thank you, Mr. Chairman. I apologize for not being here a little earlier. We are dealing with an issue of pipeline safety in another room.

Gentlemen, welcome. Mr. Brown, I would like to ask you first, while it is our understanding that while Mr. Barboza was in custody, you learned that he was getting visits from a bookie, I think, by the name of Sharliss. Do you remember that?

Mr. BROWN. Yes.

Mr. LATOURETTE. And when you learned Mr. Sharliss' background, it is my understanding that you then began taping the visits between the bookmaker and Mr. Barboza. Is that also correct?

Mr. BROWN. Yes, sir.

Mr. LATOURETTE. And as a result of information received from the tape recordings that you made, it is my understanding that a homicide in Las Vegas may have been cleared as a result of the information that you developed?

Mr. BROWN. Yes, sir.

Mr. LATOURETTE. Do you recall anything about the specifics of that murder?

Mr. BROWN. Evidently, somebody was buried by a real estate sign. I don't remember the exact location. I remember the real estate sign.

Mr. LATOURETTE. OK. I would assume that during the course of these meetings between Sharliss and Barboza that from time to

time there would be information that would be developed or you could hear information that you thought might have been of interest to the FBI?

Mr. BROWN. Yes, sir.

Mr. LATOURETTE. And did you do anything relative to cooperating with the FBI?

Mr. BROWN. Yes.

Mr. LATOURETTE. Can you tell us what you did?

Mr. BROWN. I would make cassettes. This was a reel-to-reel, slow reel. When things were pertinent, I would make a cassette of it and give it to Agent Ahlstrom.

Mr. LATOURETTE. Let me ask you and Mr. Miller. As I understand it, Mr. Barboza came to California in February 1972. Then in March 1972 Mr. Harrington, who was the agent in charge of the Organized Crime Task Force, if I understand his position correctly, came to visit Mr. Barboza. Do you remember that meeting occurred?

Mr. BROWN. My memory has been refreshed and now I do remember that.

Mr. LATOURETTE. Were you, as Mr. Barboza's lawyer, asked to attend that meeting?

Mr. BROWN. No, I don't believe I was.

Mr. LATOURETTE. Mr. Cameron, are you aware whether or not the District Attorney or representatives of the District Attorney's office was invited to attend that meeting with Mr. Barboza or Mr. Harrington?

Mr. CAMERON. No, we were not.

Mr. LATOURETTE. Following Mr. Harrington's visit, however, I do understand that the prosecuting attorney's office did request some information of Mr. Harrington or a meeting with Mr. Harrington to determine what he was doing. Do you recall that, Mr. Cameron?

Mr. CAMERON. I do.

Mr. LATOURETTE. Was there such a meeting with Mr. Harrington?

Mr. CAMERON. There was a meeting in our office in the District Attorney's office. I believe Mr. Hyland, the District Attorney, Ron Fahey, myself and Mr. Harrington were there. It was a very brief meeting. The District Attorney wanted to know what he was doing there, what he could do to help our case, if anything.

Frankly, my boss was upset that a member of the Justice Department was—I won't use "interfering," but at least not giving us information as to why he was there and what he was doing and could he help us.

Mr. LATOURETTE. Well, I think that leads to not only the Harrington visit, but the fact that these fellows were going to testify in the upcoming trial. When Mr. Tierney was asking you questions, Mr. Miller, a little earlier, one of you made the comment that they didn't know anything about this homicide, this Clay Wilson homicide. To your knowledge, did they, Mr. Miller? They had no facts relative to the homicide that you were defending, did they?

Mr. MILLER. Well, I am sure they had the communication from Mr. Geraway to Mr. Hyland, the District Attorney. You are talking about prior to the trial?

Mr. LATOURETTE. Right.

Mr. MILLER. Yes, I am sure that they had that information and probably in my discussions we talked about it.

Mr. LATOURETTE. But they didn't have any relative—I mean they weren't eyewitnesses. They hadn't discovered any. I think you made the observation that the only purpose that you could see for their testimony was to show the flag or use the prestige of their office to show that FBI agents were testifying on behalf of Mr. Barboza.

Mr. MILLER. That's correct.

Mr. LATOURETTE. Mr. Tierney mentioned two letters. I would just like to have those put up on the screens as exhibit 2 and 3 and, Mr. Chairman, ask that they be admitted into the record of this hearing.

It is my understanding that exhibits 2 and 3 are the letters from Mr. Hyland that Mr. Tierney was asking about wherein he basically was asking for the courtesy that if Mr. Harrington is going to testify, would you be kind enough to give us the courtesy of having them come in and chatting with us first. Is that what exhibits 2 and 3 are?

I think, Mr. Cameron, I will ask you that since they appear to be letters generated from the office of the District Attorney.

[Exhibits 2 and 3 follow:]

Office of the District Attorney
County of Sonoma
HALL OF JUSTICE
2555 MENDOCINO AVENUE
SANTA ROSA, CALIFORNIA 95401

KIERNAN R. HYLAND
DISTRICT ATTORNEY

JOHN W. HAWKES
ASSISTANT DISTRICT ATTORNEY

~~HARRINGTON~~

October 26, 1971

73A 1023
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RECEIVED
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Washington, D.C.

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KRH:hn
Enclosure

123-66
DEPARTMENT OF JUSTICE
OCT 28 1971
R.A.C.
CRIMINAL DIVISION
Organized Crime and Racketeering Section

EXHIBIT
2

FBI/BOS-CRM-00007

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(Continued on Page 6A, Col. 6)

ENCLOSURE

58

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County of Sonoma
HALL OF JUSTICE
2555 MENDOCINO AVENUE
SANTA ROSA, CALIFORNIA 95401

KIERNAN R. HYLAND
DISTRICT ATTORNEY

JOHN W. HAWKES
ASSISTANT DISTRICT ATTORNEY

October 26, 1971

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Kiernan R Hyland

KIERNAN R. HYLAND
District Attorney

KRH:hn
Enclosure

BEST COPY

92-9828-22

EXHIBIT
3

Mr. CAMERON. I am sorry, sir. I was reading.

Mr. LATOURETTE. Exhibits 2 and 3, I just want for record purposes to make sure that exhibits 2 and 3 are the letters that Mr. Tierney was discussing that were sent by Mr. Hyland, his District Attorney, expressing his displeasure to both the Attorney General and also to Mr. Hoover, I believe, indicating that, one, we are not really happy about this, and two, if Mr. Harrington is going to testify, could you at least give us common courtesy if you are not going to give us usual courtesy.

Is that what Exhibits 2 and 3 are?

Mr. CAMERON. Yes.

Mr. LATOURETTE. Mr. Miller, I apologize again for not being here at the beginning. But did your trial practice back when this trial was occurring, had you represented murder cases before?

Mr. MILLER. Yes, sir, I have.

Mr. LATOURETTE. Had you ever seen a situation where a Federal law enforcement agent had ever come in and testified on behalf of one of your defendants?

Mr. MILLER. No.

Mr. LATOURETTE. From chatting with other members of the defenses bar, was this something that you had ever even heard of in the course of your practice?

Mr. MILLER. I don't know if it came up, but I am sure it was something that they probably never heard of.

Mr. LATOURETTE. And Mr. Cameron, are you aware, based upon your experience, of a Federal law enforcement agent coming into court and testifying on behalf of a defendant charged with capital murder?

Mr. CAMERON. In my experience, no, sir.

Mr. LATOURETTE. Mr. Chairman, I will stop now and wait for the next round.

Mr. BURTON. The gentleman yields back his time.

Let me just ask one quick question here. Mr. Miller, were you asked to participate in that meeting with your client and Mr. Harrington when he came to visit him?

Mr. MILLER. Not that I recall, sir.

Mr. BURTON. Were you aware that he was going to meet with him? I mean you are his defense attorney. And here is a guy who was a strike force attorney, prosecuting attorney, up in Boston who came in to see your client who you are defending on a murder charge. He talked to him and you didn't even know about it?

Mr. MILLER. I don't know for sure, but if I had to bet on it, I don't think I was aware of it.

Mr. BURTON. I mean you would have wanted to be there, wouldn't you? I mean, if somebody of that stature was coming in to talk to your client?

Mr. MILLER. Yes.

Mr. BURTON. I guess one could draw the conclusion that they wanted this meeting to be just between the two of them?

Mr. MILLER. Well, that would just be a guess.

Mr. BURTON. Let us put it this way. If there's a person of that stature who is involved in prosecution of criminals and he comes to see a defendant in a murder case, isn't it a little bit unusual that he would meet privately with the defendant?

Mr. MILLER. I would go out of my mind, except they were so—I thought they were so——

Mr. BURTON. Close?

Mr. MILLER. I thought they were so intent upon his not getting the death penalty that they wouldn't do anything to hurt me. Otherwise, I would be afraid that they would turn against me.

Mr. BURTON. But one could draw the conclusion that they wanted their meeting to be between the two of them.

Mr. MILLER. Yes, but again, he may well have asked my permission. It has been over 30 years ago and I just don't recall.

Mr. BURTON. OK.

Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. I have a question for Mr. Cameron, but before I do, well, let me put it in the form of a question. You made reference to a Massachusetts State Police Officer. Can you repeat his name for the record?

Mr. CAMERON. His name is Reagan.

Mr. DELAHUNT. Could it be John Reagan?

Mr. CAMERON. Reagan, Yes, sir.

Mr. DELAHUNT. At that time he would have been a lieutenant on the State Police?

Mr. CAMERON. He was a lieutenant in the State Police as I remember.

Mr. DELAHUNT. How would you describe his cooperation with your efforts?

Mr. CAMERON. I am positive, I got more information from him in whatever time—I am pretty sure he drove us to Walpole State Prison. Whatever time it takes to go from Boston to Walpole, I remember it is kind of a journey, we got more information on that ride from him than we did from the FBI.

Mr. DELAHUNT. In full disclosure, Mr. Chairman, I want to make it a matter of record that Major John Reagan worked with me in a variety of investigations during my tenure as District Attorney. He is someone whom I have very fond memories. He was a dear friend and someone whom I consider the ultimate professional and whose integrity is beyond any reproach. I just want to make that a matter of record.

I have never met Mr. Cameron before except for today. I am not surprised that Major John Reagan of the Massachusetts State Police provided you whatever information he could regarding this particular matter.

Mr. CAMERON. He was a good fellow.

Mr. DELAHUNT. Post the plea, if I could just direct your attention for a moment to your involvement or the Office of the District Attorney's involvement or the police involvement. Were you ever notified in terms of transfers in terms of where Mr. Barboza was incarcerated?

Mr. CAMERON. I inquired when he first went in our State system that I would like to know where he went. I lost him. Subsequently, I think he was in Montana, in their State system, I believe, but under Federal control.

Mr. DELAHUNT. So, he was in a State system. You and Mr. Brown were intimately involved in the investigation of the Wilson homicide. You requested to be informed, but somehow he got lost.

Mr. CAMERON. To me, yes, sir, he was lost.

Mr. DELAHUNT. Are you aware or were you ever invited or are you aware of anybody in California that received an invitation to testify at a parole hearing for Mr. Barboza?

Mr. CAMERON. I was not, sir.

Mr. DELAHUNT. You were not invited to testify?

Mr. CAMERON. No, I think I would be one of the last people to be invited.

Mr. DELAHUNT. They didn't want you there, is that what you are saying, Mr. Cameron?

Mr. CAMERON. I would think that I would not be on his list of witnesses.

Mr. DELAHUNT. Mr. Brown, were you ever invited to testify at a parole hearing?

Mr. BROWN. No, sir.

Mr. DELAHUNT. In retrospect, I presume that you would have been in opposition to allowing or in opposition to having Mr. Barboza paroled back into the community?

Mr. BROWN. Yes, sir.

Mr. DELAHUNT. Do you have any information relative to the parole hearing that must have been held for Mr. Barboza?

Mr. BROWN. No, no, nothing. As Mr. Cameron said, he disappeared in the system.

Mr. DELAHUNT. He disappeared in the system and then he disappeared out to the street.

Mr. BROWN. That's about right.

Mr. DELAHUNT. Are you, Mr. Brown and Mr. Cameron aware of the fact that Mr. Salvati sought a parole for some 20 years and was denied a parole for 20 years?

Mr. CAMERON. I am aware of it now because I watched Mr. Salvati's testimony.

Mr. DELAHUNT. Right.

Mr. CAMERON. I just met him this morning and I knew nothing about his situation at all until last night. Just for the record, Mr. Salvati sought parole through his attorney, Mr. Garo, I believe commencing in the late 1970's. We don't really understand yet, given all of the evidence that has been made available to this committee of an exculpatory nature why Mr. Salvati was never paroled, but I would hope, Mr. Chairman, that we would find out the answers to those particular questions.

Mr. BURTON. You may rest assured, we are going to do our best to find out.

Mr. DELAHUNT. Thank you, Mr. Chairman.

Mr. Miller, you seem to have continuing contact with Mr. Barboza post his plea.

Mr. MILLER. Very little. He did appear at the courthouse after his release. We had a conversation in the judge's chambers. After that I recall little or no contact, but my investigator, I think, had contact with him after his release from prison.

Mr. DELAHUNT. Did you represent him at a parole hearing?

Mr. MILLER. No, sir. I wasn't even aware of any parole hearing until—I didn't even know if there was a parole hearing and are you sure there was one?

Mr. DELAHUNT. So, we don't even know if there was a parole hearing.

Mr. MILLER. That's correct. I am not aware of one.

Mr. DELAHUNT. But the sentence that was imposed, if you can help us in terms of California law, was 5 to life?

Mr. MILLER. Yes.

Mr. DELAHUNT. And yet he served some 4 years.

Mr. MILLER. I think it was less than that.

Mr. DELAHUNT. Less than 4 years. Mr. Cameron, do you know how much time Mr. Barboza served?

Mr. CAMERON. No, but I believe it was less than 4 years.

Mr. DELAHUNT. Less than 4 years? We don't know if there was a parole hearing. You, as his counsel, were never notified as to whether there was a parole hearing.

Mr. MILLER. Not that I recall. I was surprised when I found out he was out of custody.

Mr. CAMERON. I am sure if our office had been notified we would have opposed it.

Mr. DELAHUNT. You would have opposed it?

Mr. CAMERON. Absolutely.

Mr. BURTON. We will come back to the gentleman in just a few minutes.

Mr. Miller, you know, I know you are a great defenses attorney and I know you have great experience, but it surprises me that Mr. Harrington came out there and you didn't know about it or didn't get a chance to go. You weren't notified about any potential parole hearing. You kind of probably found out he was on the street when he came up to you and started talking to you in the courtroom.

You don't think any of that seems a little odd? It's funny, don't you think? A little odd, not funny.

Mr. MILLER. Yes. I think he was sent to Deer Park, MT, wasn't he, immediately?

Mr. CAMERON. He first went into the State system and I don't remember how long he was in the California penal system, but he went to Montana shortly after he went into the California system.

Mr. MILLER. So, he came out of our system into, I think they call it Deer Park, and then he was taken back to California. The guard found marijuana in his shoe and he broke, he said, "That just is my luck." He hit a guard one with a left hook and he would break his jaw.

So, there he was back in isolation at San Quentin. I talked to him and he was manacled. The next thing I knew——

Mr. BURTON. He was out.

Mr. MILLER. No, he was out in some camp somewhere. He was making long distance calls to my office.

Mr. BURTON. So, it was not a major security penitentiary?

Mr. MILLER. He went from Deer Park to San Quentin to Folsom. At Folsom they had him in a cage, almost. Then, the next thing I know he was up around Sonora at one of those——

Mr. BURTON. Nicer ones, yes.

Mr. LaTourette, I will yield my time to you.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Gentlemen, if I could direct your attention back to the exhibit book for just a second. My task here is to sort of make a record, so this might be boring, but we will do it as best we can.

Exhibits 4 and 5, if you could take a look at those, Mr. Miller, they are unsigned, undated letters from the Attorney General of the United States that set out the conditions under which Mr. Rico and Mr. Condon may testify on Mr. Barboza's behalf. If one of you can just tell me that is what they are, then I can ask you some questions.

[Exhibits 4 and 5 follow:]

Office of the Attorney General
Washington, D. C. 20530

Mr. H. Paul Rico
Special Agent
Federal Bureau of Investigation
Miami, Florida

Dear Mr. Rico:

In response to the subpoena served upon you in the case of State of California v. Joseph Barbosa, you are hereby authorized to testify concerning the following facts and their surrounding circumstances:

(1) That when Barbosa was in a protective status in Massachusetts awaiting call as a witness you advised him that efforts were being made by criminal elements to locate him for the purpose of killing him before his appearance as a witness; and

(2) On or about February 3, 1970, you advised Barbosa to leave the Massachusetts area immediately because of a potential threat to his life.

This authorization is subject to the following requirements:

(1) You may not disclose any information which might result in the identification of a confidential informant or source of information;

(2) You may not identify any of the places where Barbosa was held in protective status;

(3) 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; and

92-9828-38

ENCLOSURE

EXHIBIT
4

FENGCAD Baynnes, N.J.

(4) Any information concerning material in Department of Justice files may not be provided without express authority from the Department of Justice.

Sincerely,

Attorney General

Office of the Attorney General
Washington, D.C. 20530

Mr. Dennis M. Condon
Special Agent
Federal Bureau of Investigation
Boston, Massachusetts

Dear Mr. Condon:

In response to the subpoena served upon you in the case of State of California v. Joseph Barbosa, you are hereby authorized to testify concerning the following facts and their surrounding circumstances:

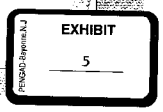
(1) That when Barbosa was in a protective status in Massachusetts awaiting call as a witness you advised him that efforts were being made by criminal elements to locate him for the purpose of killing him prior to his appearance as a witness; and

(2) That on or about January, 1970, Harry Johnson and Allan Fidler traveled from the Boston area to the San Francisco area, that they traveled extensively in the northern California area, and that they were apprehended and the circumstances surrounding their apprehension, detention and identification by local police, as well as the facts concerning these events of which you advised Barbosa.

This authorization is subject to the following requirements:

(1) You may not disclose any information which might result in the identification of a confidential informant or source of information;

(2) You may not identify any of the places where Barbosa was held in protective status;



(3) 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; and

(4) Any information concerning material in Department of Justice files may not be provided without express authority from the Department of Justice.

Sincerely,

Attorney General

Mr. MILLER. You said 4 and 5?

Mr. LATOURETTE. Yes, sir.

Mr. MILLER. I thought that the authorization came with a different exhibit. Oh, yes, 5, yes, instructions to Dennis Condon as to what he could and could not testify to.

Mr. LATOURETTE. Right. And 4, I think is the one to Mr. Rico.

Mr. MILLER. Yes.

Mr. LATOURETTE. OK. Were you satisfied, Mr. Miller, despite the fact that these restrictions, and they are pretty tight restrictions, had been placed on Mr. Condon and Mr. Rico, that despite those restrictions that there testimony would still be valuable to Mr. Barboza?

Mr. MILLER. Yes.

Mr. LATOURETTE. And can you tell us why?

Mr. MILLER. Again, not necessarily as to the content of their testimony or the relevance of their testimony, but rather, the color of their office as it would shine upon me and my client.

As we have said, it is very unusual to have any law enforcement officer testify as a subpoenaed witness for the prosecution, especially, if they are FBI and especially if there are three of them.

Mr. LATOURETTE. The unusual part that occurred a little bit later that I want to talk to you about, but it is my understanding that when Mr. Condon, Agent Condon, was on the stand the prosecutor asked him whether or not he was aware that Barboza was negotiating with the mafia to recant his testimony. Do you remember him asking that question?

Mr. MILLER. Not exactly, but I do recall—is that when he declined to answer?

Mr. LATOURETTE. I think it is. Is that your memory, also?

Mr. MILLER. Yes, something along those lines.

Mr. LATOURETTE. It is my understanding that he cited the instructions he received from the Attorney General and basically indicated he could not answer the question.

Mr. MILLER. That's correct.

Mr. LATOURETTE. The question I have of you, though, is that despite these instructions that sort of limited the amount of information they gave on direct testimony, are you aware that there was a fellow by the name of Lawrence Hughes? His name surfaced in this case, Lawrence Hughes.

Mr. MILLER. Only when my memory was refreshed, yes.

Mr. LATOURETTE. OK. And Lawrence Hughes, if I understand Mr. Hughes' involvement, it is that he offered—and Mr. Cameron, maybe you can help us—he offered to testify against Mr. Barboza relative to not only some stolen bonds that he had received, but also the fact that allegedly Mr. Barboza confessed the Wilson murder to him.

Is that your recollection, Mr. Cameron?

Mr. CAMERON. Yes, sir. It was during the trial itself that he popped up like a mushroom to help our case. I suspected at the time, I suspect now, that he was sent out by organized crime to help our case.

Mr. LATOURETTE. And Mr. Miller, does that fit with your refreshed recollection that Mr. Hughes appeared in the middle of the case and he was going to offer some rather——

Mr. MILLER. I have no independent recollection of that at all, sir.

Mr. LATOURETTE. OK. Well, let me then direct you, Mr. Cameron, if I can, to exhibit No. 6. Exhibit No. 6 appears to be a request to the FBI Director to let Condon, despite the restrictions placed upon his testimony in exhibits 4 and 5, but a request to the FBI Director to let Mr. Condon come back and impeach the prosecution witness, Hughes.

Am I reading that document correctly?

[Exhibit 6 follows:]

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

DEC 2 1971

TELETYPE

Mr. Tolson
Mr. Felt
Mr. Rosen
Mr. Mohr
Mr. Bishop
Mr. Miller, E.S.
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Ponder
Mr. Bates
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

NR 008 SF PLAIN

3:20 PM URGENT 12/2/71 MCC

TO DIRECTOR (92-9828)

BOSTON (92-1132)

FROM SAN FRANCISCO (92-2061) (P) 4P

JOSEPH BARON, AKA. AR.

RE BOSTON TEL TO BUREAU AND SAN FRANCISCO, NOVEMBER TWENTYFOUR LAST, ENTITLED "JOSEPH BARON, AKA; ET AL; UNSUB, AKA VICTOR L. DI CARLI, VICTOR DI CARL, ITSP, OO NEW YORK."

ON DECEMBER ONE LAST, SAS DENNIS M. CONDON, BOSTON OFFICE, AND H. PAUL RICO, MIAMI OFFICE, WITH ATTORNEY EDWARD F. HARRINGTON, BOSTON STRIKE FORCE, WERE INTERVIEWED BY DISTRICT ATTORNEY KERNAN HYLAND, SONOMA COUNTY, CALIF., AND MEMBERS OF HIS STAFF REGARDING THEIR POSSIBLE TESTIMONY ON THE CASE OF STATE OF CALIFORNIA VS. BARON. DISTRICT ATTORNEY ADVISED THAT STATE HAD NOT RESTED, AS HE CALLED AN UNEXPECTED SURPRISE WITNESS, LAWRENCE HUGHES OF NEW BEDFORD, MASSACHUSETTS. HYLAND ADVISED THAT HUGHES TESTIFIED THAT IN JULY, NINETEEN SEVENTY, BARON PROVIDED HIM WITH ACCESS TO BONDS STOLEN IN CALIFORNIA (THE STATE'S THEORY IS THAT BARON KILLED WILSON AS A RESULT OF AN ARGUMENT OVER THE DISPOSITION OF THESE BONDS) AND THAT BARON ALLEGEDLY ADMITTED TO HUGHES THAT HE, BARON, HAD

END PAGE ONE

EX-100 REC 35 92-9828-37

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EXHIBIT 6

PAGE TWO

SLEPT WITH WILSON'S WIFE ONE HOUR AFTER HE HAD KILLED WILSON. HYLAND INDICATED THAT THE SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE HAD BEEN TOLD THIS IN MARCH OF NINETEEN SEVENTYONE AND IMPLIED THAT HUGHES ALSO TOLD THE FBI THAT BARON HAD POSSESSION OF THE AFOREMENTIONED BONDS.

REFERENCED TELETYPE SETS FORTH INFORMATION PROVIDED BY HUGHES TO THE FBI AT THE TIME OF THIS INTERVIEW ON NOVEMBER TWENTYFOUR LAST, AT NEW BEDFORD, MASSACHUSETTS. PERTINENT INFORMATION CONTAINED IN REFERENCED TELETYPE WAS PREVIOUSLY MADE AVAILABLE BY FBI, SAN FRANCISCO, TO SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE. JUST PRIOR TO USING HUGHES AS A PROSECUTION WITNESS, THE DISTRICT ATTORNEY TURNED OVER TO DEFENSE COUNSEL THE SUBSTANCE OF THE REFERENCED TELETYPE. REFERENCED TELETYPE HAD SET FORTH THEREIN THAT HUGHES HAD BEEN IN CONTACT WITH BOSTON OFFICE OF THE FBI IN SEPTEMBER NINETEEN SEVENTY, AND HAD NOT MADE ANY STATEMENTS RE ANY KNOWLEDGE OF BARON'S INVOLVEMENT IN CALIFORNIA HOMICIDE.

AS THE BUREAU IS AWARE, HUGHES, AFTER HIS CONTACT WITH THE FBI IN SEPTEMBER OF NINETEEN SEVENTY, WAS PUT IN TOUCH WITH SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, AS HIS INFORMATION HAD A BEARING ON THE ORGANIZATION'S ATTEMPTS TO OVERTURN THE

END PAGE TWO

58 DEC 17

PAGE THREE

DEEGAN MURDER CASE IN WHICH BARON HAD TESTIFIED. HUGHES WAS MAINTAINED BY THE SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE FROM SEPTEMBER, NINETEEN SEVENTY THROUGH APRIL NINETEEN SEVENTYONE, IN ORDER TO BE AVAILABLE IN THE EVENT A HEARING ON A MOTION FOR A NEW TRIAL IN THE DEEGAN CASE WAS HELD.

DISTRICT ATTORNEY HYLAND STATED THAT THERE WAS NO QUESTION IN HIS MIND THAT HUGHES WAS SENT OUT FROM THE BOSTON AREA TO SOLIDIFY THE CASE AGAINST BARON. STRIKE FORCE ATTORNEY IS OF OPINION THAT HUGHES HAS BEEN CORRUPTED BY LCN AND INSTIGATED TO FURNISH FALSE TESTIMONY.

IN INTERVIEW OF SAS CONDON, RICO, AND STRIKE FORCE ATTORNEY HARRINGTON BY PUBLIC DEFENDER, HE REQUESTED THE RESULTS OF THE FBI INTERVIEW IN SEPTEMBER NINETEEN SEVENTY, OF HUGHES AND IDENTITY OF AGENT WHO CONDUCTED THE INTERVIEW. STRIKE FORCE ATTORNEY ADVISED PUBLIC DEFENDER THAT SA CONDON HAD INTERVIEWED HUGHES BUT COULD NOT TESTIFY CONCERNING INTERVIEW WITHOUT OBTAINING A GRANT OF AUTHORITY.

STRIKE FORCE ATTORNEYS FROM BOSTON, MASSACHUSETTS, HAVE THIS DATE REQUESTED THAT SA CONDON'S GRANT OF AUTHORITY BE EXPANDED TO INCLUDE THAT FACT THAT ON SEPTEMBER TWENTYTHREE, NINETEEN SEVENTY, HE INTERVIEWED LAWRENCE HUGHES WITH SA DAVID DIVAN.

END PAGE THREE

PAGE FOUR

AT THIS TIME HUGHES TOLD HIM ABOUT THE ALLEGED MEETING BETWEEN BAILEY AND BARON IN JULY, NINETEEN SEVENTY, AT WHICH TIME THE FIGURE OF FIVE HUNDRED THOUSAND DOLLARS WAS AGREED UPON FOR A CHANGE OF TESTIMONY, AND AN EARLIER MEETING BETWEEN BARON AND FRANK DAVIS, CLOSE ASSOCIATE OF RAYMOND PATRIARCA AND OTHERS, IN MAY OF NINETEEN SEVENTY. BUT HUGHES FAILED TO GIVE ANY INFORMATION CONCERNING BARON'S INVOLVEMENT WITH STOLEN BONDS OR THE MURDER. STRIKE FORCE ATTORNEYS FEEL STRONGLY THAT IN THE BEST INTEREST OF THE GOVERNEMENT, THIS REQUEST FOR TESTIMONY SHOULD BE GRANTED.

COPY OF FD THREE ZERO TWO OF INTERVIEW OF HUGHES ON SEPTEMBER TWENTYTHREE NINETEEN SEVENTY, IN POSSESSION OF SUPERVISOR THOMAS EMORY, FBI HEADQUARTERS.

DEFENSE ALSO CALLING JOHN DOYLE, CHIEF INVESTIGATOR, SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, BOSTON, MASSACHUSETTS, AS DOYLE HAS BEEN IN CONSTANT TOUCH WITH HUGHES SINCE SEPTEMBER OF NINETEEN SEVENTY AND NEVER RECEIVED ANY INFORMATION FROM HUGHES RELATIVE TO BARON'S ALLEGED ADMISSION OF INVOLVEMENT IN CALIFORNIA MURDER.

BUREAU WILL BE KEPT ADVISED.

END

TMT FBI WA

CC: MR. CLEVELAND

Mr. CAMERON. I have never seen this before, sir.

Mr. LATOURETTE. OK. Could you just take a minute to study it? I think it speaks for the fact that we now have the Justice Department and the FBI not only offering up agents to testify in the defense case in chief, but when a troublesome witness like Mr. Hughes shows up, they now go above and beyond and say that, you know what, these FBI guys can come back and call Mr. Hughes a liar, further damaging the prosecution's case. So, if you could just take a minute to study that, if any of you have any insight or recollection, either refreshed or otherwise that you can add for the record, I would appreciate it.

The information specifically that I think that I'm referring to is at the bottom of page 3 of exhibit 6. Maybe we can go there.

Mr. MILLER. And your question, sir?

Mr. LATOURETTE. My question is, do you recall any of this occurring. That is that at the time I think you said, Mr. Cameron, that Mr. Hughes popped up like a mushroom to give the prosecution a hand.

All I am asking is: Is it a fair characterization of exhibit 6, specifically the third page, that a request was being made to Mr. Hoover to let Mr. Condon come back and impeach the prosecution witness, Mr. Hughes. That's the way, at least, it appears to me.

Mr. CAMERON. That's the way it appears to me, sir.

Mr. LATOURETTE. Mr. Miller, is that a fair reading by you, also?

Mr. MILLER. Yes, sir.

Mr. LATOURETTE. Mr. Miller, last, also on the same page of exhibit 6 in the second full paragraph, and let me just read that. In the second full paragraph it says that "in an interview with Condon and Rico and Strike Force Attorney Harrington by the Public Defender, he, the Public Defender, requests the results of the FBI interview in September of Hughes and the identity of the agent who conducted the interview."

That paragraph, to me, makes it sound as if you wanted to see a copy of the interview of Mr. Hughes by FBI agents. Do you ever recall making such a request?

Mr. CAMERON. No, but I am sure if I was aware of it, I would have asked for that, yes, which under California law I would have been entitled to.

Mr. LATOURETTE. OK. Then, last, at the bottom of the last page of exhibit 6, which I think is page 4, it says, "Defense is also calling John Doyle, the Chief Investigator, Suffolk County District Attorney's Office, Boston, Massachusetts."

Did you ever have any contact with John Doyle and the Suffolk County District Attorney's Office?

Mr. MILLER. Not that I am aware, nor am I aware of my investigator being in touch with him, but he might have been.

Mr. LATOURETTE. Since you don't remember any dealings with Mr. Doyle, do you know whether the idea to potentially call Mr. Doyle as a witness to help your case or at least to be identified came from the FBI or the Justice Department?

Mr. MILLER. I have no idea, sir.

Mr. LATOURETTE. Thank you very much. I yield back.

Mr. BURTON. Boy, I will tell you, you read that exhibit 6, and I hope everybody in the media gets a chance to read that. It is really

something. Those FBI agents were given authority by the Attorney General to impeach Mr. Hughes' testimony. I just can't believe that.

Mr. Tierney.

Mr. TIERNEY. Mr. Chairman, at this time, all I wanted to do was to make sure that through unanimous consent that all of the exhibits in the exhibit book be admitted into the record.

Mr. BURTON. Without objection, it is so ordered.

Mr. TIERNEY. The only remaining question that I have was for Mr. Brown. Was that gun ever found?

Mr. BROWN. Yes.

Mr. TIERNEY. In time for the trial?

Mr. BROWN. Yes.

Mr. TIERNEY. With respect to Agent Ahlstrom, do you know whether or not he ever registered formally his disappointment over the Justice Department and FBI's assistance in his trial?

Mr. MILLER. You know, I don't know that he did, no.

Mr. TIERNEY. Thank you. I will yield to Mr. Delahunt if he has any questions.

Mr. DELAHUNT. Yes, if I may, Mr. Chairman, Mr. Miller, did Barboza ever discuss with you the arrangements that he had made relative to his cooperation with the Federal Government that led to his arrival in Santa Rosa, CA?

Mr. MILLER. He liked to brag a lot. He said he was the first witness of this type and he was placed in—where do they keep all the gold in this country? Fort Knox. That he was held there under the witness protection and from there I think he was placed somewhere else and eventually to Santa Rosa, CA.

He indicated that he was being rewarded for his testimony against, I guess it is Raymond Patriarca and he mentioned a few other names.

Mr. DELAHUNT. Did he tell you the benefits and the reward that he received for his testimony, albeit his perjured testimony in the case of Mr. Salvati and others?

Mr. MILLER. Well, he went from Baron to Bentley.

Mr. DELAHUNT. Then he was given training to become a cook?

Mr. MILLER. He was given with the Marine Cooks and Stewards, a union hall, yes, he was given employment there.

Mr. DELAHUNT. And presumably, he was provided a stipend of sorts?

Mr. MILLER. Oh, sure.

Mr. DELAHUNT. He was given money, taxpayers' money.

Mr. MILLER. I'm sure.

Mr. DELAHUNT. And he was relocated, his travel expenses were paid to start all over again in Santa Rosa, CA?

Mr. MILLER. Correct.

Mr. DELAHUNT. And out in Santa Rosa, he begins a new phase of his criminal career. Did he ever explain that the benefits that he was to receive as a result of his negotiations with the Federal Government were to continue ad infinitum?

Mr. MILLER. Only for his protection, but not for any illegality, I'm sure. That wasn't discussed, but that—he had done the Government a tremendous favor, and in response they were going to take care of him, as long as he behaved himself, the rest of his life.

Mr. DELAHUNT. So in behaving yourself, you're charged with a first degree capital case, that's behaving yourself?

Mr. MILLER. Well, no, as it turned out, evidently he did not behave himself in a manner in which they had hoped.

Mr. DELAHUNT. But the benefits continued. Mr. Cameron.

Mr. CAMERON. That was always my question, where does it stop.

Mr. DELAHUNT. Where does it end.

Mr. CAMERON. If a man commits murder, in my book, it should stop there.

Mr. DELAHUNT. This was after the deal was done, though, Mr. Cameron, wasn't it?

Mr. CAMERON. This was after the deal was done. He committed another murder and the Federal Government was still supporting him, as best I understand it.

Mr. DELAHUNT. And the benefits just kept accruing?

Mr. CAMERON. As I understand it, sir, yes, sir.

Mr. DELAHUNT. Would you, Mr. Brown, or you, Mr. Cameron, be disturbed if you discovered that this career criminal of great notoriety was granted parole and early release because of the intervention of the Federal Government? How would you feel about that, Mr. Brown?

Mr. BROWN. Well, it's a terrible, terrible system, if that's how it's going to operate.

Mr. DELAHUNT. Mr. Cameron, how would you feel about it?

Mr. CAMERON. It's a travesty of justice to have that happen, and to have had that happen.

Mr. DELAHUNT. What do you suspect, Mr. Miller? You've been around a while?

Mr. MILLER. Well, if the allegations by the chairman are true, it's saddening and heartbreaking and a travesty.

Mr. DELAHUNT. Well, we do know that he ended up on the street, didn't he? That's one fact we know. We don't know if there was a parole hearing, we don't know how he ended up back in the street. Mr. Salvati, he couldn't get paroled, and he was sitting there for 30 some odd years, innocent. And you received no cooperation. Is that what justice is about in America?

Mr. CAMERON. Not in my book.

Mr. DELAHUNT. Not in mine, either. I yield, Mr. Chairman.

Mr. BURTON. We have a vote on the floor. We've got about 11 minutes until the vote closes. So let me just go through a couple of things here real quickly.

I think this is something that's very interesting. John Doyle was the chief investigator for the Suffolk County District Attorney's office in Boston. He had been in touch with this Hughes, and he was also going to be there, was asked if he would, he indicated he would go out there and impeach Hughes as a witness.

Mr. Miller, I don't know if you were asked this question or not, I may have missed it. Did the Suffolk County District Attorney's office ever talk to you about him coming out and testifying on behalf of——

Mr. MILLER. I have no recollection of that. However, my investigator may have been in touch with him. I have no recollection.

Mr. BURTON. So Harrington from the U.S. Attorney's Office and the Suffolk County District Attorneys' Office both were willing to

come out and testify on behalf of Mr. Barboza if he had wanted it to?

Mr. MILLER. I was aware of the FBI, yes. But not aware of any other person.

Mr. BURTON. Now, Judge Harrington, Rico and Condon all testified on the same day, is that right?

Mr. MILLER. Probably. I'm not sure.

Mr. BURTON. Did Judge Harrington or Rico or Condon have any knowledge of the murder or the circumstances surrounding the murder of Clay Wilson, to your knowledge?

Mr. MILLER. Only after it happened. And that was probably from the communication from Mr. Geraway to Mr. Hyland.

Mr. BURTON. According to the transcript, Judge Harrington and Rico and Condon were all basically asked the same questions. The questions concerned Barboza's cooperation with the Federal Government and the Mafia attempts to kill Barboza. There were no questions about the murder of Clay Wilson. As Barboza's attorney, what was more important to you, what Mr. Harrington and the agents were saying about Barboza, the fact that a senior Justice Department official and two FBI agents were there testifying on his behalf? He just wanted them there because of their credibility as an agency?

Mr. MILLER. That's all.

Mr. BURTON. OK. Did you ever wonder why they sent out three instead of one?

Mr. MILLER. Again, I just thought they were deathly afraid that he would get the death penalty and that he would recant his testimony and that's the last thing they wanted.

Mr. BURTON. Did they ever say that to you?

Mr. MILLER. No, that's just something that I assumed.

Mr. BURTON. That you surmised?

Mr. MILLER. Yes.

Mr. BURTON. OK. Since their testimony had nothing to do with the murder, you thought that they were just going to be able to influence them by their presence and saying he was cooperating?

Mr. MILLER. That's correct.

Mr. BURTON. Was there a discussion with the prosector, Mr. Hyland, about whether to be more aggressive with Mr. Harrington and the FBI agents, do you know, Mr. Cameron or Mr. Brown? Was there any discussion saying he should be——

Mr. CAMERON. Was there a discussion in our office?

Mr. BURTON. Yes, regarding cross examination, that they should be more aggressive, either in cross examination or in asking the Justice Department not to allow these people to come out.

Mr. CAMERON. We talked about that during the trial, whether or not to really tear into them. And we all came to the conclusion that it wasn't going to do us any good, it was going to hurt us even more, because they weren't going to say anything that was going to help us. By that time, they had taken our first degree murder case, and I truly believe with our testimony, they had colored it to the point where we were not going to get a first degree murder.

Mr. BURTON. That's why the plea bargain took place?

Mr. CAMERON. Yes, sir.

Mr. BURTON. We have a few more questions we'd like to ask you. Would you mind waiting until we come back, probably about 15 minutes, then we'll wind this thing up?

We'll recess for about 15 minutes for the vote, then we'll be right back. Thank you.

[Recess.]

Mr. LATOURETTE [assuming Chair]. If we could ask the witnesses to come back to the table, we'll try and conclude things in an expeditious fashion. And we appreciate your indulgence. As you may know, the House is taking up the rather non-controversial issue of campaign finance reform today. So we're called to come back and forth once in a while.

Mr. Delahunt, for 5 minutes.

Mr. DELAHUNT. Thank you, Mr. Chairman, and I'll be brief. Let me just conclude by thanking Mr. Miller and Mr. Cameron and Mr. Brown. I mean, you have really provided your Nation a service today, you truly have. I know maybe it doesn't seem like that, but it is. It's been extremely informative.

The chairman, Mr. Burton, announced at the beginning of the hearing today that there would be in lieu of an appearance by former Special Agent Condon a deposition to be conducted in Massachusetts, in Boston, presumably. And I have consulted with my friend, Mr. LaTourette from Ohio. We share a State prosecutorial experience. I'm pleased to say, and I'm making this a matter of record so it will box him in, that he and I will also attend and participate with chief counsel, Mr. Wilson, in that particular deposition. And through you, Mr. LaTourette, to Mr. Wilson.

I think it's very important, particularly given what we heard today in terms of post-plea, if you will, and what happened in terms of parole, release back into the community, that in stark contrast to what occurred in the case of Mr. Salvati up in Massachusetts, that this committee attempt to work an agreement with a number of individuals that may have information regarding the reason that Mr. Salvati was not granted a parole permit, that we do make an effort also to depose those individuals that might have that information.

I think it's important. I think there's a theme here that we're talking about. And again, the lack of sharing of this information with State and local officials.

With that, I'll conclude, Mr. Chairman and reiterate my thanks to Mr. Miller, Mr. Cameron and Mr. Brown.

Mr. LATOURETTE. I thank you very much, Mr. Delahunt. I look forward to traveling to Boston with you. I'm thinking seafood and Patriots memorabilia might make it go down a little bit better. [Laughter.]

Gentlemen, I know that you've been patient all day. I just have about six or seven more questions, and our counsel, Mr. Wilson, may have a few questions. Then we'll be concluded.

I'm always reminded, I'm 47 years old and I can remember when I was growing up there was a show on television called the FBI, Efram Zimbalist, Jr. was in it. I think many of us thought that J. Edgar Hoover and Efram Zimbalist, Jr. were infallible and they were solving all the world's problems.

I know where we left off when the chairman recessed the hearing to go for the votes. It's my understanding, Mr. Cameron, that there may have been a discussion between, in the District Attorney's office, whether Mr. Hyland, the District Attorney, should be more aggressive or not with the FBI agents who were coming to testify. Do you recall a discussion of that?

Mr. CAMERON. That was during the trial, yes, sir.

Mr. LATOURETTE. Can you relate for us now, some 30 years later, what was Mr. Hyland's concern, what was he thinking and what he eventually did relative to whether or not to be aggressive with these FBI guys who were really ruining his 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 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.

So we thought we'd better take what we got offered.

Mr. LATOURETTE. As I understand it, eventually the decision was made, because of the esteem that the FBI was held in, to not go after them, as you might another negative witness to your case. Is that your recollection?

Mr. CAMERON. I'm sorry sir, I didn't hear you.

Mr. LATOURETTE. The decision was made by Mr. Hyland, if I understand it right, to not go after them, as it were——

Mr. CAMERON. That's right.

Mr. LATOURETTE [continuing]. When they were on the stand, because of who they were and who they represented.

Mr. CAMERON. We felt that we were only going to get damaged more.

Mr. LATOURETTE. Sure. Mr. Miller, do you have an opinion as to—I know this was resolved by plea, but 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.

Mr. LATOURETTE. And it's my understanding that 2 days after they hit the stand is when the State decided to come forward, and you made the offer of plea, did you not, Mr. Miller?

Mr. MILLER. That's correct.

Mr. LATOURETTE. And if I understood you earlier, Mr. Cameron, it was your feeling that the agent's testimony and Harrington's testimony had put you in a position where you were now willing to listen to, or the prosecution was now willing to listen to a plea of something other than capital murder, is that right?

Mr. CAMERON. Absolutely.

Mr. LATOURETTE. And is that pretty much how that all happened, after they testified you guys decided, we'd better take this and get out of Dodge?

Mr. CAMERON. We were willing and eager to go ahead with the capital case up until that time and then, you're right, it was time to get out of Dodge.

Mr. LATOURETTE. Aside from the agent's testimony, was anything else going wrong with your case? In other words, up until the fact that they hit the stand and you decided, this is not good for us, was there anything else negative going on in your case that caused the district attorney to come off of a capital murder charge?

Mr. CAMERON. We were always concerned when Mr. Miller was defending a murder. He's a good attorney and he did a good job in this case. Did I personally think that we still had a capital case? Yes, sir. Did our office think that? Yes, sir.

Mr. LATOURETTE. What was it then that caused you to accept his offer of plea to a lesser charge?

Mr. CAMERON. It wasn't anything but having the FBI there, and the color of their authority painting him an honest person and truthful and what-not.

Mr. LATOURETTE. Mr. Miller, I mentioned earlier a fellow by the name of Ted Sharliss, I think, who was a bookmaker and gambler, if I understand it, from back east. Were you aware of him, Mr. Sharliss, first of all?

Mr. MILLER. Yes, sir. I was aware of him before the trial, and I was aware of his involvement in the execution of Mr. Barboza after.

Mr. LATOURETTE. But were you aware back in the early 1970's that Mr. Sharliss was an informant for the FBI? Did you know that at the time?

Mr. MILLER. Yes.

Mr. LATOURETTE. OK. Did you during the contact that you might have had with him during your representation of Mr. Barboza ever believe that he was recording conversations that you and he were having, that is you and Sharliss?

Mr. MILLER. Yes.

Mr. LATOURETTE. Can you describe why it is you felt that?

Mr. MILLER. A friend of mine knew Mr. Sharliss and knew that he always had a recording apparatus. And I went to a birthday party, and Mr. Sharliss is where I met him. He told me what great friends he was with Mr. Barboza. Offered me several hundred dollars just for cigarettes for Mr. Barboza. And I said, why don't you just go deliver that yourself. And that conversation was played back to me by some law enforcement agent.

Mr. LATOURETTE. One of the witnesses to the murder, my understanding, one of the eyewitnesses to the murder of Mr. Clay Wilson was Wilson's wife, Dee.

Mr. MILLER. That's correct.

Mr. LATOURETTE. There may have been some questions asked earlier of you as to, I think, Mr. Cameron or maybe Mr. Brown, you became concerned that there were threats made against your eyewitnesses, contracts taken out on them, is that an accurate observation?

Mr. BROWN. Yes, that's true.

Mr. LATOURETTE. OK. Were any of you aware that Dee Wilson was an FBI informant at that time?

Mr. CAMERON. No.

Mr. BROWN. No.

Mr. LATOURETTE. Mr. Miller.

Mr. MILLER. No, I don't think so, sir. By the way, she was held in protective custody around the clock by three agents.

Mr. LATOURETTE. In order to, Mr. Wilson has some questions about Dee Wilson and some of the things that occurred. I want to yield to him and hopefully we can be about finished.

Mr. DELAHUNT. Mr. Chairman, before the counsel makes an inquiry, if I may.

Mr. LATOURETTE. Certainly.

Mr. DELAHUNT. The line of questioning that I was pursuing relative to the parole of Mr. Barboza, I think that a partial answer might be a letter that I was just handed by minority counsel. If I may just have a moment to inquire of Mr. Miller whether he has any recollection of hearing about or reading this letter.

It would appear that it was dated in July 1975. It purports to be from Mr. Barboza. It's signed Joseph Bentley, but I presume that is his pseudonym. It's signed off as, always, Joe. It's addressed to a Gary Evans. Was he an investigator?

Mr. MILLER. Gregory Evans, yes.

Mr. DELAHUNT. Gregory Evans?

Mr. MILLER. Yes.

Mr. DELAHUNT. He was an investigator that worked for you during the course of this?

Mr. MILLER. That's correct.

Mr. DELAHUNT. Let me just read some pertinent extracts, and then I'll provide you or the clerk will provide you a copy of this letter to see if it refreshes your recollection. I'm just seeing this myself for the first time.

Halfway down the first page, he writes, I'm inserting the parole board decision in this letter. California is rather slow in reply, so I guess I'll be here 2 to 3 months more. Greg, I plan to come to Santa Rosa for a visit and I'll make my presence known immediately to the police. Why bring this up? Because I truly, truly feel no ill.

Mr. MILLER. Feels what, sir?

Mr. DELAHUNT. No ill will. It was my fault and not theirs in regard to the case breaking wide open. So when I go into Santa Rosa, I don't want nobody getting paranoid.

Then he proceeds to say, and this is probably the most germane part of the letter in terms of the issue of early release. The parole board said that this is the fastest hearing in the history of Montana. You have made parole. I didn't even say one word except thank you. And I floated out in a dream that I never thought would come truthfully. You, Marty and Ted H. made this all come true. Nobody did I ever owe so much to. Always, Joe.

Mr. MILLER. Ted H?

Mr. DELAHUNT. Ted H presumably would be Ted Harrington. Does this in any way refresh your recollection?

Mr. MILLER. I had no contact with him really, as I recall. But I did give, from my files a number of correspondences. I guess this was one of the letters I gave to Mr. Wilson.

Mr. DELAHUNT. OK. Mr. Chairman, I would request that this letter be submitted and made part of the record.

Mr. LATOURETTE. Without objection.

[The information referred to follows:]

July 5 1973 Sun

Ide Gray,

How can I ever thank you + Marty for what you two + Ted H. did for me today words can never even begin to express what I feel + what I also feel I owe you three, so I'll just say I am your friend for life in all I stand for + believe in. I'll always be there no matter what + when ever you both need me, nobody living do I feel a debt to as I feel towards you two!

Wasn't able to see you three today but I very well understand.

I am inserting the Parole Boards decision in this letter. Calif. is rather slow in reply so I guess I'll be here two to three months more.

Gray, I plan to come to Santa Rosa for a visit + I will make my presence known immediately to the police in regards to legality. Why I bring this up is because I truly, truly feel no ill towards the

two Dee + Paulette, it was my fault not theirs in regards to the case breaking wide open. So when I go into Santa Rosa I dont want nobody getting paranoid. How could I lie to you + Marty at this point when I say I promise you both no trouble in Santa Rosa + I dont wish nobody any harm there. I am coming to Santa Rosa for a visit to see you Marty + others. Tell me is this wrong, especially when I bear no ill to no one there?

The parole board said this is the fastest hearing in the ~~State~~ History of Montana; her you made parole, I didnt even say one word! Except thank you + I floated out in a dream that I never thought would come truthfully! You, Marty + Ted H made this all come true. Nobody did I ever owe so much to!

I called Maggie + told her + Bob Blumenthal, + she will I know tell you.

I look forward to the future & hope we can enjoy dinner, drinks & conversation together, my house will always be open to you & Marty & once I do get settled where I plan in the future I hope you both with your families will eventual spend some time there & enjoy what I have to offer there. I'll even poach a few sea gulls for Marty to shoot! ☺ I'm well prove that my words aren't just the moment & the happiness I feel for the new start on life you both gave me!

I hope you'll find the time to write me when its convenient.

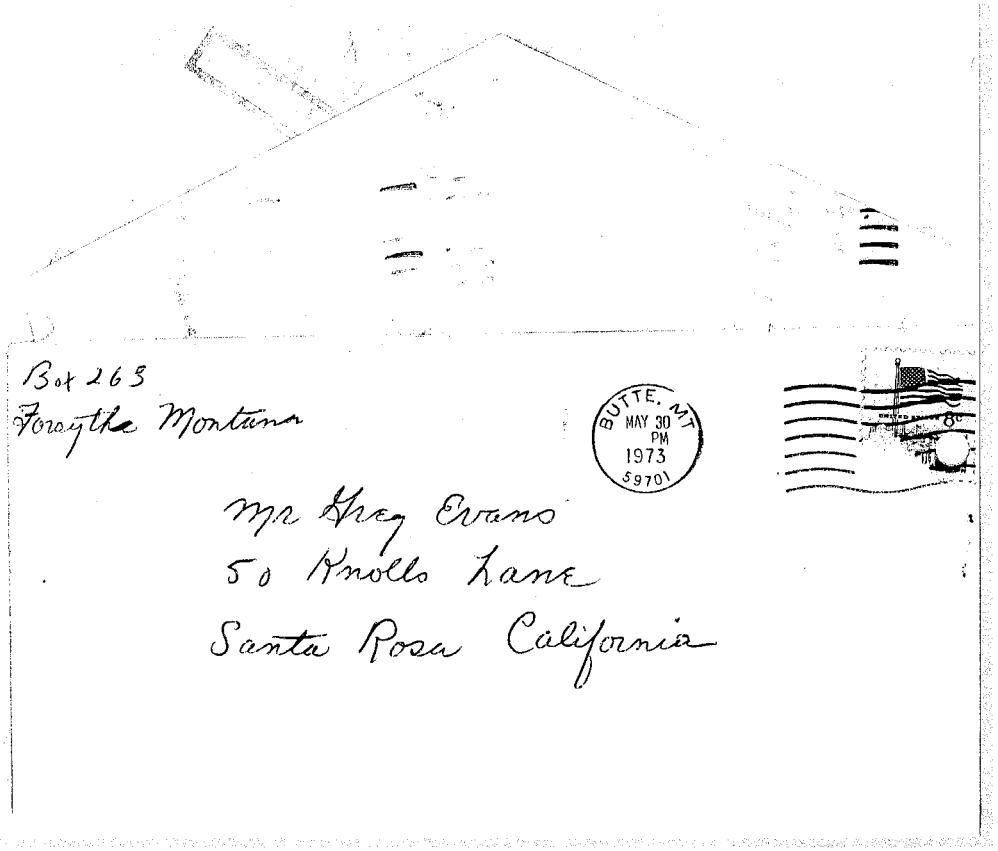
Be sure to show Marty this letter because this letter is certainly meant for him two!

It finally is a better day my friend. Have my best to Dianne, & the people

at the office.

Always
Joe

Joseph Bentley


Box 263
Forsyth Montana
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PM
1973
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Mr Greg Evans
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Santa Rosa California

Mr. DELAHUNT. Thank you.

Mr. LATOURETTE. Thank you. Mr. Wilson.

Mr. WILSON. Just to followup on that, Mr. Miller did provide this correspondence, very graciously allowed us to review a number of letters that Mr. Barboza sent to his investigator, Greg Evans. We also do have information from the Montana and California authorities, and we're aware of the various parole proceedings. In fact, Judge Harrington did in fact testify at one of the parole proceedings on behalf of Mr. Barboza. So that is something that did happen and tomorrow we'll be able to ask Judge Harrington a question about that.

Mr. Brown, I just wanted to clarify one thing. There were two witnesses to the murder of Clay Wilson, Dee Wilson and Paulette Ramos.

Mr. BROWN. Yes.

Mr. WILSON. Before you talked a little bit about them and security concerns. Could you just walk us through in a narrative fashion what happened with those two witnesses, from your recollection?

Mr. BROWN. OK. The exact date I'm not sure of. It was before the trial, maybe 3 months before the trial, 4 months before the trial. But at a point, we were told that three individuals, and they were named for us, were coming from the East Coast to eliminate our witnesses.

Mr. WILSON. Before you go to that, at this point, it's our understanding that Ms. Wilson's house had been burned down.

Mr. BROWN. Yes.

Mr. WILSON. Had this already taken place?

Mr. BROWN. Yes.

Mr. WILSON. So is it correct to say that Ms. Wilson's house had been burned down, and then after the house was burned down, individuals came to you with information?

Mr. BROWN. Yes. The house burned down before we knew we had a body, before we knew her husband had been killed. We were trying to identify these people that were coming. In the meantime, we took the two witnesses and put them from house to house. We moved them around.

Mr. WILSON. So they were in your protective custody?

Mr. BROWN. Yes, sir. We tried, we asked the FBI to help us out. We wanted them, who are these people, we need a description of them, etc. Nothing happened. We tried to, all avenues, we sought out. Anyway, Massachusetts has got this blue book on criminals, and they were identified in this, we were told if we could just find out the particulars, they were in this book. And we got no help from the FBI. Weeks went by.

So we made a phone call to an attorney in Boston. I believe his number and name were given to us by Geraway, call this guy, you'll get it. We did and we got it. We got the information on these three people.

Mr. WILSON. So to just restate this, you were worried that your two eyewitnesses would be murdered?

Mr. BROWN. Yes.

Mr. WILSON. And the only person that ended up helping you was a man who was serving a life sentence himself?

Mr. BROWN. Yes, he got mail, we went through his mail. How he got information, I really don't know how he found out things. He was locked up, we had him isolated. I don't remember anybody coming to visit him. Anyway, so we made this phone call to an attorney in Boston. And it wasn't too long after that we had this information of who these individuals were. In fact, it was pages, or copies of pages from this book, blue book.

Mr. WILSON. Just before we resumed this session of the hearing, you mentioned that you had information at the time that Barboza may have been involved in other homicides?

Mr. BROWN. Yes.

Mr. WILSON. Could you tell us a little bit about that?

Mr. BROWN. I was looking at exhibit 6 about the bonds, the DeCarli bonds. There was a young man from Santa Rosa that made a trip back to New Bedford with Barboza before we knew we had a homicide. And he was present at a meeting with the individuals discussed, named here in this book, or in exhibit 6. And what he told us, what he told me is exactly what you have got in this report.

Barboza moved freely. He moved freely across the country. He did what he wanted to do. But the bonds had a large bearing on things as far as Barboza was concerned. Because these bonds started turning up across the country in other lands, in back rooms of stock companies. And they were the DeCarli bonds who our witness said he was with Barboza when he met with Bailey and all this happened.

Sure enough, it was after Barboza's trial that things started coming to light, these bonds started appearing in these back rooms of stock companies.

Mr. WILSON. What about, there were a couple of homicides?

Mr. BROWN. Yes. That same man, and I can't remember his name, the same man told us, myself and another investigator, that he thought Barboza had shot another man, and he was buried on a hill across the street from his house, which was up, I think it was on Saint Elena Road outside of Santa Rosa. We spent a lot of time up there, we took infrared pictures, we couldn't find anything. We couldn't find a body.

However, on a Halloween before Barboza was arrested in Massachusetts, we were told by two individuals, Geraway was one of them, that Barboza shot a man riding a bicycle on Halloween night, a black man. Drove by and shot him with a 45 automatic. You know, that information was passed on the New Bedford police and I don't know whatever became of that.

Mr. WILSON. Are you aware of any Federal efforts to try and solve these crimes?

Mr. BROWN. No. This information was passed on, though. Agent Ahlstrom was advised of this.

Mr. WILSON. I ask that because we received all of the records that appear to be relevant to this from the FBI and we've not seen any of the information that you apparently passed on to them.

Mr. BROWN. Agent Ahlstrom was informed. He was told, an ongoing deal.

Mr. WILSON. Thank you very much.

Mr. LATOURETTE. Thank you, Mr. Wilson.

Just to sum up the point, Dee Wilson was in your custody, and she was, somebody in the FBI's protective custody was trying to kill people in your custody, is that what we had going on pretty much, Mr. Brown?

Mr. BROWN. No, sir. At the time we had those two witnesses under protection, it was individuals who were, I don't think they were in the Witness Protection Program.

Mr. LATOURETTE. No, but Mr. Barboza was in the Witness Protection Program?

Mr. BROWN. Yes, sir.

Mr. LATOURETTE. And he was the one on trial, so the person that would benefit from Dee Wilson's destruction would have been Mr. Barboza, who was in the Federal Witness Protection Program?

Mr. BROWN. You're correct.

Mr. LATOURETTE. OK. Mr. Chairman, is there anything you'd like to ask?

Mr. BURTON. No, I just wanted to conclude by saying pretty much the same thing as Mr. Delahunt, and that is, we appreciate very much all three of you coming out here from the West Coast, Nevada and California and testifying. Hopefully your testimony and answering of questions will be very helpful in getting us to the answers we want and getting the information we want from the Justice Department. You helped us make our case and we appreciate it very, very much.

With that, Mr. Chairman, thank you.

Mr. LATOURETTE. Thank you, Mr. Chairman.

Mr. Delahunt, any closing words?

Mr. DELAHUNT. I would make a note that tomorrow we will be continuing this inquiry.

Mr. MILLER. Thank you.

Mr. BURTON. Let me just ask, if the Chair would yield, do you plan to leave tomorrow, or when are you planning to go back out west? Would it be possible for you to stay tomorrow?

Mr. BROWN. Yes, sir. We're going home Friday.

Mr. BURTON. Just in case, it might jog your memory and there may be some additional information you could give to us. If you do, I hope you'll contact Mr. Wilson or myself and let us know.

Mr. CAMERON. Do we get that fabled lobster, sir? [Laughter.]

Mr. LATOURETTE. I think you have to go to Boston to get the lobster.

Mr. BURTON. I don't know if I can get you lobster, but we'll certainly take care of your expenses until you leave.

With that, thank you, Mr. Chairman.

Mr. LATOURETTE. Thank you, Mr. Chairman.

And gentlemen, you go with the committee's thanks. By the power invested in me by Chairman Burton, this hearing is adjourned.

[Whereupon, at 2:06 p.m., the committee was recessed, to reconvene on Thursday, February 14, 2002.]

THE CALIFORNIA MURDER TRIAL OF JOE "THE ANIMAL" BARBOZA: DID THE FEDERAL GOVERNMENT SUPPORT THE RELEASE OF A DANGEROUS MAFIA ASSASSIN?

THURSDAY, FEBRUARY 14, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to recess, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Barr, Morella, Horn, LaTourette, Cummings, Kucinich, Tierney, and Lynch.

Also present: Mr. Delahunt.

Staff present: Kevin Binger, staff director; James C. Wilson, chief counsel; David A. Kass, deputy chief counsel; Mark Corallo, director of communications; Thomas Bowman, senior counsel; Chad Bungard and James J. Schumann, counsels; Elizabeth Clay, professional staff member; Robert A. Briggs, chief clerk; Robin Butler, office manager; Elizabeth Crane, legislative assistant; Elizabeth Frigola, deputy communications director; Joshua E. Gillespie, deputy chief clerk; Nicholis Mutton, assistant to chief counsel; Leneal Scott, computer systems manager; Corinne Zaccagnini, systems administrator; Michael Yeager, minority deputy chief counsel; Ellen Rayner, minority chief clerk; and Jean Gosa and Earley Green, minority assistant clerks.

Mr. BURTON. The Committee on Government Reform will come to order.

I ask unanimous consent that a statement by John Cavicchi, attorney for Peter Limone—is that how you pronounce his name, Limone—be included in the record. Without objection, so ordered.

[The information referred to follows:]

Statement of John Cavicchi, Esq.

Submitted to the

Committee on Government Reform

Mr. Chairman, Distinguished Committee Members:

I support the Congressional Hearings and the Justice Task Force investigation into this tragedy. Congress and the Department of Justice are diligently seeking solutions that would prevent future injustices.

In Massachusetts, similar legislation had been enacted in 1939. That legislation would have prevented this atrocity. However, the Supreme Judicial Court of Massachusetts ignored the law. For unknown reasons, the SJC, on several occasions, chose either to ignore the law or change the facts. Consequently, two innocent men, Henry Tameleo and Louis Greco, died in prison. A third, Peter Limone, was released from prison in January 2001 because of the intervention of Assistant United States Attorney John Durham and the Justice Task Force. Subsequently, the convictions of Joseph Salvati and Wilfred "Roy" French were vacated.

I have received considerable public acclaim for my efforts on behalf of Mr. Limone. However, from 1977 until 1995, I failed to liberate Louis Greco, a highly decorated, severely disabled World War II combat veteran. Mr. Greco received, among other awards, the Purple Heart, Philippine Liberation Ribbon with two Bronze Stars, Good Conduct Medal, Combat Infantryman's Badge, Expert Infantryman's Badge, and the Asiatic-Pacific Theater Ribbon with three Battle Stars.

I state unequivocally that had it not been for Mr. Durham and the Justice Task Force, Mr. Limone would still be in prison. I have made these sentiments known to President Bush and Judge Wolf.

The only positive event during Mr. Greco's incarceration was that he died before a new law became effective which would have prevented burial among his fellow veterans. Greco loved the Army. He was honorably discharged because of the serious shrapnel wound to his ankle, received in Bataan, which incapacitated him until his death.

During a previous hearing, there was discussion regarding the polygraph.[1] Greco, despite three polygraph examinations, one of which was in the possession of prosecuting authorities prior to trial, was tried, convicted and sentenced to death. He ultimately died in a dingy, urine-stinking prison ward, despite numerous appeals, and two separate votes of the Advisory Board of Pardons. Governors Dukakis and Weld ignored the Board's recommendations to commute the sentence.

The Honorable Edward F. Harrington, referring to accomplice witnesses, has stated, "No court has ever found fault with my handling of such witnesses."[2] This statement requires us to examine the complicity of the judiciary in this case. The Massachusetts statute, to which I referred, M.G.L. Chapter 278, section 33E, had been enacted as a result of the notorious case of Sacco and Vanzetti.[3] Although comparisons are odious, this case is worse for two reasons. First, in *Sacco and Vanzetti*, the murderers were unknown. Prosecution authorities spun a web of lies to execute Sacco and Vanzetti. In this case, not only did prosecution authorities know Deegan was about to be murdered,

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[1] Tr. 133, 134, 141, 162, May, 2001.
[2] EDWARD F. HARRINGTON, Letter to Senator Joseph R. Biden, Jr., p. 2 (January 29, 1988), Senate, *Harrington Confirmation Hearing*, Part 4, Serial no. J-100-8, p. 1006.
[3] Commonwealth v. Sacco, 151 N.E. 839 (Mass. 1926).

they knew the identities of the murderers, did nothing to prevent the murder, and conspired to convict and sentence innocent men to death. Second, in *Sacco and Vanzetti,* the Supreme Judicial Court of Massachusetts claimed it had no legal grounds by which it could reverse the conviction. In this case, despite enabling legislation, it abrogated the statute and engaged in result-oriented decision making in order to keep the convictions intact. Consequently, a corrupt criminal prosecution became a case of judicial perjury and false imprisonment.

The federal courts aided and abetted this miscarriage of justice. While one judge was deciding the allegation of the known use of perjured testimony by the Suffolk District Attorney's Office, his son was an assistant district attorney in that same office. The result was a dishonest decision and a continued denial of justice.[4]

There may be an attempt to justify the unconstitutional and criminal conduct of those sworn to uphold the Constitution and defend our liberty by replying that those unjustly convicted were major organized crime figures,[5] that it was necessary to eliminate the "Mafia," and that the country faced a threat to "law and order."[6]

My response is, first, there can be no justification for abandoning our constitutional principles; second, I find no evidence that Louis Greco was a major organized crime figure; third, although Peter Limone and Henry Tameleo were identified in the McClellan Hearings as members of the Cosa Nostra,[7] it is important to note that, in the 1960s, the

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[4] Greco v. Workman, 481 F.Supp.481 (Mass. 1979), *cert. denied,* 100 S. Ct. 2992 (1980).
[5] *See supra* note 1, at 223.
[6] *See infra* note 4, at 561.
[7] *Organized Crime and Illicit Traffic in Narcotics: Senate Committee on Government Operations,* October, 1963, 88th Cong. 1st. Sess. Part 2. See pp. 550-559, 565-568, 89th Cong. 1965 1st Sess. Cited by the Supreme Judicial Court of Massachusetts, *Comm. v. French,* 259 N.E. 2d 210 (1970) n. 18.

Boston Cosa Nostra consisted of gambling and loan-sharking. There was no evidence of drug-trafficking or labor-racketeering.[8]

We cannot justify any criminal enterprise. It is odious and unconscionable for law enforcement to justify murder and falsely imprison innocent men because they were members of an organized gaming enterprise. Apparently, the FBI was cognizant of the criminal activities of Bulger and Flemmi and the terror generated by these killers. The consequences of corrupt and unconstitutional prosecution polices were devastating. Concerned citizens and the relatives of the dead and missing cannot help but wonder where the long and winding road of corruption and murder will lead. I expect a comprehensive investigation with full disclosure to the people of the United States of America.

Finally, I do not have the solution to the problem. Judges are given permanency in office because they are above politics and are immune to outside interference.[9] In Massachusetts, they have failed.

In deciding what remedies are required, I urge this committee to heed the words of Albert Einstein, "[E]ven the most perfectly planned democratic institutions are no better than the people whose instruments they are…."[10]

Respectfully submitted,

John Cavicchi

January 15, 2002

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[8] *Id. at 567.*

[9] THE FEDERALIST NO. 78 (Alexander Hamilton).

[10] ROBERT P. WEEKS, COMMONWEALTH v. SACCO AND VANZETTI 273 (1958). "Everything should be done to keep alive the tragic affair of Sacco and Vanzetti in the conscience of mankind. They remind us of the fact that even the most perfectly planned democratic institutions are no better than the people whose instruments they are…."

Mr. BURTON. We are resuming the hearing which we began yesterday morning. I will make a brief opening statement.

As everyone knows, we have been reviewing the way the Justice Department and the FBI have been investigating organized crime over the last three or four decades. We have been looking very hard at the way the FBI handled their confidential informants in Boston—which has been a disaster.

We have held 2 days of hearings. We focused on two different trials—Joe Salvati's trial and Joe "the Animal" Barboza's trial. The way the FBI and the Justice Department behaved during those two trials was as different as night and day.

What happened says a lot about why we are conducting this investigation.

Joe Salvati was on trial for the murder of Teddy Deegan in 1967. He had no history of involvement in organized crime. The FBI had all kinds of evidence that other people committed the murder. But the FBI allowed their star informant, Joe "the Animal" Barboza, to testify against Salvati. He lied. He committed perjury and convicted four men who did not commit the crime. The FBI knew Barboza was lying and they did not lift a finger to stop him. They let Joe Salvati go to prison for 30 years. And as I understand it, they initially asked for the death penalty but they gave him life imprisonment and he spent 30 years there.

Joe Barboza went on trial for murder in 1971. Here you had a known mob hit man. The FBI believed that he had already committed 26 murders. The evidence against Barboza in the 1971 trial was overwhelming. The detectives and even Joe Barboza's lawyer testified yesterday that it appeared to be slam-dunk capital murder case. And then the FBI pulled out all the stops to try to help Joe Barboza get off.

They flew out to California. They worked with the defense team. They testified on Barboza's behalf. According to our witnesses to date, 2 days after FBI agents Paul Rico and Dennis Condon testified, along with Justice Department lawyer Edward Harrington, the prosecutors agreed to a lenient plea bargain.

Mr. Cameron said it all yesterday: "The FBI at the time was considered pretty sacrosanct. They had damaged our case to the point that we didn't think the jury would give us a first degree murder verdict." Mr. Cameron said that what was really damaging was, "having the FBI there and the color of their authority painting him [Barboza] as honest and truthful."

So in 1967, they had an innocent man on trial—Joe Salvati. The FBI had all the evidence showing that he was innocent. And they let their star witness commit perjury and put Mr. Salvati away for 30 years. Four children and a wife, and they missed him for 30 years.

In 1971, they had a known Mafia hit man on trial. The evidence against him was overwhelming. And the Justice Department and the FBI flew all the way across the country, testified on his behalf, and helped him get a soft sentence. I think it was 5 years to life, and he was out in about 3 years or something like that.

But it does not stop there.

Joe Salvati spent 30 years in prison. His lawyer, Victor Garo, spent decades trying to get his sentence commuted. When Mr. Garo

submitted petitions to the Massachusetts pardon commission, it appears that the FBI helped stop Mr. Salvati from getting a pardon.

Joe Barboza spent less than 5 years in prison. At his first opportunity for parole, Mr. Harrington, from the Justice Department, flew out to Montana to testify on his behalf. In a 1973 letter, Joe Barboza wrote, "the parole board said this is the fastest hearing in the history of Montana, how you made parole, I didn't even say one word!"

In the same letter, he thanked Mr. Harrington profusely: "How can I ever thank you and Marty for what you two and Ted H. did for me today. Words can never even begin to express what I feel." This is a man that killed 26 people at least, murdered 1 while he was in the Witness Protection Program. The FBI and the Justice Department helped him get a light sentence instead of first degree murder which was a death penalty in those days, and then they helped him get parole. While Mr. Salvati rotted in prison for 30 years. That was in 1973. Joe Barboza, who murdered a bunch of people and lied on the witness stand, was about to be a free man. Joe Salvati, who never killed anyone, had another 20 years to spend in prison.

I do not know about anyone else, but it seems to me like Justice was stood on its head.

That is why we are conducting this investigation. We had a Justice Department that was determined to break the back of the mob, and that is good. But in Boston, we had a group of FBI agents who decided to throw the rules out the window. They let a lying witness send innocent men to death row and life in prison. They had a group of mob informants committing murders with impunity. They tipped off killers so they could flee before being arrested. They interfered with local investigations of drug dealing and arms smuggling. And when people went to the Justice Department with evidence about murders, some of them wound up dead.

We cannot allow this type of conduct. We need to know how extensive it was. We need to know how far up the food chain this went. How many people at the Justice Department and the FBI knew what was going on? J. Edgar Hoover received two memos every week about the illegal wiretaps in New England. We have dozens of other memos written to him about the Deegan murder and other topics.

We cannot have the FBI or the Justice Department being complicitous in giving innocent men life sentences or possibly the death penalty. We cannot have the FBI winking and looking the other way when their informants go on a crime spree.

I cannot understand why Mr. Rico and Mr. Condon and Mr. Harrington did what they did in the Clay Wilson murder trial.

Joe Barboza was a cold-blooded killer. They gave him a new identity. They put him in the middle of an unsuspecting community. They put him on the payroll. And he killed again. At that point, they should have locked him up and thrown away the key. But they did just the opposite. They did everything they could to get him back out on the street. Joe Barboza was murdered himself in 1976. I just have to wonder, if he had not been killed, how many more murders would they have let him commit before the Justice Department decided to rein him in?

On our first panel, we have two of the three men who participated in that trial in California. Paul Rico, who was an FBI agent, is here. Edward Harrington, who was the chief of the Justice Department's Strike Force Against Organized Crime in New England, is here. Mr. Rico is now retired. Mr. Harrington is now a Federal judge.

We appreciate both of you being here today. We have lots of questions about the things that you did and the reasons that you did them. And we are looking forward to hearing what you have to say.

We were also going to have Dennis Condon, the other FBI agent, testify today. But because of his health problems, we have excused him for today. However, he will be interviewed under oath by the committee members and staff next week. We are going to send I think two or three committee members. I think you are going to be going up there next week along with the gentleman from Ohio.

On our second panel, we have Jay Bybee, the head of the Justice Department's Office of Legal Counsel. We asked Mr. Bybee to be here because of the ongoing dispute that we have over this committee getting access to documents that we need.

I think everyone knows that last fall we subpoenaed a set of Justice Department memos that deal directly with the issues we are looking at. The Justice Department found 10 memos that comply with the subpoena, but they refuse even to let us see them. Now we did see one yesterday, they finally acquiesced on that one. After all of the terrible things that happened up in Boston—perjury, murders, obstruction of justice, an innocent man spending 30 years in prison—they refuse to let us see those documents, with the exception of one.

Let me be clear. This is the People's House. We are the elected Representatives of the people. Our constituents send us here to oversee the Government and to protect their rights. And that is the system of checks and balances.

I want to say also that we asked for documents pertaining to this case in addition to the ones we subpoenaed 6 months ago, I think it was over 6 months ago, in June of last year. And yesterday, the Justice Department dumped thousands of pages of documents on my chief counsel's desk, knowing full well that we could not go through them before today's hearing. Now he did review some of those last night and some of those documents are very, very important to this investigation.

So I just want to say to the Justice Department, if you think because you dropped those on our desk last night and knowing that we would not have a chance to review them before the hearing today, you made a mistake. Because we will review those documents and if we have to we will haul everybody back in here, including the Justice Department, to go over those documents. So this kind of nonsense has to stop. If we ask for documents and you are going to give them to us, do not give them to us at the last minute so we cannot look at them. We are not going to let that stand.

This is not going to end until we get the documents we want and find out what happened and bring this case to a close. We had a bunch of criminals running around killing people under virtual FBI

protection. The FBI let innocent men die in prison. And we have an obligation, as I said, to get to the bottom of it.

Yesterday, we had a little crack in the dike. The Justice Department let us read one of the memos. They did not let us keep it, but they let us read it. It was written by Judge Harrington over 30 years ago. It goes right to the heart of what we are investigating. It would have been helpful if we had read this weeks ago before we interviewed Judge Harrington up in Boston. But we have read it now and that is a step in the right direction.

I have told the Justice Department, I will tell everyone here today, as I said a moment ago, with probably more passion than is in this document, we are not going to let this stand. We are going to get to the bottom of it.

We had one other little surprise yesterday, and I alluded to that as well.

I want to ask my friends from the Justice Department, how are we supposed to conduct an investigation when we have these kinds of problems? We have a Federal judge testifying. We have a former FBI agent appearing under subpoena. And we get thousands of new documents in at the last minute. It is not fair to those who are staying here till 3 a.m. and then finding out about this the next day. My staff has been working till 2 and 3 a.m. the last 2 or 3 weeks to prepare for these hearings. I appreciate what they do and I am very sorry that after all that work we get all this thrown at us at the last minute. But we will get to the bottom of it.

[The prepared statement of Hon. Dan Burton follows:]

Opening Statement
Chairman Dan Burton
Committee on Government Reform
"The California Murder Trial of Joe 'The Animal' Barboza:
Did the Federal Government Support the Release of a Dangerous Mafia Assassin"
February 14, 2002

Good morning.

As everyone knows, we've been reviewing the way the Justice Department and the FBI have been investigating organized crime over the last three or four decades. We've been looking very hard at the way the FBI handled their confidential informants in Boston -- which has been a disaster.

We've held two days of hearings. We focused on two different trials -- Joe Salvati's trial and Joe "the Animal" Barboza's trial. The way the FBI and the Justice Department behaved during those two trials was as different as night and day.

What happened says a lot about why we're conducting this investigation.

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Joe Barboza went on trial for murder in 1971. Here you had a known mob hitman. The FBI believed that he'd already committed 26 murders. The evidence against Barboza in the 1971 trial was overwhelming. The detectives and even Joe Barboza's lawyer testified yesterday that it was a slam-dunk capital murder case. And then the FBI pulled out all the stops to try to help Joe Barboza get off.

They flew out to California. They worked with the defense team. They testified on Barboza's behalf. According to our witnesses yesterday, two days after FBI agents Paul Rico and Dennis Condon testified, along with Justice Department lawyer Edward Harrington, the prosecutors agreed to a lenient plea bargain.

Mr. Cameron said it all yesterday:

"The FBI at the time was considered pretty sacrosanct. They had damaged our case to the point that we didn't think the jury would give us a first degree murder verdict."

Mr. Cameron said that what was really damaging was, "having the FBI there and the color of their authority painting him (Barboza) as honest and truthful."

So in 1967, they had an innocent man on trial -- Joe Salvati. The FBI had all the evidence showing that he was innocent. And they let their star witness commit perjury and put him away for thirty years.

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But it doesn't stop there.

Joe Salvati spent thirty years in prison. His lawyer, Victor Garo, spent decades trying to get his sentence commuted. When Mr. Garo submitted petitions to the Massachusetts pardon commission, it appears that the FBI helped stop it from happening.

Joe Barboza spent less than five years in prison. At his first opportunity for parole, Mr. Harrington, from the Justice Department, flew out to Montana to testify on his behalf. In a 1973 letter, Joe Barboza wrote, "the parole board said this is the fastest hearing in the history of Montana, how you made parole, I didn't even say one word!"

In that same letter, he thanked Mr. Harrington profusely:

"How can I ever thank you & Marty for what you two and Ted H. did for me today. Words can never even begin to express what I feel."

That was in 1973. Joe Barboza -- who murdered a bunch of people and lied on the witness stand -- was about to be a free man. Joe Salvati -- who never killed anyone -- had another 20 years to spend in prison.

I don't know about anyone else, but it seems to me like Justice was stood on its head.

That's why we're conducting this investigation. We had a Justice Department that was determined to break the back of the mob, and that's good. But in Boston, we had a group of FBI agents who decided to throw the rules out the window.

- They let a lying witness send innocent men to death row and life in prison.
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We cannot allow this type of conduct. We need to know how extensive it was. We need to know how far up the food chain this went. How many people at the Justice Department and the FBI knew what was going on? J. Edgar Hoover received two memos every week about the illegal wiretaps in New England. We have dozens of other memos written to him about the Deegan murder and other topics.

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On our first panel, we have two of the three men who participated in that trial in California. Paul Rico, who was an FBI agent, is here. Edward Harrington, who was the Chief of the Justice Department's Strike Force Against Organized Crime in New England, is here. Mr. Rico is now retired. Mr. Harrington is now a Federal judge. Thank you both for being here. We have a lot of questions about the things that you did and the reasons that you did them. We're looking forward to hearing what you have to say.

We were also going to have Dennis Condon testify today. Because of his health problems, we've excused him for today. However, he will be interviewed under oath by Committee Members and staff next week.

On our second panel, we have Jay Bybee, the head of the Justice Department's Office of Legal Counsel. We asked Mr. Bybee to be here because of the ongoing dispute that we have over this committee getting access to the documents that we need.

I think everyone knows that last Fall, we subpoenaed a set of Justice Department memos that deal directly with the issues we're looking at. The Justice Department found ten memos that comply with the subpoena, but they refuse even to let us see them. After all of the terrible things that happened up in Boston -- perjury, murders, obstruction, an innocent man spending thirty years in prison -- they refuse to let us see those documents.

Let me be very clear. This is the People's House. We are the elected representatives of the people. Our constituents send us here to oversee the government and protect their rights. That's the system of checks and balances.

We had a bunch of criminals running around killing people under virtual FBI protection. The FBI let innocent men die in prison. As the people's representatives, we have an obligation to find out why it happened, and to make sure it never happens again. We're not going to take 'no' for an answer on these documents.

Yesterday, we had a little crack in the dike. The Justice Department let us read one of the memos. It was written by Judge Harrington over thirty years ago. It goes right to the heart of what we're investigating. It would have been helpful if we could have read it weeks ago before we interviewed Judge Harrington up in Boston. But we've read it now and that's a step in the right direction.

I've told the Justice Department, and I'll tell everyone here today, that we're not going to be satisfied until we've seen every one of those documents. And it would be good if we could get it done now instead of the evening before a hearing where we need the information.

We had one other little surprise yesterday. About 3:00 yesterday afternoon, the Justice Department showed up at our door with a new box of documents related to the Deegan murder trial -- thousands of pages that we need to see for this investigation. I asked for those documents last summer -- in June. And they showed up at our offices two hours after we finished one hearing and less than 24 hours before our next hearing.

I want to ask my friends from the Justice Department, how are we supposed to conduct an investigation like this? We have a Federal judge testifying. We have a former FBI agent appearing under subpoena, and we get thousands of new documents in at the last minute. That's not fair to the Committee. I'm going to have some questions for Mr. Bybee about when these documents were uncovered and why we didn't get them months ago. If he doesn't have the answers now, I hope he'll get them in the next couple of hours before he testifies.

That concludes my opening statement. I now yield to Mr. Waxman for his statement.

Mr. BURTON. Do you have an opening statement that you would like to make?

Mr. DELAHUNT. I do not have an opening statement, Mr. Chairman. Again, thank you for extending the invitation to myself and my colleagues from Massachusetts, Mr. Frank and Mr. Meehan, to serve on the committee. Obviously, we have a parochial interest as well as an interest in discovering the truth.

But let me take this opportunity while I am here to welcome as a witness Judge Harrington. Judge Harrington and I have interfaced and intersected on many occasions; when I was a District Attorney in the greater Boston area, and when he was the U.S. Attorney. I just read through his statement and this is at the conclusion, but I think it is important that I read it. "Today, many believe that Joseph Salvati was falsely implicated by Baron." I happen to feel confident about that conclusion, Mr. Harrington. "I do not know whether this allegation is true or not, but I wish to make clear that the government's campaign against organized crime could never justify the false conviction of any man and that I would never knowingly participate in any scheme to elicit false testimony or to cover up a false conviction."

I want you, Mr. Chairman, to know and I want to say it publicly that I am absolutely convinced of the veracity of that statement. I've known Mr. Harrington for 30 years. We have had some disagreements along the way. But I know him to be a man of integrity, and I believe Ted Harrington. I yield back.

Mr. BURTON. Mr. Barr. Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman. I praise you for the tenacity and the focus you have on this situation. And I would hope that the Attorney General of the United States will wake up and say let's clean house. The new Director of the FBI seems to be a very fine person and he ought to look at C–SPAN and walk out of his luxurious office there and say the FBI is not going to be corrupt and we are going to get to the bottom of it.

And the business of dumping box after box of memoranda at the last minute reminds me of most of what we have listened to from the Clinton administration. I would hope that this Bush administration will not be sort of having a problem of not doing anything because the President is invoking executive privilege. I think that is just wrong. And it will be a sad story if that happens. Thank you, Mr. Chairman.

Mr. BURTON. Thank you, Mr. Horn. Mr. Tierney, I believe you said you wanted to pass on an opening statement.

Mr. TIERNEY. That is correct.

Mr. BURTON. OK. We will get right to it. We will start with you, Mr. Rico. Let me swear you in first. Would both of you please stand.

[Witnesses sworn.]

Mr. BURTON. Mr. Rico, do you have an opening statement?

Mr. RICO. I am accompanied by counsel today. On advice of counsel, it is my intention to invoke my fifth amendment rights to remain silent in response to every question asked by the committee today.

Mr. BURTON. We certainly understand you exercising your fifth amendment rights. However, when you were here the last time we

asked you, I think I had my counsel come out and talk to you directly, and I asked you if you wanted to have legal counsel advise you. I think you were very graphic, I will not comment on exactly what you said, but you said something about your age and you did not have anything, that you were not concerned about testifying, and you testified. And I am just curious about why there is a different attitude today than there was the last time you appeared before the committee.

Mr. RICO. I have my counsel here today and he advised me, and I am taking his advice and am invoking my fifth amendment right to remain silent in response to every question asked by the committee today.

Mr. BURTON. Very well. Could you at least identify your counsel, please.

Mr. RICO. Yes. Peter Parker.

Mr. BURTON. OK. And he is your local counsel from up in Massachusetts?

Mr. RICO. Yes.

Mr. BURTON. OK. Thank you. Judge Harrington, do you have an opening statement you would like to make?

STATEMENT OF EDWARD F. HARRINGTON, SENIOR JUDGE, FEDERAL DISTRICT COURT, FORMER ASSISTANT U.S. ATTORNEY

Judge HARRINGTON. First of all, I want to thank the chairman and the committee for the opportunity to answer your questions. I would ask that my full statement be made part of the record of these proceedings as well as the one attachment which is a memorandum that I prepared on August 28, 1970. With the permission of the chairman, I would like to just read approximately 10 paragraphs from that statement.

Mr. BURTON. That is fine. And the rest of your statement will appear in the record and we will take a look at it.

Judge HARRINGTON. From 1961 to 1966, over 60 gangland figures were murdered in the Boston Gang Wars. Prior to 1968, none of these murders was prosecuted. Law enforcement was unable to prosecute organized crime because of the essential characteristics of organized crime, namely, the insulation of the "boss" from the overt criminal act, the underworld's code of silence, and the threat of reprisal should anyone testify against its members. Because of these realities, in order to prosecute a major racketeer, accomplice witness testimony was a necessity. This was especially so before the legalization of court authorized electronic surveillance in 1970.

In 1967 Joseph Baron was the first of the organized crime accomplice witnesses to be developed in New England and one of the first such witnesses in the entire Nation. Baron was the original witness in the Witness Protection Program and the Government's experience gained in protecting him provided the basis for the congressional establishment of the formal Witness Protection Program in October 1970.

In the spring of 1967, Baron expressed to the FBI a willingness to testify in three prosecutions, namely, the Patriarca case involving the charge of conspiracy to travel interstate to murder Willie Marfeo, which was tried in the Federal court in March 1968; and

the DeSeglio and Deegan murder cases which were both tried in State court, by District Attorney Garrett Byrne's office.

I was an assistant U.S. attorney assigned to the Federal Patriarca case and was not involved in the prosecution of the two State murder cases. I never knew the details of Baron's testimony concerning the conspiracy to murder Deegan. I never discussed the case with him. According to the Massachusetts Supreme Judicial Court, Baron's testimony in the Deegan case was developed by the District Attorney's office "in pieces" from July through October 1967.

I was not cognizant of any information provided by confidential informants concerning the Deegan murder. I never had any knowledge of the confidential informant reports that have recently come to light.

Walter T. Barnes and I interviewed Baron at Walpole Prison on August 28, 1970, after he had been arrested on a gun carrying charge in the Commonwealth of Massachusetts. Baron requested to see Barnes and me. The information contained in our memorandum to James Featherstone of that same date fully sets forth what Baron told us during that interview. Baron told us that his recantation was false, that it was induced by the payment of money funded by the organization, and that his trial testimony in the Deegan murder case was truthful. I have asked that a copy of that memorandum be made a part of the record in these proceedings. At the time of this interview, Barnes and I were unaware of Baron's alleged involvement in the killing of Clay Wilson in California.

I was authorized by the Attorney General of the United States, after being subpoenaed by defense counsel, to testify on Baron's behalf in the Wilson murder case in California in 1971, to bring to the attention of the court the extent of Baron's cooperation with prosecuting authorities in their fight against organized crime. The reason for this testimony was threefold: The Government had promised to bring the extent of his cooperation to sentencing authorities at the time he was developed as an accomplice witness; in that Baron was the original witness for the Witness Protection Program and as the Government's experience gained in protecting him served as the basis for the congressional establishment of that program in 1970, the Government supported Baron to provide needed support to the fledgling Witness Protection Program; and three, it provided the Government an opportunity to send a signal to potential informants and accomplice witnesses that the Government would honor its commitments in their cooperation with the Government in its fight against organized crime.

The Justice Department's strategy was very successful. In the next several years the Government was able to develop many significant accomplice witnesses.

In summary, I did not try the Deegan murder case and was not cognizant of the details of its evidence. I did not believe that any information of which I was aware was exculpatory. I believed that any recantation by Baron would have been perjurious. And I testified at the Wilson murder trial under the explicit instructions

of the Attorney General of the United States, after having been subpoenaed by Baron's defense counsel.

Thank you, Mr. Chairman, for the opportunity to make an opening statement.

[The prepared statement of Judge Harrington follows:]

STATEMENT OF UNITED STATES SENIOR DISTRICT JUDGE
EDWARD F. HARRINGTON BEFORE THE GOVERNMENT REFORM COMMITTEE
OF THE UNITED STATES HOUSE OF REPRESENTATIVES

In November 1961, I joined the Criminal Division of the U. S. Department of Justice in Washington, D.C., as a Trial Attorney. In January 1963, I first became involved in the investigation and prosecution of organized crime under the leadership of Attorney General Robert Kennedy. In 1961 Attorney General Kennedy had commenced the first concerted governmental effort against organized crime in the history of American law enforcement. I was assigned to the unit involved in the investigation of labor racketeering throughout the United States. With this unit, I was later dispatched by Kennedy to Mississippi during the "long hot summer of 1964" to protect the civil rights workers who were conducting "freedom schools" there. In 1965, I came to Boston and continued to be involved in the government's campaign against organized crime in the following various capacities:

> As an Assistant United States Attorney from March 29, 1965 to January 30, 1969; as Deputy Chief of the United States Department of Justice's Strike Force Against Organized Crime for New England from May 5, 1969 to October 16, 1970; as Chief Attorney of this unit from October 16, 1970 to March 31, 1973; and as United States Attorney for the District of Massachusetts from August 1, 1977 to October 31, 1981.

During these years I was involved in the successful prosecution of Raymond L. S. Patriarca, the longtime "boss" of the New England Mafia, and other major underworld figures; the establishment of the Witness Protection Program; the installation of the first court-authorized wiretap in the District of Massachusetts; and the planting of the court-

authorized "bug" in the Angiulo faction's headquarters in Boston in 1981, which resulted in the decimation of the Boston faction of the organization.

During these years it was the Department of Justice's policy, under administrations of both parties, to direct its investigative and prosecutive resources towards the elimination of the Mafia, the national crime syndicate. To that end it was the policy of the F.B.I. to establish and maintain a program of top echelon underworld confidential informants in order to develop the criminal intelligence necessary for the successful prosecution of the leaders of the organized crime syndicate. The years 1961 through 1966 were devoted to the development of this intelligence bedrock.

It was also the policy of the F.B.I. to protect the confidentiality of the identity of informants to ensure their safety and, thereby, maintain the F.B.I.'s continued access to criminal intelligence. Throughout my tenure as a federal prosecutor, I never knew the identity of any F.B.I. informant. As a result of the Department of Justice's policy and program, the New England family of the Mafia has been virtually eradicated.

From 1961 to 1966 over 60 gangland figures were murdered in the Boston Gang Wars. Prior to 1968, none of these murders was prosecuted. Law enforcement was unable to prosecute organized crime because of the essential characteristics of organized crime, namely, the insulation of the "boss" from the overt criminal act, the underworld's code of silence, and the threat of reprisal should anyone testify against its members. Because of these realities, in order to prosecute a major racketeer, accomplice witness testimony was a necessity. This was especially so before the legalization of

court authorized electronic surveillance in 1970.

In 1967 Joseph Baron was the first of the organized crime accomplice witnesses to be developed in New England and one of the first such witnesses in the entire nation. Baron was the original witness in the Witness Protection Program and the government's experience gained in protecting him provided the basis for the congressional establishment of the formal Witness Protection Program in October 1970.

In the Spring of 1967 Baron expressed to the F.B.I. a willingness to testify in three prosecutions, namely, the Patriarca case involving the charge of conspiracy to travel interstate to murder Willie Marfeo, which was tried in federal court in March 1968; and the DeSeglio and Deegan murder cases which were both tried in state court, by District Attorney Garrett Byrne's office.

I was an Assistant U. S. Attorney assigned to the federal Patriarca case and was not involved in the prosecution of the two state murder cases. I never knew the details of Baron's testimony concerning the conspiracy to murder Deegan. I never discussed the case with him. According to the Massachusetts Supreme Judicial Court, Baron's testimony in the Deegan case was developed by the District Attorney's office "in pieces"from July through October of 1967.

I was not cognizant of any information provided by confidential informants concerning the Deegan murder. I never had any knowledge of the confidential informant reports that have recently come to light.

In the Spring of 1967, Strike Force Attorney Walter T. Barnes and I prepared a

prosecution memorandum for submission to the Justice Department for the federal Patriarca case. In conjunction therewith, we reviewed the logs of the illegal Patriarca "bug" which had been installed in Patriarca's office for over a three-year period during the years 1962 to 1965. One purpose of the review was to determine whether the information derived from the "bug" would taint the Patriarca case. Another purpose was to assess Baron's credibility as a witness in the Patriarca case. At least two references to the Deegan murder gleaned from the logs were cited in the prosecution memorandum to manifest Baron's veracity as a witness, namely, that he had personal access to Patriarca and would receive authorizations from him, as Baron was asserting. These references in the logs strengthened federal prosecutors' confidence in Baron's credibility as a witness in the Patriarca case.

Our review of the logs was undertaken at least five months before the state court indictments in the Deegan case. The references in the logs to the Deegan murder were consistent with my limited understanding of it, namely, that it was a "sanctioned hit," that is, one approved by Patriarca in Providence and concurred in by the leaders of the Boston faction. The defendants in the Patriarca case were granted access to the Patriarca logs under court order. Two of the attorneys in the Patriarca case were also the attorneys for the same individual defendants in the Deegan case, including the lead trial counsel.

Barnes and I interviewed Baron at Walpole Prison on August 28, 1970 after he had been arrested on a gun carrying charge in the Commonwealth of Massachusetts.

At this time Baron was a member of the Witness Protection Program under the supervision of the Organized Crime Section of the Justice Department. He had been relocated to California and had been provided with a new identity in 1968 after concluding his testimony in the three prosecutions. He requested to see Barnes and me after his arrest because, as Strike Force Attorneys, we represented the Organized Crime Section in Massachusetts and had become acquainted with him during the preparation and trial of the Patriarca case.

The information contained in our Memorandum to James Featherstone of that same date fully sets forth what Baron told us during that interview. Baron told us that his recantation was false, that it had been induced by the payment of money funded by the organization, and that his trial testimony in the Deegan murder case was truthful. A copy of our Memorandum is attached hereto. At the time of this interview, Barnes and I were unaware of Baron's alleged involvement in the killing of Clay Wilson in California.

Although Barnes and I were told by Baron in the August 28, 1970 interview that the reason for his false recantation was the payments that he was receiving from the organization, it was and is my personal belief that, in addition to money, the reason why Baron indicated to the organization that he would be willing to recant his testimony was because he was unable to make a legitimate living and was desirous of ingratiating himself with the organization so that he could return to organized criminal activities in order to make money and because he believed that the hope of the

organization that he would fully recant his testimony might forestall his being assassinated. Baron was ultimately assassinated by the organization in 1976.

The organization's attempt to bribe Baron was consistent with its past efforts at countering Baron's testimony: on the eve of the Patriarca trial, the organization car-bombed Baron's attorney, John Fitzgerald, and, as discussed in the opinion of the Supreme Judicial Court, before the Deegan trial, the organization attempted to bribe Baron to recant his grand jury testimony and sought to coerce another person to falsely admit to the Deegan murder.

I was authorized by the Attorney General of the United States, after being subpoenaed by defense counsel, to testify on Baron's behalf in the Wilson murder case in California in 1971 to bring to the attention of the court the extent of Baron's cooperation with prosecuting authorities in their fight against organized crime. The reason for this testimony was threefold: (1) the government had promised him to bring the extent of his cooperation to sentencing authorities at the time he was developed as an accomplice witness; (2) in that Baron was the original witness for the Witness Protection Program and as the government's experience gained in protecting him served as the basis for the congressional establishment of that program in 1970, the government supported Baron to provide needed support to the fledgling Witness Protection Program; and (3) it provided the government an opportunity to send a signal to potential informants and accomplice witnesses that the government would honor its commitments in return for their cooperation with the government in its fight against

organized crime. The Justice Department's strategy was very successful. In the next several years the government was able to develop many significant accomplice witnesses.

Today, many believe that Joseph Salvati was falsely implicated by Baron. I do not know whether this allegation is true or not, but I wish to make clear that the government's campaign against organized crime could never justify the false conviction of any man and that I would never knowingly participate in any scheme to elicit false testimony or to cover up a false conviction.

In summary, I did not try the Deegan murder case and was not cognizant of the details of its evidence; did not believe that any information of which I was aware was exculpatory; believed that any recantation by Baron would have been perjurious; and testified at the Wilson murder trial under the explicit instructions of the Attorney General of the United States, after having been subpoenaed by Baron's defense counsel.

WIRETAPPED

James Scatterstone, Deputy Chief
Organized Crime & Racketeering Section

August 28, 1970

Walter T. Barnes and Edward P. Harrington
Special Attorneys, Boston Field Office
Organized Crime & Racketeering Section

Interview with Joseph Baron

On August 28, 1970 at approximately 11:00 A. M., Arthur Isberg, Massachusetts Commissioner of Corrections, telephonically advised Walter Barnes that Joseph Baron had requested in writing to speak to Barnes and Special Agent Dennis Condon. Isberg told Barnes to contact Fred Butterworth at Walpole for the exact wording of the request. Edward Harrington called Butterworth at Walpole and Butterworth read Baron's written request, a copy of which is attached to this memorandum. Harrington advised Butterworth that Barnes and Harrington would leave immediately for Walpole.

Barnes and Harrington conferred with Joseph Baron at Walpole Correctional Institution from approximately 1:00 P. M. until 2:15 P. M. Baron 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. Baron also requested that his probation revocation warrant be withdrawn. Barnes and Harrington advised Baron that they had no control over the Massachusetts Parole Board and that they could make no promises in this regard.

During the course of the conversation, Baron made the following statements:

Baron 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;

Baron 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; that Bailey acknowledged

EXHIBIT

to him that the affidavits themselves were not sufficient to warrant the granting of a new trial, but that it would be necessary for Baron to testify as a witness, which Baron does not desire to do.

Baron 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." He stated that this statement would be merely a pretext so that Bailey will not distrust him on account of his seeing them.

Baron stated that if he took the lie-detector test it would prove that he told the truth during the Deegan trial, but that he will not take this test until he is out of custody and beyond the control of Bailey.

Baron stated that two of his trips from California to Boston were made at the instigation of the underworld and that he was paid for these trips through the books of Bi-Lo Construction Company of Providence, Rhode Island, an officer of which, Frank Davis, Baron met on several occasions in this connection.

Barnes and Harrington told Baron that they would and could make no promises to him but that they would merely pass the results of their conversation onto District Attorney Garrett Byrne, which was done by Harrington at approximately 3:30 P. M. on August 28, 1970.

Enclosure

000774

Mr. BURTON. Just 1 second.

Mr. BARR. Mr. Chairman, the witness kept referring to the name "Baron." For clarification, that is Joseph "the Animal" Barboza, is that correct?

Mr. BURTON. Yes. Mr. Barboza, when he went into the Witness Protection Program, that was one of the pseudonyms that he used, an alias.

Mr. BARR. OK.

Mr. LATOURETTE. Mr. Chairman, could I make an inquiry of the staff. Judge Harrington, when he made his opening remarks, referred to a memo I think that was prepared following a visit to Walpole Prison. Is that in our exhibit book?

Mr. BURTON. I do not think—did we have that exhibit?

Mr. WILSON. Mr. LaTourette, that is not in the exhibit book. There was a prosecution memo prepared in 1967 that we were allowed to review yesterday that the Justice Department has not provided to us. Now there was another memorandum that was referred to that is attached to Judge Harrington's statement.

Mr. BURTON. He wanted to make it part of the record.

Mr. WILSON. And we have that.

Mr. BURTON. Do members of the committee have that?

Mr. WILSON. Yes.

Mr. BURTON. They do have that. OK.

All right, we will proceed. Before we get to questioning, I have a couple pages of background information we want to read into the record and then we will get started with the questioning.

Teddy Deegan was murdered in 1965. The FBI had considerable information about the Deegan murder in 1965. It knew from informants and microphone surveillance, wiretaps, and surveillance that Joe "the Animal" Barboza and Jimmy "the Bear" Flemmi were involved in the murder. But before this information was developed, both Special Agents Rico and Condon knew that Flemmi wanted to become a professional assassin.

On May 25, 1964, Dennis Condon wrote a memo that talks about Jimmy "the Bear" Flemmi. Mr. Condon said that "all he wants to do now is kill people" and that "it is better than hitting banks." Mr. Condon then indicated that the informant told him that Jimmy Flemmi feels he can be the top hit man in the area, and he intends to be. That is in exhibit 8 of our documents that we have.

[Exhibit 8 follows:]

SUBJECT: VINCENT JAMES FLEMMI, Aka.

[redacted] F.B

Memo of SA Dennis M. Condon 5/25/64 captioned: [redacted]

B

[redacted] was contacted on 5/22/64, advised that within the last few days he was in contact with [redacted] and JAMES FLEMMI. FLEMMI told him that all he wants to do now is to kill people, and that it is better than hitting banks. FLEMMI said that [redacted] have taken money for about six contract hits which they have not fulfilled. They spent the money for these hits drinking.

Informant said, FLEMMI said that he feels he can now be the top hit man in this area and intends to be.

[redacted]

FLEMMI told the informant that there was a big piece of money that came out of the hit on [redacted] and the informant gathered from FLEMMI's talk that he, FLEMMI, had made the hit.

[redacted] F.B

Boston letter to Director & SAC, Newark 5/25/64 captioned: [redacted]

[redacted] Informant stated that it appears that JAMES FLEMMI, a Roxbury, Mass. hoodlum, will probably become the "contract man" in the Boston area.

[redacted]

Boston letter to Director 6/4/64 captioned: [redacted]

F.B

This letter sets out information to the Bureau on [redacted] Under the heading CRIMINAL ASSOCIATES the following information appears concerning JAMES FLEMMI.

The informant is presently associated with [redacted] and JAMES FLEMMI. FLEMMI

EXHIBIT 8

Mr. BURTON. Five months later, Mr. Rico, you wrote a memo that says, an informant told you that Jimmy Flemmi wants to be considered the best hit man in the area. That is exhibit No. 9. A few days later, Mr. Rico, you wrote a memo that says an informant told you that "Jimmy Flemmi wants to kill Teddy Deegan." That is exhibit No. 10.

[Exhibits 9 and 10 follow:]

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F

[redacted] (Cont'd)

M [redacted]

Informant advised 10/5/64, that he is friendly with the FLEMMI's, but VINCENT FLEMMI is an extremely dangerous individual. For example, he said that approximately Monday night, 9/28/64, VINCENT FLEMMI came into [redacted] bar room and immediately engaged [redacted] in a fight. During the fight FLEMMI took something out of his pocket and threw it into [redacted] eyes and then knocked him unconscious. [redacted] has not regained his sight since this episode and is under a doctor's care. Informant also advised that he suspects that FLEMMI had committed several murders, but he did not wish to discuss them.

B

Informant advised that [redacted]

M [redacted] and "JIMMY" FLEMMI wanted to be considered the "best hit man" in the area.

Informant advised also that he has had no unfavorable reaction over [redacted] arrest from either FLEMMI or from Romeo Martin.

B

[redacted] B.F

Memo of H. Paul Ricolo 8/6/64 to SAC, Boston entitled: [redacted]

M [redacted]

Informant advised he again met with [redacted] at approximately noontime on 10/6/64, and [redacted]

M

At this time [redacted] offered to help VINCENT FLEMMI and his brother "whack out" an individual that the FLEMMI's were having trouble with in [redacted] Cafe in [redacted] if the FLEMMI's would first join him in "whacking out [redacted]

B

000327

000010

EXHIBIT 9

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F.H.

[redacted] (Cont'd)

Deegan told FLEMMI that he intends to remain in hiding for a few weeks in order to avoid being questioned by police.

FLEMMI told the informant that Deegan told him that [redacted] was going to hit one of the members of the Boston Italian group at the Coliseum Restaurant. FLEMMI told informant that his was obviously an attempt to get the Italian element in Boston interested in eliminating [redacted] B

FLEMMI told informant that he wants to kill Deegan. Information relating to Deegan's participating in the killing of [redacted] was furnished to the Everett, Mass., Police Department on 10/18/64. [redacted] mentioned as [redacted] B

[redacted] F.H. B

Boston airtel to Director, FBI 10/15/64 captioned: [redacted]

M

[redacted] FLEMMI told the informant that [redacted] had offered to help FLEMMI and his brother to "whack out" an individual with whom the FLEMMI'S were having trouble at [redacted] Cafe in [redacted] provided the FLEMMI'S would first join him in "hitting" [redacted] B

[redacted] F.B

Memo of H. Paul Rico to SAC, Boston 10/8/64 and captioned: [redacted]

B

M

[redacted]

EXHIBIT 10

Mr. BURTON. In late December 1964 Director Hoover was informed that Jimmy Flemmi stabbed FBI informant George Ash 50 times and then shot him. Yet in early 1965, even though it knew that Flemmi's professional goal in life was to be an assassin, the FBI targeted Jimmy Flemmi to be an informant. That is exhibit No. 11.

[Exhibit 11 follows:]

DIRECTOR, FBI 3/9/65

SAC, BOSTON [redacted]

VINCENT JAMES FLEMMI, aka
"Jimmy" Flemmi
[redacted]

Rebulet dated 9/10/63 and Boslet to Bureau dated 10/3/63 entitled, "TOP ECHELON CRIMINAL INFORMANT."

VINCENT JAMES FLEMMI, aka "JIMMY" FLEMMI, is being designated as a target in this program.

VINCENT JAMES FLEMMI is presently operating an after-hours drinking establishment and a blackjack game upstairs over Walsh's TV store, Dudley Street, Boston, according to [redacted] FLEMMI also is believed to be involved in the murders of the following individuals:

[redacted]

In addition, he and [redacted] were tried for the murder of a fellow inmate at the Massachusetts Correctional Institution, Walpole, Mass. He was acquitted of this crime.

VINCENT FLEMMI, according to [redacted] has been visiting RAYMOND L. S. PATRIARCA on a fairly frequent basis in the past two months.

It is known, through [redacted], that FLEMMI, although he now has a lucrative business, has lost considerable money gambling and his only hope of bailing out is to continue to operate this illegal after-hours establishment and card game. He therefore should be susceptible to pressure.

2-Bureau
2-Boston [redacted]

HPR:[redacted]
(4)

EXHIBIT
11

000752A

F

[redacted]

FLEMMI is described as follows:

Name:	VINCENT JAMES FLEMMI
Alias:	"Jimmy" Flemmi
Race:	White
Sex:	Male
Born:	9/5/35
Height:	5'10"
Weight:	200 lbs.
Hair:	Dark brown, receding
Eyes:	Brown
Complexion:	Dark
Arrest Record:	Convicted of Larceny, Breaking and Entering, Using a Car Without Authority, Assault and Battery, Unarmed Robbery, and Armed Robbery.

In addition, he was the subject of an "Unlawful Flight to Avoid Prosecution" for armed robbery and was apprehended by Bureau Agents of this office as a result of this warrant.

Mr. BURTON. The day after the FBI indicated that it wanted Flemmi as an informant, Mr. Rico wrote a memo that came from information that was obtained through microphone surveillance of Raymond Patriarca. The memo said that Patriarca gave permission for Jimmy Flemmi to kill Edward Teddy Deegan. In fact, the memo even says that a dry run had already been made and that Deegan would be set up by a close associate. This information was important enough that it was sent to FBI Director J. Edgar Hoover in Washington. Two days later, Director Hoover and three office supervisors in Albany, Buffalo, and Miami were sent the following information by AirTel: "James Flemmi and Joseph Barboza contacted Raymond Patriarca and they 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."

Mr. Rico, I will skip the questions for you right now. And I think I will yield time starting off to—well, we will skip the questions for right now.

Later the same day that the FBI Director got the information about the plan to kill Deegan, Deegan was murdered in an alley in Chelsea, MA. The day after the Deegan murder, Agent Rico wrote a memo describing in detail who killed Deegan and how the murder was carried out. This memo says that "Informant advised Vincent Jimmy Flemmi contacted him and told him that the previous evening Deegan was lured to a finance company in Chelsea and that the door to the finance company had been left open by an employee of the company, and when they got to the door Roy French, who was setting Deegan up, shot Deegan and Joseph Romeo Martin and Ronnie Cassesso came out the door and one of them fired into Deegan's body. While Deegan was approaching the doorway, he [Flemmi] and Joe Barboza walked over toward the car driven by Tony Stats and they were going to kill Stats but Stats saw them coming and drove away before any shots were fired. Flemmi told informant that Ronnie Cassesso and Romeo Martin wanted to prove to Raymond Patriarca that they were capable individuals and that is why they wanted to hit Deegan. Flemmi indicated they did an awful sloppy job."

A few days later, on March 19, 1965, the head of the FBI office in Boston sent an AirTel to FBI Director Hoover. It states: "Informants report that Cassesso, Martin, Vincent James Flemmi, and Joseph Barboza were responsible for the Deegan killing."

On June 4, 1965, the head of the Boston office sent another memo to Director Hoover. It is about Jimmy Flemmi. It states: "It is known through other informants and sources that this individual [Jimmy Flemmi] has been in contact with Raymond Patriarca and other members of La Cosa Nostra in this area and potentially could be an excellent informant. Concerning the informant's emotional stability, the agent handling the informant believes from information obtained from other informants and sources that [the FBI code number for Vincent Jimmy Flemmi] murdered,"—and then we have some redacted information that we do not have—"Edward Teddy Deegan and [blank] as well as a fellow inmate at the Massachusetts Correctional Institution at Walpole, Massachusetts, and from all indications he is going to continue to commit murder. Although

the informant will be difficult to contact once he is released from the hospital because he feels that [blank] will try to kill him, the informant's potential outweighs the risk involved."

The FBI Director was told, Mr. Hoover was told that Flemmi had previously murdered seven people, including Teddy Deegan. There are dozens of additional details that are important, but that provides a summary of what was known by the FBI in 1965.

Joe Barboza and Jimmy Flemmi killed people for money and they killed people for pleasure. The FBI wanted Jimmy Flemmi and his brother Stevie "the Rifleman" Flemmi to be informants. The FBI had microphone surveillance information that Flemmi and Barboza were going to kill Deegan, and the FBI had information that Flemmi and Barboza did kill Deegan. Neither Flemmi nor Barboza appear to have been questioned about the Deegan murder in 1965 and nothing happened to them.

Two years passed and Joe Barboza was arrested in 1967 on an unrelated crime and faced a 70 year prison sentence. The FBI assigned H. Paul Rico and Dennis Condon to work with Barboza to see if they could get him to become a cooperating witness. They convinced Barboza to testify in three different trials. One of the trials was for the murder of Teddy Deegan. Before the trial, however, Barboza told Mr. Rico and Mr. Condon something that was very important. In one of those very first interviews, Barboza told Mr. Rico and Mr. Condon he would never provide information that would allow James Vincent Flemmi to "fry."

We will now go to the questions and we will start off with Mr. Barr. I will reserve my time, Mr. Barr.

Mr. BARR. Mr. Rico, I would like to ask you a question that has nothing to do with testimony in this case. But over the years, I am sure as an FBI Special Agent you had a lot of witnesses that took the fifth. You knew they were guilty of something and that is why they took the fifth. Are you comfortable being in that position yourself today?

Mr. RICO. I invoke my fifth amendment right to remain silent in response to that question.

Mr. BARR. I heard you. I am just looking at you, something to look at. Very interesting. I hope you sleep well at night.

Judge Harrington, on December 20, 2001, committee staff interviewed you and you told us that you were not privy, and that is consistent with your statement today, to information that Barboza was providing Rico and Condon. But 3 days ago you made the following statement to Boston reporter Dan Rea, and I would like to run that tape, exhibit No. 18: ". . . Vincent Jimmy Flemmi. [Mr. Harrington:] He told the Bureau, and I was informed of it, that of all the murders that he was involved in, and Baron was reputed to be in over twenty murders, he would not testify in those murders in which Jimmy Flemmi was involved."

[Exhibit 18 follows:]

"Baron [Barboza] told the Bureau, and I was informed of it, that of all the murders he was involved in, and Baron [Barboza] was reputed to be in over 20 murders, he would not testify in those murders in which Jimmy Flemmi was involved."

PENGAD-Bayonne N J
EXHIBIT
18

Judge Edward Harrington
February 11, 2002

Judge HARRINGTON. That is a correct statement, sir.

Mr. BARR. OK. And how do you square that with your statement today, basically sort of the Ken Lay approach, that you knew nothing and do not know anything?

Judge HARRINGTON. I do not think I meant to convey that. If I did, I am sorry. I indicated in my opening statement I thought that I was unaware of any informant information relating to the Deegan murder case. When I heard that, what I just spoke of, from the FBI agents, that is what they conveyed to me from Joseph Baron, not from any informant. Joseph Baron, in my mind, was an accomplice witness at that time and not an informant. So if there is any ambiguity, I am quite sorry. But my statement there on TV was absolutely correct and I do not believe that it is inconsistent with my opening statement.

Mr. BARR. It is your testimony here today that whatever you now know about or previously knew about information that Barboza was providing to Rico and Condon about committing murders that was all information conveyed to you long after the fact.

Judge HARRINGTON. That is not so.

Mr. BARR. When was it that you found out what Barboza——

Judge HARRINGTON. My statement is that I had no detailed knowledge of Baron's testimony in the Deegan murder case and that I had no information regarding informant information that had been provided to the Bureau on the Deegan murder case. I knew what Baron was going to testify on the Federal Patriarca case because I was assigned to that case, I tried that case. So I am making the distinction between the Federal Patriarca case in which I was assigned as an assistant U.S. attorney and the Deegan murder case which was tried in State court by the District Attorney of Suffolk County. I did not know anything—anything—about Baron's testimony with respect to the Deegan murder case nor any informant information regarding it.

Mr. BARR. Did you ever discuss it with Mr. Rico?

Judge HARRINGTON. Did I ever discuss what with Mr. Rico?

Mr. BARR. Mr. Barboza.

Judge HARRINGTON. Of course, I discussed with Mr. Rico about Mr. Barboza, but with respect to the Federal Patriarca case, not the State Deegan murder case.

Mr. BARR. Give me some feel for how such a conversation would take place. You have Mr. Rico who is well aware of basically the entirety of Mr. Barboza's criminal activities, both historical and current, and you are sitting there talking to him as an assistant U.S. attorney tasked with a prosecution and Mr. Rico starts to tell you something about the State case, do you say, please, do not go into that, I do not want to know about that. How could you compartmentalize——

Judge HARRINGTON. I do not think I said that.

Mr. BARR. How could you compartmentalize the information about this?

Judge HARRINGTON. I do not think I said——

Mr. BARR. As a prosecutor, wouldn't you have wanted to find out everything there is to know about this person?

Judge HARRINGTON. I will say it again. I never discussed the Deegan murder case with Joseph Barboza or with Mr. Rico. I was assigned to the Federal case. That is what I concentrated on.

Mr. BURTON. Would you yield to me, please?

Mr. BARR. I yield to the chairman.

Mr. BURTON. There was a wiretap——

Judge HARRINGTON. There was a bug. It was a bug.

Mr. BURTON. OK, there was a bug. And in that bug, we looked at the document yesterday which came from the bug, and in that there was a conversation between Joe "the Animal" Barboza, who you keep calling Baron, and Flemmi and Patriarca, and in that they said they wanted to kill Deegan. That information was never brought out in the State trial but you knew about it. No, wait a minute——

Judge HARRINGTON. No, I am——

Mr. BURTON. Just a minute. I know that you were not involved in that trial but you knew about it ahead of time. And I cannot understand as a prosecutor, knowing that Barboza and Flemmi had asked Patriarca for permission to kill Deegan, you knew they were involved, you knew that it was not bought up in the trial, you knew that four people were being prosecuted for it, but not Barboza and Flemmi, and you had exculpatory information at your disposal and yet it never was brought out during that trial. Now you were the prosecuting attorney in the Patriarca case but you knew while this very infamous trial was going on that it was Barboza and Flemmi that wanted to kill Deegan. Why didn't you tell somebody that? Why didn't that come out in the trial? You knew about it ahead of time.

Judge HARRINGTON. Could I explain it.

Mr. BURTON. Yes. I would like for you to explain it.

Judge HARRINGTON. There are certain matters and sequence of events that would have to be explicated, and I am prepared to do it. First of all, I would like to tell the staff that when they saw me on December 20 they were asking me questions relating to matters that were 35 years ago and I told them that at that time I had no memory of the references in the Patriarca bug, and that was truthful.

Approximately a few weeks later, the FBI Task Force came to me and provided me with my pros memo that Walter Barnes and I had prepared in May and April 1967. Prior to their providing me with the pros memo, I had no memory that I had even written this pros memo which was, looking at it, 30 or 40 pages. This pros memo related to our need to have the Department of Justice approve the prosecution of Raymond Patriarca in the Federal case. There were two references, at least two references were shown to me about the logs from the Patriarca bug. I want to just give you the sequence so you will know.

In preparing that pros memo, I was focusing on two things: One, whether the results of the illegal Patriarca bug would taint the Federal Patriarca case; and second, whether there was anything in the logs of the Patriarca bug that would corroborate Baron's testimony in the Patriarca case. I reviewed those logs with Walter Barnes, 3 years of logs, in April and May 1967. Baron's testimony in the Deegan State murder case was developed in pieces by the

District Attorney's office of Suffolk County, according to the Supreme Judicial Court's opinion in that case, from July 1967 to October 1967.

Now why did we have two references at least in the Deegan murder case in the Patriarca pros memo? The fact that reference that Patriarca gave authority to Baron to kill Deegan tended to corroborate his testimony in the Federal Marfeo case because it showed two things. One, that Joseph Baron 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 Baron's testimony in the Federal Patriarca case is it showed that he received authorizations to kill from Patriarca. And that, again, substantiated his testimony in the Federal Marfeo case.

So at the time, 5 months later, when the Deegan murder indictments came down, 5 months after I had gone through the logs, and James Flemmi's name was not named as a defendant, I had no memory at that time of these two references. That is the fact. And the reason is because I was exclusively involved on a daily basis for prosecuting the major criminal figure in New England for 35 years and that was my object.

Mr. BURTON. With the consent of the committee, I want to follow-up on this. 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. Now if you knew that Patriarca had given approval to kill Deegan, then why didn't you prosecute him for that case? Because that was before the case in which you did prosecute him.

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.

Mr. BURTON. Well, it stretches credulity as far as this Member is concerned. It stretches credulity, Judge, that you would have bugged recordings that showed that Barboza and Flemmi asked Patriarca for permission to kill Deegan. That was a murder charge that could have been used against him and that would have stuck in your memory like a hot iron because you were after this guy. And if that information stuck in your mind and then you saw the Deegan murder trial at which four people, not Barboza and not Flemmi, were on trial, that you would have had this exculpatory memory emblazoned in your mind because you were after Patriarca in the first place. And for you to say that you did not remember it just stretches my imagination, stretches credulity.

Judge HARRINGTON. I think the record should be clear. These logs, of which one reference I was supposed to remember 5 months later, were available to counsel for the defendants in the Patriarca case, two of which counsel were counsel for the defendants in the

Deegan murder case. So the defendants in the Deegan murder case were well aware of this reference to Patriarca, Baron, and Flemmi.

Mr. BURTON. How do you know that the defense counsel for the defendants in that murder case, the Deegan murder case had access to this information about Barboza and Flemmi asking Patriarca for permission to kill Deegan?

Judge HARRINGTON. It is my understanding and memory that they were so authorized under court order.

Mr. BURTON. We will have to check that out, because I cannot imagine defense counsel not bringing that exculpatory information before when there are four people up on a murder charge and three of those people were not involved in that murder. It would be a dereliction of their responsibility to not bring that out. And so I am going to find out if they had that information.

Judge HARRINGTON. Could I answer the chairman. The reason they did not bring it out is because if they had brought out the fact on cross-examination that the Deegan murder was a sanctioned hit coming from Rhode Island and also concurred in by the Boston mob, two other individuals would have gone down, obviously; namely, Henry Tameleo, the alter ego of Raymond Patriarca, and Peter Limone, the alter ego of Gennaro Angiulo.

Mr. BURTON. So?

Judge HARRINGTON. So if it was an authorized hit, as the logs seem to say it was, then Limone and Tameleo are there. Because at that time there was no authorized hit in Massachusetts that was not authorized by Patriarca or Tameleo and concurred in by Angiulo and Limone.

Mr. BURTON. I know, but that is not the point. You had four people, three of whom were not guilty of the Deegan murder, on trial. Their defense attorneys, you are telling us, had access to this information, this exculpatory information that Barboza and Flemmi asked Patriarca for this hit on Deegan. And for defense counsel to have that information when their people are up on a murder charge and not bring that out in court does not make any sense. It just does not make any sense.

Judge HARRINGTON. I did not say all of them. I said the counsel for Henry Tameleo and counsel for Ronald Cassesso, who were the defendants in the Federal Patriarca case, were also counsel for those two same defendants in the Deegan murder case and they had access to the logs under court order.

Mr. BURTON. What about the counsel for Mr. Salvati?

Judge HARRINGTON. Mr. Salvati was represented by the law firm of Henry Tameleo's lawyer.

Mr. BURTON. And so you are saying that there was collusion between them to keep this under wraps.

Judge HARRINGTON. I am not saying it at all.

Mr. BURTON. His attorney is right here right now, Mr. Salvati's attorney.

Judge HARRINGTON. I am not saying that. Mr. Garo was not counsel for Mr. Salvati at that time.

Mr. BURTON. So Mr. Salvati's counsel was connected to the law firm that was——

Judge HARRINGTON. He was. He was an associate of the lead attorney in the Deegan murder case.

Mr. WILSON. Judge Harrington, just to try and clarify this one issue. It is my understanding that in the Patriarca case, the Federal case, the information that would have been turned over to the defense might not have been all of the Patriarca logs but it would have been information that was germane to Patriarca's involvement in the Marfeo murder conspiracy. Is that correct?

Judge HARRINGTON. I do not know. I do not know. But I was told, when I was interviewed by the Task Force of the FBI, when for the first time in 35 years they showed me my exhaustive prosecution memo on the Patriarca case, they advised me and they refreshed my recollection that Tameleo and Cassesso's lawyer had access to the logs of the Patriarca bug. How much they were, I do not know, they did not say that and I did not question it.

Mr. WILSON. Well this is an important distinction, because in the Taglianetti case it is true that the Taglianetti defense lawyers only got a very small subset of the Patriarca logs. Correct?

Judge HARRINGTON. That is correct.

Mr. WILSON. So it would stand to reason that in the Patriarca Federal case the defense lawyers would only get information that was germane to the Patriarca case.

Judge HARRINGTON. I do not think that is true. And the reason is this, sir, if I can explain. The real first reason we were obligated by the Department of Justice to review the 3-years of the logs of the illegal Patriarca bug was to ensure that there would be no taint, no taint that would prevent our proceeding in the Federal case. Therefore, we reviewed all the logs and it is my belief, sir, my belief, that all the logs were made available to defense counsel in the Federal case.

Mr. BURTON. Let me just followup. But you did know from the illegal bug, you did know while the case was going on in which these four defendants were up for murder on the Deegan case, you did know at that time that there had been a conversation between Flemmi, Barboza, and Patriarca about the murder. Barboza, Flemmi, and Patriarca had a conversation. You knew when the trial was going on that these four people were on trial in the Deegan murder case, you already knew that conversation took place. So you had exculpatory information at your disposal. And what you are saying is that you were prohibited from divulging that information because of the Patriarca case that you wanted to prosecute later on.

Judge HARRINGTON. No. That was not the reason, sir.

Mr. BURTON. Well why did—when you were reading in the newspapers that these four people were going to be convicted and you knew that Barboza and Flemmi had talked to Patriarca about this hit, why didn't you say something? These four guys—he spent 30 years in jail for a crime he did not commit and you had this exculpatory information at your disposal and you did not say anything about it. Why?

Judge HARRINGTON. In brief, sir, I reviewed the logs in April and May 1967. There was one reference or two to the Deegan case. When the indictment came down 5 months later I had no memory of this particular reference. But if I had—if I had—it would have been consistent with my general understanding of the Deegan pros-

ecution; namely, that it was an authorized hit emanating from Providence and concurred in by the Boston faction.

Mr. BURTON. I understand that. But two of the people that were involved in the hit, Barboza and Flemmi, were never prosecuted for that and innocent people went to jail. And that information that you had was never brought out. So 30 years of a man's life went by and some other people's lives went by. I cannot understand when you did read that it did not ring a bell in your head saying why in the world was this not brought out in the trial.

Judge HARRINGTON. Because, Mr. Chairman, I did not know the details of Baron's testimony in the Deegan case and at the time of that trial I had no memory of this one reference or two references to the Deegan case in logs that I had checked out 5 months earlier. I just didn't.

Mr. BURTON. I am not going to belabor this. But you were trying to nail this mob boss and you knew this conversation——

Judge HARRINGTON. It was the policy of the U.S. Department of Justice.

Mr. BURTON. I know. But you were trying to nail this mob boss and you knew he had this conversation with these two people, and you are telling us that you just forgot it and 5 months later you did not remember it. That does not make any sense because he would have been complicitous in a murder because he authorized the hit. And you are telling us you forgot that 5 months later and that is why you did not bring this exculpatory evidence out.

Judge HARRINGTON. The proof that I forgot it is that if I had remembered I think I would have gone to Garrett Byrne and said how come you are not prosecuting Raymond Patriarca for murder. The fact that I did not do it proves that I had no memory of this reference 5 months earlier.

Mr. BURTON. Well, that does not sit with me because I do not think you would have forgotten that.

Mr. LATOURETTE. Mr. Chairman, before you yield to Mr. Tierney, could I just ask a procedural matter, with Mr. Tierney's indulgence.

Mr. BURTON. Sure.

Mr. LATOURETTE. I heard the Judge in your questioning talk about the fact that the Department of Justice came to him with a 30 to 40 page prosecution memorandum to help refresh his recollection after our counsel met with him in December. And my question is, do we have a copy of that? Then the question I have is—and I took in response to Mr. Barr's questioning of Mr. Rico and his previous observation that he is not going to answer any questions and he is going to invoke the fifth amendment. I see on the second panel you have a member of the Department of Justice. I think it is unusual that the Justice Department will not give to the Congress of the United States these documents, however they are giving them to people who are about to appear in front of us. I do not have any problem with the Judge reviewing his own memo from 35 years ago. But my view would be that if the Judge can see it, I cannot quite figure out why we cannot see it, too, as we go through the questioning of Judge Harrington today.

There is also some questions about redactions that have been made by the Department of Justice in some of these reports. This Member, speaking only on behalf of myself, would find it instruc-

tive to perhaps replace the silent Mr. Rico with the member from the Department of Justice so that we have Judge Harrington and the Department of Justice side by side on the same panel so we can explore those issues.

Mr. BURTON. I think that makes sense. Mr. Rico is not going to testify today because of his fifth amendment rights. So why don't we excuse you now, Mr. Rico, you and your counsel.

And let's have the Department of Justice come up and we will swear him in right now. And then we will let the members of the panel quiz them side by side. We will stand in recess for just a moment.

[Recess.]

Mr. BURTON. The attorney for the Justice Department will come forward. If he chooses not to—because this information, for the media and for everybody, this information was given to Judge Harrington over 2 weeks ago and the Justice Department decided to let us see it last night knowing full well that we would not have time to digest everything. And so the attorney for the Justice Department will come forward now or else we will move on a contempt citation. This stuff has got to stop. I do not know what the heck is going on over there, but this is nonsense.

Let me swear in the witness, Mr. Bybee.

[Witness sworn.]

Mr. BURTON. OK, I think Mr. Tierney is next.

Mr. TIERNEY. Thank you, Mr. Chairman. Judge, let me ask some questions from another point in time in this process. While the prosecution was going on in California with respect to the allegation and what turned out to be the murder of Clay Wilson by Mr. Baron [or Mr. Barboza]. There is information that you went to California and had a visit with Mr. Barboza while he was in prison.

Judge HARRINGTON. I did.

Mr. TIERNEY. What occasioned that visit?

Judge HARRINGTON. I was sent out there by the Organized Crime Section of the Department of Justice to determine whether Baron had been set up on this charge; namely——

Mr. TIERNEY. Not to be rude but we only have 5 minutes so I want to try to get this where I want to go.

Judge HARRINGTON. Sure.

Mr. TIERNEY. And I do not get a chance to go after judges often so we get them to do what we want to do. Who contacted you and asked you to go? Who, specifically?

Judge HARRINGTON. I think it was either James Featherstone or Bill Lynch, who at that time were running the Organized Crime Section of the Department of Justice. But in view of the fact that Baron was charged with a murder and he was such a significant breakthrough in the Government's effort in organized crime, and we knew that the organization was going to retaliate against him, either kill him, as they ultimately did, or get him in trouble, our first decision was to determine whether he was in fact involved in this murder. So I went out there to speak with him to find out if this was a set up, are you being framed, or were you involved.

Mr. TIERNEY. Do you think it was a little unusual that you went out there without first contacting the prosecuting attorney involved in that murder case?

Judge HARRINGTON. I think that has been overblown. It was my intention to find out first what the situation was and then immediately report to the District Attorney's office. I had no reason not to go to him. But my main responsibility was to determine whether Baron was being framed. Here is a man who after 6 years of the Department of Justice conducting intelligence gathering but had not had one single case, we see Baron, the first witness in the Witness Protection Program, involved with being charged with murder. We had to go out and find out whether he was in fact involved. And that was my purpose.

Mr. TIERNEY. But knowing his background, it could not have been a surprise to you that he was charged with a murder.

Judge HARRINGTON. Well, I thought that after he joined the Witness Protection Program that maybe he would try to stay within the bounds of the law. It is obvious that a mistake was made. However, the Witness Protection Program was authorized by the Congress of the United States because they saw that in the long run we are going to have some failures but overall it has been an effective tool against the organized underworld.

Mr. TIERNEY. At the same time you went out to see Mr. Barboza, you did not even contact his lawyer to tell him that you were going to see him in person. Is that right?

Judge HARRINGTON. I think on that first trip I did meet with his lawyer.

Mr. TIERNEY. Before you saw Barboza?

Judge HARRINGTON. In conjunction therewith. I do not know who I saw first. I wanted to see Baron first myself. But on that, it is my memory that in conjunction with that visit I spoke with both the District Attorney and——

Mr. TIERNEY. But they may well both have been after you saw Barboza?

Judge HARRINGTON. There is no doubt I saw Barboza first.

Mr. TIERNEY. OK. At the time you went out there, did you know that the prosecuting attorney had already written to both FBI Director Hoover and U.S. Attorney Mitchell indicating his concerns about the fact that you and FBI agents might be going out there to testify in that trial?

Judge HARRINGTON. I do not know when I knew that. But I knew that the prosecuting attorney was not happy with the Government's effort to support Baron.

Mr. TIERNEY. In all of your career, on how many occasions did you testify as a character witness for a murderer?

Judge HARRINGTON. Well I never testified as a character witness. What I testified to was the extent of his cooperation with the U.S. Government. I never said that Joe Baron was a good fellow.

Mr. TIERNEY. In all of your career, how often did you testify to somebody's involvement in the program or with the Government?

Judge HARRINGTON. Well, I think it was the only so-called accomplice witness who after he had been developed was engaged in a murder trial. So I would say he was the only one.

Mr. TIERNEY. How is it the decision was made that you and the FBI agents would actually take the step of testifying for the defense in that trial?

Judge HARRINGTON. We were subpoenaed, first of all. I have my subpoena right here.

Mr. TIERNEY. Were you a reluctant witness, Mr. Harrington?

Judge HARRINGTON. I was not. I was subpoenaed because defense counsel wanted us, and, second, I was authorized by the Attorney General under explicit instructions. So my appearance out there——

Mr. TIERNEY. Did those instructions, your authorization from the Attorney General come after the Attorney General was contacted in writing by the prosecuting attorney expressing his concerns?

Judge HARRINGTON. I do not know when the prosecuting attorney wrote that letter to the Attorney General. But I was accepting my orders from the Attorney General and the Organized Crime Section. They thought it was an important effort at that time. And the reason why it was important is because we sent a signal for the first time to the underworld that the Government would abide by its commitments. And in so doing, many accomplice witnesses were developed in New England and throughout the United States.

Mr. TIERNEY. At the time you testified in that Wilson trial in California, what was your knowledge about Mr. Barboza's criminal involvement at that time? Did you have an idea of how many murders he had been implicated in?

Judge HARRINGTON. I think he was reputed to have been involved in at least 20 murders.

Mr. TIERNEY. And knowing that, it was still the determination of the Department to send you and FBI agents out to testify at that trial?

Judge HARRINGTON. It was. And it seems in retrospect different. But this was in the early days of a national governmental effort to root out a national scourge, and Baron, being what he was, was the only type of individual who would be able to provide the evidence necessary to convict major racketeers.

Mr. BURTON. Let me, before I yield to Mr. Horn, ask two quick questions. You were subpoenaed by the defense to testify. Was that after you went out to see Mr. Barboza?

Judge HARRINGTON. After I went out?

Mr. BURTON. Yes.

Judge HARRINGTON. Oh, yes. I was subpoenaed for the trial which took place I would say 6 months later.

Mr. BURTON. After. And the FBI agents, I do not know if they were subpoenaed or not, do you know about that?

Judge HARRINGTON. I am sure they were subpoenaed. I think they were subpoenaed.

Mr. BURTON. OK. So you go out and you meet with a man who is on trial for murder who has killed 26 people, and after you meet with Mr. Barboza you talk to his defense counsel, and the defense counsel knows a U.S. attorney very prominent in Boston is out there on Barboza's behalf, and then he subpoenas you. It sounds to me like you were subpoenaed because he knew you were going to be a friendly witness because you were out there seeing Barboza.

Judge HARRINGTON. There is no doubt about it.

Mr. BURTON. Yes. So you probably would not have been subpoenaed if you had not gone out there?

Judge HARRINGTON. That is true. But it was a judgment of the Department of Justice, for the reasons I gave in my opening statement, that we wished to support this person.

Mr. BURTON. Did you suggest to the defense counsel that you would be willing to be a witness if you were subpoenaed?

Judge HARRINGTON. I am sure I did.

Mr. BURTON. Ah. OK. Now the other thing I want to ask is, obviously when you are dealing with the underworld and you have an informant that is going to cooperate in exchange for leniency and you are going to put them in the Witness Protection Program, obviously you want to help them for past offenses. The big problem is he killed 26 people before that. You were out there after he was put in the Witness Protection Program and he murdered another person. If a person is in the Witness Protection Program and you have given them free rein because they are cooperating with you, have cooperated in the past, why do you excuse another murder? And how many will you excuse before you take them to task? How many times do you go to defend these crudballs?

Judge HARRINGTON. All I can say is that he was the first. He was more significant than most accomplice witnesses. He was the breakthrough. He was a very significant figure not only in the fight against organized crime, but in the establishment of the Witness Protection Program. He was somewhat unique, Mr. Chairman.

Mr. BURTON. Judge, Judge, Judge, the guy murdered 26 people. I can understand you working with him, putting him in the Witness Protection Program. But then he murdered another guy, and maybe more than that, and you are out there defending him. You got him into a prison on a 5-year sentence for a murder that was a slam-dunk murder case and then he was out in about 3 or 4 years. And when he was in prison his attorney told us yesterday he was making calls on a regular basis like he was at some country club, he was smoking marijuana while he was in there. He had the life of Riley. And he was out early. He killed this Mr. Wilson and God only knows who else he might have killed. I can understand working with these crudballs to get other crudballs higher up the food chain. But he had murdered another person and you are out there defending the guy.

Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman. We have already had exhibit No. 18 and I just want to get moving. On December 20, committee staff interviewed Judge Harrington and, Judge, you told the staff that you were not privy to the information that Barboza was providing to Rico and Condon. But 3 days ago Judge Harrington made the following statement to Boston reporter Dan Rea, that is exhibit No. 18 that we showed already, and that is, "Barboza told the Bureau, and I was informed of it, that all of the murders he was involved in, and Barboza was reputed to be in over twenty murders, he would not testify in those murders in which Jimmy Flemmi was involved." Judge, the Justice Department apparently let you review some documents between December 20th and this week, is that correct?

[Exhibit 18 follows:]

"Baron [Barboza] told the Bureau, and I was informed of it, that of all the murders he was involved in, and Baron [Barboza] was reputed to be in over 20 murders, he would not testify in those murders in which Jimmy Flemmi was involved."

PENGAD-Bayonne N J
EXHIBIT
18

Judge Edward Harrington
February 11, 2002

Judge HARRINGTON. I do not think they let me review it. They are conducting I think a concurrent investigation and they questioned me about some of these matters that this committee is. And during the course of the questioning they showed me certain documentation. One such documentation was my pros memo of 35 years ago, which when I spoke with your staff I had no memory of. But in answer to your question, I hope that pros memo is made public because it shows one thing; that as far as the Federal Patriarca case was concerned, there was an exhaustive enolization of the statute, the corroborative evidence, and the credibility of Baron with respect to that case. So I would hope that some day that pros memo is made public.

Mr. HORN. Well, I can understand that. After December 20, did you have any discussions with Justice personnel about any documents relating to Barboza more than what we know about?

Judge HARRINGTON. I do not know what you know. But they did show me some informant reports that I was unaware of back in 1967, but not for the purpose of so-called prepping me for these proceedings, but to undergo interrogation by them on the same subject matter.

Mr. HORN. Now my understanding is that the statement that was just part of exhibit No. 18, did you review the Patriarca tapes and was there any information against Flemmi? What was the statement on that, and were you aware of that?

Judge HARRINGTON. When I spoke with the FBI Task Force representative sometime in January I remember one log from the Patriarca bug which showed that Baron-Barboza and James Flemmi sought permission from Raymond Patriarca to kill Edward Deegan. I did see that.

Mr. HORN. When Barboza was interviewed were Federal officials always with him?

Judge HARRINGTON. When Baron was interviewed on the Patriarca case those statements were taken by FBI agents. When Baron was interviewed with respect to the State Deegan murder case, those statements were taken by the District Attorney's office.

Mr. HORN. Did you at that time have discussions with the Suffolk County District Attorney, I assume that is Garrett Byrne's office that you are referring to, and——

Judge HARRINGTON. I am.

Mr. HORN. And regarding the information the FBI had developed through informants and the secret Patriarca and the Angiulo listening devices regarding the Deegan murder. I think when you were going through the confirmation process to become a Federal judge you pointed to the development of Barboza as a cooperating witness as one of your major professional triumphs. Were you always satisfied that Barboza was telling the truth?

Judge HARRINGTON. I was.

Mr. HORN. We have exhibits No. 20 and 21, Mr. Chairman, that I would put into the record.

Mr. BURTON. Without objection.

[Exhibits 20 and 21 follow:]

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January 20, 1988

Senator Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Senator Biden:

This is in response to your letter dated January 12, 1988, requesting my answers to additional questions raised since the second hearing on my nomination.

Q. 1. The committee received a letter from Attorney Stephen Delinsky, a copy of which is enclosed, raising concerns about a number of actions taken by you. Please explain the circumstances of your actions in responding to the following charges by Mr. Delinsky:

(a) That as a result of prosecutorial actions taken by you as U.S. Attorney, cooperation deteriorated between federal and state law enforcement officials in Massachusetts. (In responding to this charge, it would also be helpful if you would address yourself to the events described in the enclosed column from the Boston Globe dated June 14, 1981 and the enclosed column from the Boston Herald dated September 26, 1986.)

(b) That after the Judicial Nominating Council turned down your application for a State Judgeship, you publically and privately berated Mr. Delinsky for his role in the nominating process, using extremely harsh language.

A. 1. (a) There was excellent cooperation between federal and state authorities while I was U.S. Attorney, as evidenced by the Masiello-Manzi state corruption prosecution, the historic Ward Commission hearings into corruption in the award of state contracts, the joint federal-state investigation of the notorious criminal figure Myles Connor, and the Jarabek bribery investigation. See Boston Globe article dated October, 1981. However, the federal prosecution of Richard Paul, an employee of the Attorney General's office, and the F.B.I.'s investigation of Myles Connor, an informer for District Attorney Delahunt caused some strains between the offices. I will set forth the background of each case.

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PERSCO-Bayonne, N.J.
EXHIBIT
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Sheridan, Gerrahan & Lander

Senator Joseph R. Biden, Jr.
Page 2

U.S. v. Richard Paul - As U.S. Attorney, my office prosecuted an agent assigned to the consumer protection unit of the Massachusetts Attorney General's Office for "shaking down" used car dealers under his regulatory jurisdiction. The prosecution resulted from a six-month joint F.B.I. - State Police investigation which involved the use of electronic surveillance. The case was prosecuted in the federal court after the Attorney General declined to prosecute and decided to handle the matter administratively. Paul has been a campaign worker for the Attorney General. Defendant Paul's electronically intercepted conversations contained remarks which proved embarrassing to the Attorney General and led to a deterioration in our working relationship. The defendant was sentenced to an eighteen month term of imprisonment.

Commonwealt v. Connor - This was a state prosecution against a notorious criminal figure for his alleged involvement in the double-murder of two young women who were killed because they had been witnesses to a prior murder. The investigation was conducted jointly by the F.B.I. and the Boston Police Department. As U.S. Attorney, I requested the Massachusetts Attorney General to appoint a Special Prosecutor in place of District Attorney Delahunt to prosecute the case. The reason for this action was that Connor was the District Attorney's informer and the investigative agencies believed that, because of this relationship, the District Attorney might not be vigorous in pressing the case. The Attorney General agreed with my request and appointed a Special Prosecutor to try the case. Connor was convicted at the first trial. The District Attorney and his First Assistant testified on Connor's behalf that he was not involved in the murders. I called on the Attorney General to investigate the District Attorney's role in the conduct of the double-murder investigation to determine what influence his relationship with Connor had on his less than vigorous investigative efforts. The double-murder probe had been conducted in an atmosphere of intense mistrust between the F.B.I./Boston Police Department and the District Attorney's Office because Connor had allegedly been an accessory to the murder of a Boston Police Officer and the Boston Police Department felt the District Attorney had been protecting his informer. This animosity pre-dated my becoming U.S. Attorney. It should be noted that Mr. Dalinsky testified on behalf of Connor.

I had a close working relationship with former District Attorneys Byrne and Droney (as well as then Assistant District Attorney and now Senator Kerry) and current District Attorneys Flanagan, Ryan, Conte, and Rollins. (Flanagan, Byrne, and Ryan have contacted the Senate Judiciary Committee on my behalf, as have former and current Massachusetts State Police officials Keogh and Condon.) Current District Attorney Harshbarger was not in office when I served as U.S. Attorney, but when I left office, he, as Chairman of the Ethics Commission, wrote me a note lauding my accomplishments. He also told me personally that I was his model as a prosecutor.

As a public prosecutor, I developed such significant accomplice witnesses as Joseph Baron, Vincent Teresa, "Red" Kelley, William Masiello and many others whose use as witnesses I always made available to local prosecutorial authorities. Cooperation with local law enforcement was my hallmark.

Peter Lucas' political column in the midst of a partisan political campaign reflected that all Democratic District Attorneys were supporting my Democratic opponent, which is hardly surprising. The sole Republican District Attorney, Rollins, supported me.

(b) I spoke with Mr. Delinsky on the telephone on one occasion and that was two days prior to my appearance before the Nominating Council in May, 1983. I placed this call because I had been told that he was soliciting votes against me and I did not believe this to be so. I asked him if this allegation were true and he denied it and, in fact, said that he was going to support me because "your record speaks for itself".

After my rejection, I spoke to him on only one occasion. I was standing up having a sandwich with a group of attorneys at the Steaming Kettle sandwich shop in City Hall Plaza. Mr. Delinsky came into the lower store, saw me, blushed, and immediately turned and hurriedly departed the premises. The six or seven attorneys who were conversing together laughed, including myself, for it was obvious that Mr. Delinsky was not desirous of speaking to me. In a jocular manner, I said to him as he was departing, "Steve, there's no need to run away, we're all friends here" or words to that effect.

See Boston Globe articles dated May 23, 1983 and July 18, 1983. Also see Boston Herald article dated September 1, 1983.

Q. 2. According to a report that appeared in the Boston Phoenix in June of 1981, a copy of which is enclosed, you used crude language to describe U.S. District Judge Joseph Tauro after Judge Tauro declared a mistrial in a hotly contested public corruption case that your office had been prosecuting. Please explain the circumstances of your remarks in that situation, and respond to the following additional charges made in the article:

(a) That you were well aware of a potential conflict of interest between Judge Tauro and the defendant in the case long before the case went to trial, but waited until after the mistrial in the case to move for recusal.

(b) That you provided information to the press about the potential conflict of interest between Judge Tauro and the defendant and then later promised your motion to recuse the Judge in part on the fact that the Judge's impartiality "has been questioned in the public media".

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Joseph R. Biden, Jr.

A. 2. The Kelly case was a most significant public corruption case, as it was one of the few, if not the sole prosecution to come from the celebrated Lord Commission hearings. It was a very intensely contested trial conducted over a six week period. The jury stood 11-1 for conviction after only approximately twelve hours of deliberation. I was called to the court room under the belief that the jury was returning a guilty verdict. I was met in the corridor outside of the court room by Assistant United States Attorney Macdonald and the F.B.I. agent assigned to the case who motioned me to huddle privately with them in a corner of the corridor, which I did. Mr. MacDonald surprised me by saying that a mistrial was going to be declared. I uttered an oath in a private conversation with Mr. Macdonald and the agent because I was absolutely shocked that a mistrial would be granted after such a short period of deliberation. The corridor was crowded at the time, as the trial was in a brief recess, and that is why we had to huddle in a corner where we remained to devise our argument to persuade the Judge not to declare a mistrial under the circumstances.

(a) I was not aware of any facts sufficient to lead me to believe that any potential conflict of interest existed before the case was tried.

(b) I did not provide any such information to the press. The David Wilson article caused the U.S. Attorney's office to request the F.B.I. to conduct an investigation into the matter and the motion to recuse was based upon the results of this probe. U.S. District Judge Douglas Woodlock (then an Assistant U.S. Attorney) was in charge of the probe and drafted the motion.

Q. 3. In March of 1977, several years after your service as Chief of the Organized Crime Strike Force in Boston, you appeared in court with Attorney Albert Cioffi at a hearing on reduction of sentence for a criminal defendant named Louis Catania. Catania believed that he had received a stiff sentence because of allegations that he was involved with organized crime. According to a transcript of the hearing, a portion of which is enclosed, Mr. Cioffi reported to the court that you had checked with sources in the Organized Crime Strike Force and found that there was no indication that Mr. Catania had ties to organized crime. This transcript raises a number of questions:

(a) Was the information you obtained from the Organized Crime Force about Mr. Catania confidential information or derived from confidential information? If so, was it appropriate for you to disclose the information?

(b) Did you or your firm receive a fee for your appearance in this action?

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Senator Joseph R. Biden, Jr.
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(c) Did you ever receive a fee on any other occasion to provide representation or testimony concerning an individual's links to organized crime? If so, please describe the circumstances.

(d) When you were U.S. Attorney or Chief of the Organized Crime Strike Force, did you ever provide information to a private attorney concerning an individual's links to organized crime? If so, please describe the circumstances.

A. 3. Four years after I had left the Strike Force, I was called by my then private law partner, Paul Markham, to be available to testify as an expert witness in a hearing relating to a motion to revise and revoke the defendant Catania's sentence. It was Mr. Markham's understanding, which turned out to be erroneous, that at least part of the basis for the defendant's sentence was his alleged involvement in organized crime. At that time I was one of the state's most prominent experts on organized crime and was always being called upon to lecture and comment on the subject. Mr. Markham asked me if the defendant was a member of the organized criminal element and I advised him that based on my knowledge and experience he was not as I had never heard of him. I told Mr. Markham that I would verify my personal knowledge with various sources of mine who were knowledgeable about criminal matters whom I asked if they had heard of Mr. Catania. I never received any confidential information from any source; I only learned that my sources had no information regarding the defendant, as they had never heard of him either.

(a) I did not ask for nor receive any confidential information from the Organized Crime Strike Force about Mr. Catania. No source I contacted had any information regarding him whatsoever. No source had ever heard of him. A lawyer has the responsibility to seek from all sources, governmental or others, appropriate information in order to fully represent his client and to clear him from false allegations.

(b) I did not personally receive a fee. Mr. Markham, I am sure, received a fee for representing his client.

(c) No.

(d) No.

Very truly yours,

Edward F. Harrington Jr.

Edward F. Harrington

/pw

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&
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January 29, 1988

Senator Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
Washington, D. C. 20510-6275

Dear Senator Biden:

Since I responded on January 20, 1988, to the questions raised by Stephen Delinsky's letter, the Senate Judiciary Committee has received letters from Attorney Earle C. Cooley and from the Women's Bar Association concerning my nomination. Although these letters do not appear to raise any new matter requiring a response, I submit this clarification so that the record will be complete.

(1) Mr. Cooley's Letter Although I have known Mr. Cooley for years and respect him as an attorney, our principal professional involvement has been as adversaries in intensely litigated criminal matters relating to Mr. Cooley's client, Myles Connor. While I was U. S. Attorney my office was involved in the federal bank robbery prosecution and the joint Boston Police/FBI double murder investigation of Connor. Matters relating to Myles Connor were discussed in my response to Mr. Delinsky and in the newspaper articles attached to that response. Mr. Delinsky testified on behalf of Connor in the double murder case. Mr. Cooley defended Connor in both the state and federal cases. And Attorney Alice Richmond was the attorney for Connor's girl friend in the federal case.

Mr. Cooley's letter focuses upon the government's use of witnesses involved in the Federal Witness Protection Program. Mr. Cooley and I have a longstanding and fundamental philosophic difference regarding the Witness Protection Program. It has been my belief since my involvement in the "labor-racketeering" investigations of the early 60's that the successful prosecution of organized crime requires the establishment of such a program to insure the safety of the so-called accomplice witness. The Congress, under the same belief, created the Witness Protection Program as part of the Organized Crime Control Act of 1970. The program is administered by the U. S. Marshall's Service.

The testifying accomplice witness in many cases is the pre-requisite to the prosecution of a major criminal figure because of the essential character of organized crime - the "insulation" of the "boss" from the overt criminal

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act. This necessitates the testimony of an associate of the "boss" who can provide the evidentiary link between the criminal command and the criminal act. This type of witness is rare because of the underworld's code of silence and fear of reprisal. Skilled law enforcement is ever alert to circumstances which are ripe for the development of this type witness growing out of the ever-occurring fallings-out between underworld associates, and is prepared to provide the protection detail while the accomplice witness is waiting to testify and the change of identity and geographic relocation when his testimony is completed.

I have been involved in almost every major public corruption and organized crime investigation conducted in Massachusetts from the early 60's to the early 80's and over that period I was engaged in the development of many significant accomplice witnesses. 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's part. No court has ever found fault with my handling of such witnesses.

Mr. Cooley's letter refers to three specific protected witnesses:

(a) Joseph (Baron) Barboza was the first of the major accomplice witnesses developed in this part of the county. He was the chief government witness in the successful prosecution of the syndicate leader Raymond L. Patriarca in 1968. His successful protection inspired the decision of other major accomplice witnesses to cooperate with the federal government, including Vincent C. Ierace and John J. "Red" Kelley, whose testimony had significant impact on the organized underworld in the late 60's and early 70's. Barboza's protection detail served as the prototype upon which the Witness Protection Program was established when it came into being in 1970. After Barboza completed his testimony and was released from the Program, having been relocated and provided with a new identity, he committed a homicide. Under authorization of the Justice Department, two F. B. I. agents and I provided the California Court with information relating to Barboza's cooperation with federal authorities. His punishment in the homicide case was determined by the California Court. When Barboza was released from prison after serving his sentence he was murdered gangland-style in retaliation for his testimony against organized crime.

(b) Thomas Sperrazza and Diane Wazen were associates of Myles Connor and were key witnesses in the double-murder and bank robbery cases. Sperrazza remained in prison under a new identity while he was in the witness protection program. No promise was ever made to him that he would be released from prison in exchange for his cooperation. He still remains in prison serving a life sentence.

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(e) Diane Wazen was first developed as a witness by the Norfolk County District Attorney's Office in its successful prosecution of Thomas Sperrazza for his part in the double-murder. She later testified for the Attorney General's office in the double murder case against Connor and for my office in the federal bank robbery case against Connor. She was prosecuted by the Norfolk County District Attorney's Office for her involvement in a bad check scheme. My office did not interfere with that prosecution. The extent of her cooperation with law enforcement was brought to the attention of her sentencing judge.

(2) The Women's Bar Association Letter The Women's Bar Association stated that it based its action solely on the testimony of Alice Richmond before the Senate Judiciary Committee on December 9, 1987. Apparently the Women's Bar Association did not have available to it the record of the entire proceedings, including my testimony and that of four other witnesses. This additional evidence addressed fully matters raised by Ms. Richmond. I regret that the Association acted without all of the facts. There was significant evidence presented to the Committee of my efforts to advance the cause of women in the federal court, an interest to which I have always been committed. I would have welcomed the opportunity to address the matter before the Association.

I hope this letter provides clarification concerning the letters from Mr. Cooley and the Women's Bar Association.

Very truly yours,

Edward F. Harrington

Edward F. Harrington

EFH/mr

2224M

Via Federal Express
No. 6508548832

Judge HARRINGTON. Could I make one response, sir, on your question that I do not think I fully responded to. Just Tuesday of this week in the Boston Herald Jack Zalkind, the District Attorney who tried the Deegan murder case, stated: "I never spoke with Edward Harrington with respect to this matter."

Mr. BURTON. We will come back to you.

Mr. HORN. Just one question, if I might.

Mr. BURTON. OK. Sure.

Mr. HORN. How did you learn about Barboza's statement that he would not give any information about Vincent Flemmi? How did you learn that?

Judge HARRINGTON. That was provided to me by the FBI agents who spoke with Baron very early on. My statement and my opening statement is that I never had any information regarding informants, not that the FBI did not tell me something after Baron had been turned as a witness.

Mr. BURTON. Thank you, Mr. Horn. Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman. Judge Harrington, I just asked a staff member to give you a memorandum, it is exhibit No. 15. If you will just take a moment to review it. It is entitled "AirTel to the Director of the FBI from the SAC, the Special Agent in Charge, in the Boston Office," and it is the criminal intelligence program of the Boston division.

[Exhibit 15 follows:]

3/19/65

AIRTEL

TO : DIRECTOR, FBI [redacted] F

FROM: SAC, BOSTON [redacted] P

CRIMINAL INTELLIGENCE PROGRAM
BOSTON DIVISION

The following are the developments during the current week:

On 3/12/65, EDWARD "TEDDY" DEEGAN was found killed in an alleyway in Chelsea, Mass. in gangland fashion.

Informants report that RONALD CASESSA, ROMEO MARTIN, VINCENT JAMES FLEMMI, and JOSEPH BARBOZA, prominent local hoodlums, were responsible for the killing. They accomplished this by having ROY FRENCH, another Boston hoodlum, set DEEGAN up in a proposed "breaking & entering" in Chelsea, Mass. FRENCH apparently walked in behind DEEGAN when they were gaining entrance to the building and fired the first shot hitting DEEGAN in the back of the head. CASESSA and MARTIN immediately thereafter shot DEEGAN from the front.

ANTHONY STATHOPOULOS was also in on the burglary but had remained outside in the car.

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When FLEMMI and BARBOZA walked over to STATHOPOULOS's car, STATHOPOULOS thought it was the law and took off. FLEMMI and BARBOZA were going to kill STATHOPOULOS also.

Immediately thereafter, STATHOPOULOS proceeded to Atty. Al FARESE. FARESE called the Chelsea, Mass. PD before Chelsea knew of the killing and FARESE wanted to bail out ROY FRENCH and "TEDDY" DEEGAN. Shortly thereafter the Chelsea PD found the body of DEEGAN and immediately called Atty. FARESE's office, and Atty. JOHN FITZGERALD, FARESE's law partner, came to the Chelsea PD.

Efforts are now being made by the Chelsea PD to force STATHOPOULOS to furnish them the necessary information to prosecute the persons responsible.

It should be noted that this information was furnished to the Chelsea PD and it has been established by the Chelsea Police that ROY FRENCH, BARBOZA, FLEMMI, CASESSA, and MARTIN were all together at the Ebb Tide night club in Revere, Mass. and they all left at approximately 9 o'clock and returned 45 minutes later.

It should be noted that the killing took place at approximately 9:30 p.m., Friday, 3/12/65.

[redacted]

[redacted] B

Informant also advised that [redacted] had given the "OK" to JOE BARBOZA and "JIMMY" FLEMMI to kill [redacted] who was killed approximately one month ago.

Judge HARRINGTON. I have read it, sir.

Mr. DELAHUNT. The pertinent language there is, "Informants report that Ronald Cassesso, Romeo Martin, Vincent James Flemmi, and Joseph Barboza, prominent local hoodlums, were responsible for the killing. They accomplished this by having Roy French, another Boston hoodlum, set Deegan up in a proposed breaking-and-entering in Chelsea, Massachusetts." Again, this is dated March 19, 1965. It is your testimony—let me pose the question to you, you never saw this memorandum?

Judge HARRINGTON. Never did. In fact, I just note the date was March 19, 1965. At that time, I was a trial attorney with the Department of Justice here in Washington. I came to Boston as an assistant U.S. attorney approximately 10 days later. But to answer your question, I never saw it.

Mr. DELAHUNT. But even during the course of your prosecution of Patriarca and your efforts in terms of dealing with organized crime?

Judge HARRINGTON. My memory is that I never saw this informant report.

Mr. DELAHUNT. In this case there is no reference to Joseph Salvati, there is no reference to Peter Limone, there is no reference, and if someone could help me with those that were charged with the Deegan murder, I think there are two other—Louie Greco and Henry Tameleo, there is absolutely no reference to those four individuals.

Judge HARRINGTON. Not in this informant report. But I do not think, on review of the Supreme Judicial Court's opinion in the Deegan murder case, that anybody ever claimed that Peter Limone and Henry Tameleo, major figures, had anything to do with the actual killing.

Mr. DELAHUNT. Right. Let me suggest to you that Special Agent Dennis Condon testified in the State case on Deegan. You know that Special Agent Rico and Dennis Condon worked together in tandem over a long period of time.

Judge HARRINGTON. I do know that, yes, at least during this era. I know later Mr. Rico teamed up with Mr. Robert Sheehan.

Mr. DELAHUNT. Right. In your opinion as a trial lawyer, as a judge, as a former prosecutor, this particular memorandum one would consider, in terms as it relates to Mr. Salvati, and I mention him because he is present here today, this would be considered an exculpatory report.

Judge HARRINGTON. I would concur.

Mr. DELAHUNT. And if you had knowledge of the existence of this memorandum, you, as an officer of the court, as an attorney sanctioned to practice in Massachusetts, as a member of the Department of Justice, would have disclosed this to counsel for Mr. Salvati. Is that a fair statement?

Judge HARRINGTON. I think I would have.

Mr. DELAHUNT. Because you would not have wanted to see an innocent man go to jail.

Judge HARRINGTON. There is no doubt about that.

Mr. DELAHUNT. You are aware that subsequently the former Director of the FBI for the past 6 or 7 years, Mr. Freeh acknowledged

that what occurred to Mr. Salvati was an injustice after reviewing all of the documents. Maybe you are not aware of that.

Judge HARRINGTON. I am not.

Mr. DELAHUNT. You also say in your opening statement that throughout your tenure as a Federal prosecutor you never knew the identity of any FBI informant.

Judge HARRINGTON. That is correct.

Mr. DELAHUNT. In retrospect, and, Mr. Harrington, I know things look different in retrospect, I think we all look back and maybe would have done some things different, this committee is interested in developing and crafting policy to ensure that justice is done and that the guilty are prosecuted and are removed from society if they are dangerous to society and, at the same time, that the innocent people are protected.

Judge HARRINGTON. I concur.

Mr. BURTON. The gentleman's time has expired. We will come back. We will have a second round.

Mr. Barr, I took most of your time before. Why don't I yield to you what time I had, and then we will go to Mrs. Morella.

Mr. BARR. OK. I will just take part of your time, Mr. Chairman, because I know you probably have some additional questions also.

Early this morning, Judge, we played exhibit No. 18, which was your statement to a TV reporter earlier this week that Barboza had told the Bureau, and that you were informed of it, that all the murders he was involved in, and Barboza was reputed to be in over 20 murders, but that he would not testify in those murders in which Jimmy Flemmi was involved. There was also information from the microphone surveillance that Flemmi was involved in the Deegan murder. Given the fact that the Government knew that Flemmi was involved in the Deegan murders and that Barboza was saying that he would not testify in any way that could implicate Flemmi, what was the implication of Barboza's statements? Is it not a clear implication that he was going to lie, that he would not tell the truth?

Judge HARRINGTON. Well, in review of the case called *Commonwealth* v. *Limone* that came down from the Superior Court in 2001, Judge Hinkle in that case indicated that Baron testified in the Deegan case that Flemmi was involved in the scheme. The fact that Flemmi was not named as a defendant, there could have been a lot of reasons, but I think that question should be propounded of the District Attorney who made that judgment and not an assistant U.S. attorney who had nothing to do with the case.

Mr. BARR. You have testified that you stand by your statement that you are always satisfied that Barboza was telling the truth. And yet, you have to know that he was not.

Judge HARRINGTON. I do not know that.

Mr. BARR. Really?

Judge HARRINGTON. But with respect to the case that I was intimately involved in, I am convinced that he was telling the truth.

Mr. BARR. In that case maybe.

Judge HARRINGTON. In that case. With respect to the Deegan case, I had no knowledge——

Mr. BARR. But you have testified under oath that you are satisfied that Barboza was always telling the truth.

Judge HARRINGTON. In the cases that I was involved in. But even now——

Mr. BARR. That was not the question that was just asked of you before. I do not want to speak for Mr. Horn, but I do not think he asked you if in the cases in which you were intimately involved were you always satisfied that Barboza was telling the truth. Your testimony and your confirmation and your answer to the question that Mr. Horn propounded just a few moments ago was were you always satisfied that Barboza was telling the truth, and you said, yes. Yet it seems clear I think to anybody that he was not telling the truth.

Judge HARRINGTON. I do not think that is true. I think if you review the testimony in the Deegan murder case, you will find out one thing—that Baron did not stand alone. John Fitzgerald testified. Stats testified. Glavin testified. Baron was on the stand for 8½ days. If I had to look at it just from a review of the Supreme Judicial Court's opinion, which I have done in the last 5 weeks, I have learned more about the Deegan murder case in the last 5 or 6 weeks than I have known in the last 35 years, but he was on the stand for 8½ days and he was corroborated to some degree by three other witnesses. So at this time, I am not prepared to say that Baron lied in that case. But I was not involved in it and I did not know the——

Mr. BARR. A man served 30 years for that murder that we all know he did not commit. And we know that Barboza could have testified and had testimony that could have cleared Mr. Salvati and that he did not testify that Flemmi was responsible or implicated or involved in that murder. How can you sit there and defend this guy, Judge?

Judge HARRINGTON. I am not defending him.

Mr. BARR. You are saying that you still believe that he is a truthful man.

Judge HARRINGTON. All I am saying is that I think the question would be better propounded to the individual who made the prosecutorial decision on what defendants to proceed, and not me.

Mr. BARR. When Barboza was interviewed, is it not true that Federal officials were always with him?

Judge HARRINGTON. I cannot answer that question. But I will tell you this, that I was never, I was never involved with any questioning of Joseph Barboza-Baron with respect to the Deegan murder case.

Mr. BARR. I am asking is it not true that Federal agents were always with him when he was interviewed?

Judge HARRINGTON. I cannot answer that. I do not know.

Mr. BARR. You do not know.

Judge HARRINGTON. I do not know.

Mr. BARR. Would that not be standard practice?

Judge HARRINGTON. I would think—now let me go back. I would think since Baron had been turned by Federal agents that they at least would have been there as introduction to the State District Attorney's representatives who would have taken his statement. I would think so. I was not there, but I think that would be the approved practice.

Mr. BURTON. Let me just say that we have limited time left before there is a vote on the floor. So if those members want to go and come back, we will get right back to questioning. And Mr. Barr, if you go vote, maybe you could come back and take the Chair because I am going to stay here a few more minutes, and then you can take the Chair when you get back and then go right to Mrs. Morella and then to Mr. LaTourette. We have two votes I understand.

Let me just ask you this question, Mr. Harrington. You said you do not remember much about what happened 30 years ago. This information on the duration of the trial, the State trial, did you get that from the Justice Department? Is that stuff you just reviewed just recently?

Judge HARRINGTON. No. What I did since I met with your representatives, and I met with them fairly cold on December 20, I have read all the cases regarding this, not only the Supreme Judicial Court's case in the so-called Deegan murder case, and all the motions for the new trial. So as I indicated, I am familiar with the case now; 35 years ago I was not.

Mr. BURTON. You did not follow the case? It was a pretty famous case.

Judge HARRINGTON. I followed it in the paper but I had my own case.

Mr. BURTON. I understand. But I want to go back to this one point and then we will recess.

Judge HARRINGTON. Sure.

Mr. BURTON. And that one point I want to go back to is you had exculpatory evidence that you had heard. You heard Flemmi and Barboza talking to Patriarca asking if they could murder Deegan. You could have prosecuted him for murder on that case. You knew that. I cannot believe that you say 5 months later you forgot that, because you were after Patriarca, you were after him and you heard two people talking about getting permission to murder Deegan, and you are saying you forgot that. And if you had that and you were following this case in the paper, you had to know you had exculpatory information that you were keeping from that State trial. And that really is almost——

Judge HARRINGTON. It is not exculpatory information, to tell you the truth.

Mr. BURTON. Why wasn't it exculpatory?

Judge HARRINGTON. Because it was consistent with my general understanding of the prosecution that it was a sanctioned hit.

Mr. BURTON. Yes. But do you mean to tell me you do not think the defense counsel for Mr. Salvati and others would not have been able to make a stronger case if two people that were not on trial were brought forward, Mr. Barboza and Mr. Flemmi?

Judge HARRINGTON. It was available to them. It was.

Mr. BURTON. Well even though it was available to them, they may have been tied in with the mob themselves. Who knows? How do you know it was available to them?

Judge HARRINGTON. Because under court order in the Patriarca case the two defense counsel were provided access to the logs so that they could move later for a motion to dismiss the Patriarca case because it was tainted. That would have been the ground.

Mr. BURTON. How do you know that everything was made available? Did you see it? How do you know?

Judge HARRINGTON. Because I participated in the trial. I think the court allowed—I think the court, and I was so advised by the FBI when I talked with them, that the trial court in the Patriarca case made the logs available.

Mr. BURTON. Who told you that, Condon?

Judge HARRINGTON. No. The Task Force who I spoke with just in the last several months.

Mr. BURTON. Oh, they told you that.

Judge HARRINGTON. They told me during the course of their inquiry.

Mr. BURTON. I see. Why was the Patriarca case different than the Taglianetti case?

Judge HARRINGTON. In Taglianetti, the only thing that was made available in Taglianetti was a certain segment of the so-called Patriarca logs. They were made public. The Taglianetti case was tried in Rhode Island. I had nothing to do with that. With respect to the Patriarca case, since it was well known that the FBI had illegally bugged Patriarca's office, in order for the defendants in the Patriarca case to file a motion to dismiss or a motion to suppress, they were allowed by the trial counsel in the Patriarca case to have complete access to all the logs so that they could bring a motion to dismiss or suppress. And they had it.

Mr. BURTON. Well, I think we need to find out if those logs were made available to the defense counsel. If they were and it was not brought up in the case, there has got to be something funny that went on there, otherwise why would they not have brought that up. And the other thing is there is still one issue that I do not think is going to be resolved, and that is you had this information that Barboza and Flemmi were involved in that hit, you had information that Patriarca gave his consent for the hit, and you were reading all about this in the paper and nothing was ever said by you that might have helped keep these guys out of jail for 30 years.

Judge HARRINGTON. It was consistent. It showed it was a sanctioned hit.

Mr. BURTON. Yes, but you did not know that all these four people were involved in the hit. You knew that Barboza was and you knew that Flemmi was and that was never brought out in the court. You knew that information and you knew Patriarca gave his OK and you were trying to nail this guy to the wall. Why were Patriarca and Flemmi not involved in the prosecution?

Judge HARRINGTON. That is the question that should be asked to the District Attorney who was involved in the murder prosecution. If I had known, if I had remembered the reference to Patriarca in the Deegan murder case, I would have asked Garrett Byrne. But I am saying that establishes that 5 months later that one reference or two references in the logs I had completely forgotten. I would have loved to have seen Patriarca charged with the murder case.

Mr. BURTON. Your whole purpose was to nail Patriarca to the wall. And here you have him giving authority to kill somebody and you are telling me that 5 months later you forgot that? I cannot understand how you could forget that. Anyhow, we will talk about that later.

We stand in recess. We will be back in about 15 minutes.

[Recess.]

Mr. BURTON. We will reconvene the committee.

Mr. LaTourette, we will recognize you for questioning.

Mr. LATOURETTE. Thank you very much, Mr. Chairman. Mr. Bybee, when we were chatting with Judge Harrington earlier and he talked about a pros memo from 1967, and we can explore with him later whether he read it from page to page or whether he was just shown it and reviewed it, but anyway it appears that the Task Force has shared this prosecution memo from 1967 with Judge Harrington in the course of an investigation. Are you familiar with that set of facts?

Mr. BYBEE. Yes, I am.

Mr. LATOURETTE. OK. Are you aware whether or not the Justice Department Task Force investigating this issue has reviewed any of the 10 other documents, deliberative memoranda that are being withheld currently from this committee by the Department of Justice?

Mr. BYBEE. I cannot comment on matters that are under open investigation, Congressman.

Mr. LATOURETTE. OK. So you are not answering the question. You are saying that you are prohibited somehow from answering my question?

Mr. BYBEE. Well I think it would be inappropriate for me to comment on matters that are under open investigation by the Joint Task Force.

Mr. BURTON. Excuse me. Would the gentleman yield just a moment?

Mr. LATOURETTE. Certainly.

Mr. BURTON. Now we have been trying to get these documents for a long time and you are now hiding behind this is under investigation so we cannot see those documents. Is that what you are saying?

Mr. BYBEE. No, Mr. Chairman, that is not what I am saying.

Mr. BURTON. Well we got one document yesterday.

Mr. BYBEE. Yes.

Mr. BURTON. Why did we see that?

Mr. BYBEE. Because the committee gave a demonstrable effort to the administration for the need for that document.

Mr. BURTON. We did not ask for review of the document first. We said we wanted to see the document and you let us see it. Now you are saying the other nine documents that we subpoenaed we cannot get because it is under investigation.

Mr. BYBEE. No.

Mr. BURTON. They were all 10 subject to the investigation.

Mr. BYBEE. Mr. Chairman, I believe you have asked a different question than what the Congressman asked me, at least I answered the question I thought he asked me. I will be happy to answer your question. With respect to the remaining nine documents, Mr. Chairman, we will be happy, and we have indicated in repeated letters to the committee, the administration will be happy to sit down with the committee and discuss your need and our interests in those documents. That process would be a very salutary

process for both of us in trying to accommodate the needs of the committee. And those are our instructions from the President.

Mr. BURTON. Well, we will have to talk to the President about that. Because those documents we want to see, we do not want your interpretation of them.

Go ahead, Mr. LaTourette.

Mr. LATOURETTE. Thank you. Mr. Bybee, that actually leads to my next question. I understood your response about the Task Force. But the executive privilege that the President claimed on December 12th, he said he has decided to assert executive privilege with respect to these documents and to instruct you "not to release them or otherwise make them available to the Committee." You are aware of the Order of the President of the United States to the Department of Justice?

Mr. BYBEE. Yes, I am.

Mr. LATOURETTE. Well yesterday, as the chairman indicated, the Justice Department shared with our staff 1 of those 10 documents. And my question to you is, is it your understanding that the President of the United States has withdrawn his executive privilege claim as to these 10 documents?

Mr. BYBEE. No, Congressman, the President has not withdrawn his claim of executive privilege. In that same letter, Congressman, the President also instructs us, consistent with separation of powers, to meet with the committee and to try to accommodate our mutual interests. And we have been prepared to meet with the committee to sit down and discuss what your needs are for these documents and see if we can work something out.

Mr. LATOURETTE. Mr. Bybee, I do not have any difficulty with that and I favor meetings and I have met with representatives of the Justice Department. I think meetings are great things. But I am not one to parse words and I really am interested when the President of the United States instructs you not to release them, I understand you have not released them, but you are not to otherwise make them available to the committee, isn't that what you did last night?

Mr. BYBEE. Well, again, with respect to one document as to which we felt that the committee had demonstrated its need, we shared the document with the committee. It was not left in the committee's possession, it was shared with you last night.

Mr. LATOURETTE. And you believe that that activity does not otherwise make it available to the committee in contravention of the President's executive privilege claim?

Mr. BYBEE. That is the way that the Executive has historically accommodated the committee.

Mr. LATOURETTE. OK. Now again in response to the chairman's question, Assistant Attorney General Bryant, who I think was with us last week, states that "the Committee has now demonstrated a particular and critical need for access to the Harrington memo and that satisfies the constitutional standards." Can you explain to us what it is that we all did on the committee that all of a sudden we are able to meet this high bar that we were not able to meet a week ago?

Mr. BYBEE. It is a combination of different things, Congressman, including the chairman's letter to the Department of Justice this

week that indicated the witness that was coming forward and demonstrated—I can pull the letter here—but there was language in there that satisfied us that you had a particularized need for that document. And we indicated to the committee that on that basis we were willing to meet with you.

Mr. LATOURETTE. And the fact that Judge Harrington was going to appear today, is that what distinguishes this memorandum from the nine documents that we have requested?

Mr. BYBEE. Well, that would be a contributing factor. It would not be the only factor.

Mr. LATOURETTE. Can you tell us what the other factors are so we can try in this committee to satisfy whatever this high standard is?

Mr. BYBEE. Congressman, we will be happy to meet with you and talk with you about those remaining documents and about the interest of the committee in those.

Mr. LATOURETTE. Well, I have to tell you, Mr. Chairman, I would hope that you would draft a letter to President Bush because in my mind this says that they are not supposed to make the stuff available and they have now made some of the items available to us based upon a showing that I cannot find a difference between the showing that you might have made in this letter, it must have been a great letter you wrote last week, because I do not see any difference between our needs this week and last week. And I think what I expressed last week, in an unartful way, and I apologize for being coarse in my language last week, but it occurs to me what has occurred is that we do not have the President of the United States making the decision, we have assistant attorneys at the Department of Justice figuring out when it is the U.S. Congress has satisfied the requirements of the President of the United States.

I am at a total loss to figure out how that fits under any scheme that is appropriate. And I would hope you would perhaps contact President Bush and ask him to look into this matter for us. I thank you for your courtesy.

Mr. BURTON. If the gentleman would yield the balance of his time to me. Let me just say it was not until it became apparent that Judge Harrington was going to be here and you folks at the Justice Department had already shown Judge Harrington the document in question that you probably knew that we might find out that you were showing witnesses before this committee information that you would not share with the committee and that would have been embarrassing as the dickens to you, wouldn't it?

Mr. BYBEE. Mr. Chairman, the Joint Task Force is conducting an investigation of the matters surrounding the handling of FBI informants in Boston.

Mr. BURTON. Right.

Mr. BYBEE. Judge Harrington evidently, I am not part of that Task Force, is relevant to that investigation. They are talking with him on their schedule.

Mr. BURTON. Well they went up and they gave Judge Harrington access to the document that you gave to us last night.

Mr. BYBEE. Right. It was the——

Mr. BURTON. Now you do not think it would have been embarrassing for the committee to find out today that Judge Harrington

reviewed these documents that you would not give to the committee because the President said that it should not be given to anybody because of the national interest, you do not think that would have been embarrassing?

Mr. BYBEE. Mr. Chairman, in the course of the Joint Task Force investigation, they showed Judge Harrington a document that he had authored.

Mr. BURTON. Yes?

Mr. BYBEE. That is a responsible way for prosecutors to behave in refreshing the recollection of people that they are interviewing.

Mr. BURTON. You guys just really get to me, I swear. It is funny. [Laughter.]

You know, do you want me—you just tell me whether you want me to do this or not because I am willing to do it—do you want me to get all the Democrats in the House and about 30 Republicans to move a contempt citation against the administration to force you to give us these documents? Do you want me to do that?

Mr. BYBEE. No, Mr. Chairman.

Mr. BURTON. Well that is what we are going to do if you do not give us the documents. I do not know what is wrong with you guys. We are responsible for the oversight of the executive branch, all areas of the executive branch. And you guys are not above congressional scrutiny. Now we have put an innocent man in jail, our Government, for 30 years for a crime he did not commit and you do not want us to find out why. And I want you to know we want to see those documents.

We subpoenaed documents 6 months ago and last night you dumped several thousand pages of documents on my chief counsel's desk expecting us to go through those last night I suppose. Well we did not have time, obviously. And you gave us this other document to review yesterday and we did not have time to really scrutinize that like we should. So we are going to and we will probably haul you guys back up here again. And I do not know why you want to go through this. Let us see the documents.

Now if there is something there that you think should be hidden from the American people or the Congress, then you have got a problem. I mean, an innocent man and possibly other innocent people across this country were put in jail. Now we found out that there was a guy in Rhode Island that was put in jail for 18 years by the Federal Government for a crime he did not commit. We found out Mr. Salvati was put in jail for 30 years for a crime he did not commit. There were other people that got the death penalty—the death penalty—which was commuted to life in prison for crimes they did not commit. Now granted, those guys may have been crudballs associated with the Mafia, but they did not kill Deegan. They got the death penalty. We want to find out if there are other people in this country that are incarcerated or have been put to death by the Justice Department for crimes they did not commit. And you guys are obstructing justice, in my opinion, by not giving us those documents.

Now if you want to go through this week after week for the next year, then you can do it. And if you want me to go to the floor of the House and have to fight with my own party, a lot of the people in my own party to get these documents, I am willing to do that

as well. Now I do not think you want to do that. You guys are nuts. In fact, if you have any doubt, ask these gentlemen right here if I can get every Democrat to sign this. Ask them. And I will tell you how many Republicans I can get to sign this thing to force this issue to the floor.

Are you ready, Mr. Tierney?

Mr. TIERNEY. Thank you. I am not going to spend a lot of time with you, sir, because I just think what happens is we get from the Department a bunch of professional witnesses up here to stonewall on what I think is a ridiculous claim of executive privilege that is nonsense. I think the chairman has made it clear pretty much where that is going and we will deal with that another time. But we do have with us this morning Judge Harrington and I think we will take this opportunity to continue to question him.

Judge, what is it about Barboza's background that you shared with the prosecuting attorney in the Clay Wilson case when you went out there before the trial?

Judge HARRINGTON. With the prosecuting attorney?

Mr. TIERNEY. Right.

Judge HARRINGTON. I think, again, I think what I shared with him what I testified to on my approximately 10 minutes on the stand; namely, the extent of his cooperation with prosecuting authorities in their effort against organized crime.

Mr. TIERNEY. Did you tell him that he was implicated in some 20-odd other murders elsewhere?

Judge HARRINGTON. I do not know if I told him that but I think it was understood that he was a hit man for the Mafia.

Mr. TIERNEY. And you would not have gone into detail with him about all of the background you had on this individual knowing he is prosecuting the guy for murder?

Judge HARRINGTON. Again I am drawing on my memory, but I think it was understood that he was a professional killer. But it was the judgment of the Department of Justice at that time that more important than professional killers were those leaders of the organization who could reach out and, if Baron was not around, there would be other professional killers to carry out their contracts.

Mr. TIERNEY. You knew all the evidence that had been compiled against Barboza in the Wilson case. You knew how strong a case that was against him?

Judge HARRINGTON. I have to admit I knew he was involved in killing Wilson. I think his defense was self-defense. I did not go into the details of that murder case because my involvement as a witness was very limited.

Mr. TIERNEY. So you are saying it would not have mattered to you one way or the other. This guy had an incredibly strong case by his own attorney's account against him in a prosecution for involvement in this murder. Knowing that you are going out there with a couple of FBI agents to testify, you do not think it is important as to whether or not your testimony might help him get off from that charge or not, or was it in fact the purpose of going out there to help him get off or get lighter treatment in that charge?

Judge HARRINGTON. Our job was not to get him off. Our job was to fulfill our commitment on a singular witness, a person who

opened up for Federal authorities, their assault on the underworld for the first time in the history of American law enforcement.

Mr. TIERNEY. Regardless of the consequences?

Judge HARRINGTON. Regardless of the nature of Baron. If Baron was not a serial hit man, if would not have been invaluable to prosecuting authorities.

Mr. BURTON. Will the gentleman yield briefly.

Mr. TIERNEY. I will yield to the chairman.

Mr. BURTON. Let me say, you say you thought it was self-defense——

Judge HARRINGTON. No, I did not say——

Mr. BURTON. You say you thought it might be self-defense. He was shot in the head, he was buried under a stump, and Barboza allegedly made love to his wife right after the murder. I mean, this guy is an animal. And you are out there and you said you were told it might be self-defense. Bullet holes in his head, buried under a stump, and his cellmate tells exactly where the guy is, exactly where he is buried, how he was shot and killed, and what he was wearing.

Judge HARRINGTON. I did not say I thought it was self-defense. I said that his defense was self-defense.

Mr. BURTON. And you were out there defending him.

Judge HARRINGTON. I was. But, Mr. Chairman, with the authority of the Attorney General of the United States.

Mr. TIERNEY. So let me follow that for a second. The Attorney General of the United States knows that this guy is a serial murderer, knows that he is on defense for a murder that more than likely he committed because of all the circumstances the chairman stated, and you are telling us he then instructs a member of the Justice Department and two FBI agents to go and testify on behalf of this individual?

Judge HARRINGTON. That is true.

Mr. TIERNEY. OK. And to your knowledge, did the Director of the FBI also know that this was the scenario that was unraveling?

Judge HARRINGTON. I am sure he knew his two agents went out.

Mr. TIERNEY. Further, did the attorney for Barboza in that Clay Wilson murder case give you any reason to believe that Barboza might not have committed the crime other than this wild assertion that it was self-defense?

Judge HARRINGTON. It was my understanding from talking with the attorney that he was involved in the killing but his defense was self-defense.

Mr. TIERNEY. You did not have any doubt the guy had murdered him, had you? I mean, you knew the guy murdered Wilson.

Judge HARRINGTON. I knew he killed him. I did not want to evaluate his defense.

Mr. TIERNEY. When you met with Barboza in California before you talked to the prosecutor, before you talked to Mr. Miller, his defense attorney, what transpired in that jail cell?

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.

Mr. TIERNEY. Now did you report that back to the Director of the FBI, or your superiors, or John Mitchell, or anybody else that this guy that you have me going out there to testify for is a cold-blooded murderer and he is guilty of this one too?

Judge HARRINGTON. They all knew it. That is why he was important. He was a cold-blooded killer for the Mafia. That is why we used him.

Mr. TIERNEY. When you were with Barboza in that jail cell prior to his trial in the Clay Wilson case, did he tell you that if you and the FBI guys or if the Government did not do something for him in that trial he was going to rescind his testimony or recant his testimony in the Patriarca or other New England cases?

Judge HARRINGTON. He did not.

Mr. TIERNEY. Did you have that fear?

Judge HARRINGTON. No. But I will tell you this. I always knew that it was a possibility for the reasons I said in my opening statement; namely, they tried to bribe him, he could not make a living on the outside so he had to curry favor with the mob, and I think that if he offered to recant falsely that it might keep him alive. But it did not keep him alive too long. He paid the penalty for cooperating with the U.S. Government.

Mr. TIERNEY. Are we going to have another round, Mr. Chairman?

Mr. BURTON. We will have another round.

Mr. TIERNEY. Fine. I will stop here then.

Mr. BURTON. Mr. Horn, are you prepared or do you want to wait a minute?

Mr. HORN. Thank you, Mr. Chairman. Let's go into after the acquittals in the Rocco DeSeglio murder trial. After the acquittals there, did you have any concerns regarding Barboza's credibility?

Judge HARRINGTON. No. I think an evaluation of the DeSeglio murder case at the time depended primarily on the technical ground of venue. I think the jury was charged that the murder had to have been completed in one county—and the information was that Baron testified very strongly in the DeSeglio case—but it was on a technicality that an acquittal was rendered because I think the jury found that the killing had taken place in a county other than Suffolk. That is my memory at this time, sir.

Mr. HORN. If so, were any steps taken to make sure Barboza's testimony was corroborated in the upcoming Teddy Deegan and William Marfeo murder trials?

Judge HARRINGTON. With respect to the Federal Marfeo case, he was corroborated. And although, again, I had nothing to do with preparing him for trial in the Deegan murder case, from reading the opinion in the Supreme Judicial Court's opinion in the Deegan

murder case three other individuals testified in support of Baron's testimony, namely, attorney John Fitzgerald, Stathopoulos, an individual who was there the night of the murder of Deegan, and another individual by the name of Glavin. So there was some—and it just comes to mind, in the Boston Herald of Tuesday of this week when the attorney who prosecuted the Deegan murder case said that he had no conversations with me with respect to that matter, he also said that it was his judgment that Baron was strongly corroborated in the Deegan murder case. That was his testimony Tuesday of this week.

Mr. HORN. Since Barboza's testimony resulted in the acquittal of all of the defendants in the DeSeglio murder trial, did you have any concerns on using Barboza as your principal witness at the William Marfeo murder trial?

Judge HARRINGTON. Not at all because the Marfeo Federal trial was a solid case. It was solid not only because Baron was corroborated, but there were references in the so-called Patriarca logs which tended to corroborate him. We felt very, very strong on that Federal case. And my prosecutive memo which was approved by the Criminal Division of the Department of Justice proves that the Department of Justice thought that Baron's credibility in that case was very strong.

Mr. HORN. Now, as I gather the history of it, the New England Mafia, and others being the Deegan and DeSeglio murder trials, Barboza was an unindicted co-conspirator whom they allegedly tried to hire as the hit man to kill Marfeo. Unable to use the information obtained from illegal wiretaps of Patriarca's headquarters in Providence, the prosecutors had to rely on the testimony of Barboza to obtain a conviction. Is that your recollection?

Judge HARRINGTON. That is true. That is true.

Mr. HORN. And there are quite a few here. You have got the prosecution team along with yourself, Markum, Walter Barnes, and Paul Rico and Dennis Condon were the two FBI agents largely responsible for convincing Barboza to testify in this case. On March 4, 1968, a jury found Patriarca, Tameleo, and Cassesso guilty and a few days later they were each sentenced to 5 years in prison and a $10,000 fine. You helped prosecute Patriarca, Henry Tameleo, Ronald Cassesso for their involvement in the William Marfeo murder. Is that accurate?

Judge HARRINGTON. It is. It was a conspiracy to murder. The reason it was a Federal case is that, unlike the Deegan murder which was carried out, the Marfeo case did not result in a murder of Marfeo at that time. It was merely a conspiracy to travel interstate to kill Marfeo and that is why it was tried in Federal court.

Mr. HORN. Barboza was not indicted for his involvement. What deal was Barboza given in exchange for his testimony?

Judge HARRINGTON. Part of what he was granted was he was named I think as an unindicted co-conspirator. He was not named as a defendant. We made the promise that the extent of his cooperation would be brought to any sentencing authorities. We also assumed the responsibility of after the termination of his testimony that he would be relocated, provided a job, and obtain a new identity. And that process formed the basis for the Witness Protection

Program which was later endorsed by the Congress of the United States.

Mr. HORN. The Marfeo trial was really important, as our records seem to show here. Raymond Patriarca was one of the highest ranking Mafia bosses ever to be tried. The lead counsel in the case said, "If we did not win, it would be all over." And that was exhibit No. 25, Mr. Chairman, to put in the record. If everything depended on Barboza, you must have been very attentive to what was in the Patriarca tapes and logs to make sure Barboza was telling the truth; is that correct?

[Exhibit 25 follows:]

Patriarca, 2 Others Guilty; Face 5 to 15 Years

AM GLOBE MAR 9 '68

By ROBERT J. ANGLIN
Staff Reporter

Reputed New England Cosa Nostra chieftain Raymond L. S. Patriarca and two codefendants were found guilty by a Federal Court jury Friday of conspiracy to murder.

U.S. Atty. Paul Markham called the verdict, reached after four hours of deliberation, a significant breakthrough in the battle against organized crime.

Markham said the jury "obviously believed, and believed 100 percent, the testimony of Joseph (Barbosa) Barbo," gangland enforcer turned informer who was the prosecution's key witness.

Markham said also that Baron's inside knowledge of the underworld will be the basis of future trials of racket figures, although he said no such cases are pending.

Patriarca, 59, of Providence; Ronald Cousens, 36, of Somerville, and Henry Tameleo, 65, of Cranston, R.I., were convicted of conspiring to kill Willie Marfeo, 41, of Providence.

The defendants face maximum sentences of five years in jail and fines of $10,000 on each count of the indictments. Tameleo was charged with three counts, Patriarca with two and Cassesso one.

Baron testified that he and Cosgrove were asked in 1965 by the other two men to "whack out" Marfeo because he would not heed Patriarca's order to close down a dice game that was attracting too much police attention to the Federal Hill section of Providence.

U.S. District Court Judge Francis J. W. Ford set Mar. 25 for sentencing. Counsel for all three said they will appeal.

The defendants, who had remained impassive throughout the five-day trial, registered little emotion as the jury foreman, Neil Wallack of Malden, announced the verdicts on each of the counts.

Patriarca, who said later, "I'm an old man," leaned against the railing in front of the bar enclosure, gripping it with both hands with such force that his knuckles turned white.

Asked if he had any comment, he half-smiled and replied: "No comment, sir."

Patriarca was called before a U.S. Senate investigating committee in 1962 as the Cosa Nostra head in New England, and Tameleo was named as his lieutenant and a member of the gangland organizational "Mafia Island council."

Judge Ford allowed Patriarca to remain free on $25,000 bail. When Markham asked that bail be discontinued, the judge answered: "Motion denied. Bail continued. Case dismissed. Next case."

Cosgrove is serving a 5-to-10-year sentence in Norfolk Prison, mostly for armed robbery. Tameleo is held without bail in Charles Street Jail awaiting trial in Suffolk County on charges of conspiring and lifting an accessory in the slaying of Edward M. (Teddy) Deehan, 26, of Everett in March 1965.

Baron is scheduled to testify at this trial, also.

Seated in the front row of spectators as the verdicts were read were the two men largely responsible for convicting Barbo to sell all he knew about his gangland associates—Federal agents Paul Tiko and Thomas Condon.

Markham cited the two men for having performed "a great job."

"It's great to win a big one," he added.

"If Baron's credibility has been established."

"The case in the main depended on his testimony. The jury obviously believed him, believed him 100 percent.

"It was a significant victory."

Asked how the outcome of the trial would affect the government's battle against organized crime, he replied: "To put it in a negative way, if we didn't win it, it would be all over."

Atty. Walter T. Barnes, who with Atty. Edward Harrington of Markham's staff did much of the work of preparing for the trial, said: "We can't overemphasize the importance of this case."

Barnes is a staff lawyer of the U.S. Department of Justice's organized crime section.

Harrington said: "Because of these convictions there may be more information coming to us, and because of this there may be further cases developing."

The 12 male jurors deliberated four hours before returning their verdicts shortly before 2 p.m.

Before going to the jury room, they heard an hour-long instruction on points of law from Judge Ford.

The defense team of Attys. Joseph J. Balliro for Tameleo, Ronald Chisholm for Cosgrove and Charles Curran for Patriarca rested their case Thursday without calling any witnesses.

Judge Ford told the jury that Baron could be considered an accomplice in the alleged conspiracy. He was not a defendant in the indictments.

"The testimony of an accomplice should be received with caution and scrutinized with great care," the judge said.

"You may convict a person charged with a crime without corroboration, but only if you believe that the testimony of the accomplice is true.

"It is your domain to make a determination of the facts and draw a reasonable inference from those facts.

"You may apply your own test to the credibility of witnesses. Rely on appearance, consistency, self-interest, gender of, lack of candor, bias or prejudice, accuracy and reasonableness."

Baron had testified that he agreed to kill Marfeo at Patriarca's request and to do so for nothing because it would be good business to ingratiate himself.

He said the slaying was postponed in 1965 because the police became aware of the dispute between Marfeo and Patriarca.

Marfeo was shot to death in a restaurant a year later.

He said that he and Cosgrove agreed to murder Marfeo at no charge in order to ingratiate themselves with Patriarca and Tameleo.

Baron said Patriarca wanted Marfeo murdered because Marfeo had refused to do Patriarca's bidding and shut down his dice game on Atwells Ave. in the Federal Hill section of Providence.

Baron said Marfeo's continued operations had brought too much "heat" from the police.

Patriarca and Tameleo were named before a Senate Investigating Committee in 1962 as ranking members of a criminal organization known as the Cosa Nostra.

Cosgrove is currently serving a 8-year sentence at Norfolk Prison Colony for armed robbery.

EXHIBIT
25
PENGAD Bayonne, N.J.

Baron's Past Record Bared by Defense Counsel

BOSTON SUNDAY ADVERTISER, JANUARY 14,

This is the testimony given Saturday in Suffolk Superior Court in cross-examination of Joseph (Barbosa) Baron who is standing trial charged for the four defendants.

Questioning the witness, at the start of the day's session, was Atty. Albert Hutton, Jr., representing Marlon Lepore.

Baron testified he made two phone calls at about a half-hour interval, about 4 p.m. on June 16, 1966 (date body was found). They were to a Logan exchange from a pay phone in Chimbim's bar. He didn't recall the exact Logan number.

★

Q — Was the voice that answered the phone that Officer Favorito? A—I asked for Officer Favorito and spoke to him.

Q—Did you talk to him on the phone on other occasions? A — I don't think so. On this occasion, I talked to him only for 10 seconds—very briefly.

Q—Did you, on either occasion, put a handkerchief over the telephone to disguise your voice? A—Yes, on the second occasion.

Q—How long did you talk to Officer Favorito on the second occasion? A—Forty-five seconds to a minute.

Q—What did the conversation consist of? A—I told him that it would be worth your while to go to the wooded area in Danvers to a road in the woods. You'll find something in a car.

Q—You wanted to relate this information directly to Officer Favorito rather than some other officer? A—Yes.

Baron said at some time someone from the Suffolk County District Attorney's office talked with him and that they came to him, rather than he going to them.

★

Q—No one came to you from the Essex County District Attorney's office, did they? A — No.

Q—You do not like Atty pending indictments in Essex County, do you? Asst. Dist. Atty. John A. Pino jumped to his feet and objected to this question. The Judge excluded it with the comment, "It is obviously inadmissible." But before Pino could make his objection, Baron had answered "Yes".

Q—Did anyone ever tell you that the crime happened in Topsfield? A—No.

★

Q—You know that you had to tell them that the crime happened in Suffolk County to accede to the district attorney's office to become involved. Didn't you? Pino again objected to the question and it was sustained.

Q—Was there ever any talk as to whether this crime happened in Suffolk County or Essex County? A—I don't remember. Them saying that it happened in Essex County? I don't remember them saying they had any thoughts about where it happened.

Q—Did you read in the newspapers that the victim had black gloves on before you told anyone about it from the district attorney's office? (Pino objected. The judge at first excluded it, then decided to allow it.) Baron answered, "Yes."

★

Q—Did you also read in the same article that the body was found in Topsfield? A—Yes.

Judge Hudson then warned counsel that the article referred to could be introduced as an exhibit, because the defense introduced it into testimony.

Ralph again told the jury that he didn't talk to anyone from Suffolk County, that District Atty. Garrett H. Byrne's men came to him.

Q—Was there any talk when you were interviewed by some one from Suffolk County about driving from East Boston to Topsfield with bullet holes in the windshield. A—I think I mentioned that. I either heard it or read it in the newspapers that glass was sprayed on the top of the hood.

★

Q—At the time you spoke with the district attorney's office did you have information from a source that there were particles of glass sprayed in front of the car when it was found in Topsfield.

A—I thing I heard it or read it. I don't know which.

Defense counsel Hutton read into the record 12 indictments that Baron — then known as Barbosa — pleaded guilty to in Bristol County as a teenager.

★

Hutton ended his cross-examination after submitting the indictments as exhibits, whereupon Judge Hudson ruled that he would be admitted for reference purposes only, and would not go to the jury for their deliberation. He admonished the jury that they were being instructed for that limited purpose only, and had been offered notice to affect the credibility of the witness, and the jury only had the right to judge whether the reading of the indictments affected their belief in the witness or did not.

Atty. Dist. Atty. Pino then began his re-direct examination of Baron.

★

Q—Now, you were visited by law enforcement people in March of April of 1967 at Walpole? A—Yes, in March.

Q—And who were they? A—FBI agents (Dennis) Condon and (Paul) Rice.

Q—Did they come to talk to you about this case or other matters? A—Other matters.

Q—And did any member of the district attorney's office come to see you at Walpole? A—No, sir.

★

Q—And whether you were asked if you would talk to men from the district attorney's office? A—Yes sir.

Q—And were you visited later by members of the district attorney's office and they talked to you? A—Yes, sir.

★

Q—Whom did you speak to from the district attorney's office? A—Mr. Fallon (Capt. Joseph Fallon) the first time.

Q—And other times? A—Mr. Doyle, John Doyle.

Q—And you were also being visited by Condon and Rice. A—Yes.

Who made promises to you?

Q—The FBI and the D.A.'s office made promises to you? A—Yes.

Q—And what were those promises made to you? (After objections from defense counsel, Judge Hudson ruled Baron could answer on the matter of the district attorney's promises, but not any that might have been made by the FBI).

★

Q—Did either Det. Doyle or Mr. Fallon from the D.A.'s office make a promise to you?

A — Well my conversation, through my testimony, would be brought before a judge in the disposition of my cases and that was all that they could do. They couldn't promise the judge would do anything.

Q — Mr. Baron, will you please explain what you mean when you say the truth, more? A—Well, it's a sort of a thing for a financial gain.

Q—Would you be a little more exactly in your answer? A—Well, it is usually used by guys going out and stealing some money.

Q—The name of Brennan was brought out during cross-examination. Did you know him? A—Very well. He was a dear friend.

Q—And where is he today? A—He was murdered! He is dead!

Q—And where is he today? A—He was murdered! He is dead!

★

All defense counsel came to their feet, demanding that the questions and answers be stricken from the record. There was so much noise that one lawyer, Atty. Lawrence O'Donnell did not hear Judge Hudson rule that he would allow the answers to stand only as to the fact that the two men were dead, not murdered, that is the fact the two men were named and were said to be dead could not be taken in any way as evidence against any of the four defendants.

O'Donnell missed this, because he was shouting, too, and he finally said:

"I would suggest that Mr. Baron is the only best authority on murder."

Hutton replied angrily:

"Will you please yield to me, sir!"

Order was finally restored and O'Donnell was asked what he wanted to say. It developed that he wanted Hutton to instruct the jury as the judge had actually done.

Q—You testified yesterday the one thing you had to gild was your freedom. Can you tell us what prompted you to testify in open court regarding the death of Robert DiNaglio?

The question was objected to, a bench conference was held and then a long recess.

After recess, the judge excluded the question.

Baron was taken under re-direct examination by Pino.

Q—Are you testifying here in court to the truth as you know it?

A—Certainly.

Q—Does the fact that there are cases pending against you have anything to do with the truth of your testimony in this case?

A—No.

Q—You testified the other day that you had decided to tell your story in open court for your peace of mind. Just what did you mean by that?

★

Baron started to answer and the defense objected. Atty. Hutton moved for a mistrial. Judge Hudson snapped at Hutton. "If Assistant defense counsel the other day not to make motions of that nature in open court."

Hutton said "I apologize your honor."

The Judge then cautioned the witness not to answer when objections were made by defense counsel.

cont.

Pino—During your previous testimony you were asked what your frame of mind was while you were incarcerated and you told us you were thinking about getting out of jail. Were there other things on your mind? A—Yes.

Q—What was on your mind? Before he could answer, objection was made and the question was excluded.

★

Q—Did you receive any messages regarding the welfare of your family while you were in jail?

Another objection was made and the question was excluded.

Q—Do you remember talking to the district attorney of Suffolk County?, A—Yes.

Q—Did you ever testify before the Suffolk County grand jury? A—Yes.

Q—When? A—August, 1967.

Q—Concerning your grand jury testimony when did you talk to Mr. Byrne? A—After I left the grand jury room.

Q—Was this after you had testified under oath? A—Yes.

Q—And where did you talk to Mr. Byrne? A—In his office.

Q—Did you have any talk regarding promises? A—Yes.

Q—Were you given any assurances on the disposition of cases now pending against you? A—No.

Pino went back to previous testimony Baron had given about his occupation during 1960-61.

Q—Is this the skyjacking business you spoke about? A—Yes.

Ballirò took Baron in recross-examination.

Q—During your previous testimony, when you were asked to define a scene, you said it was a financial gain? A—Yes.

Q—If you can convince 12 people of the guilt of these four defendants, that would be a scene wouldn't it.

Pino objected and the question was excluded.

Q—Well, if these defendants are found guilty, you stand to make a financial gain on this case, don't you?

Pino jumped to his feet objecting, while the witness repeated from the stand, "No, no, no." The judge excluded the question and answer.

Q—Did you keep notes on your goings on for the purpose of writing or having a book written? A—No.

Q—Did you keep news clippings? A—I gathered some together, yes.

Q—For the purposes of the book? A—Originally, no.

Q—You had a different purpose? A—Yes.

Q—For making scrapbooks? A—Scrapbooks?

The question was excluded.

The judge prevented Ballirò from pursuing this line any further.

Q—Did you threaten to kill Mr. Angiulo? A—Did I threaten to kill Angiulo?

★

Objection was made by Pino, and the judge said to Ballirò "Is this something which you are prepared to prove?"

Ballirò said, "Yes, your honor, I'd like a bench conference." The judge denied it.

Q—Did you threaten to kill some 50 people, whether they were innocent or not?

Pino objected and the question was excluded.

Q—Did you threaten that if you were released from Charles St. Jail, you would do something in three days which never had been done before in the history of the world?

Another objection was made and the question was excluded.

Ballirò said to the judge, "I can prove it."

Q—Would you please take a look at this document (which he placed in Baron's hand).

Judge Hudson said, "Read it to yourself, not aloud."

Pino asked to look at the document which appeared to be a plain piece of paper with some writing on it. The judge allowed him to look.

Q—Did you make this writing in the last two years? A—Yes, sir.

★

Ballirò then introduced it for identification after asking, "Was this written since the death of Rewace and DePrisco. A—Yes, sir.

Baron was excused after his fourth day on the stand.

The final question by O'Donnell was, "Is that a diamond stickpin that you have in your tie?"

The question was excluded by Judge Hudson.

The next witness was State Police Det. Leo F. McNulty.

Q—By Pino—Was your attention directed to the area of Topsfield the night of June 16, 1966? A—Yes Sir.

Q—What time did you get there? A—Approximately 9:45 to 10 p. m.

Q—After your arrival did you become the principal investigating officer, A—Yes.

Q—At the scene you found a car? A—Yes.

Q—And where was the car located? It was located on a little used path off Rawley Bridge Road. Trooper Bailey was at the scene. The car was located about 85 and one-half feet from the road on the path. I observed in the front of the car a party obviously dead later identified to me to be Rocco DiSeglio.

Blood was coming from his nostrils, mouth and left eye. His hands were in a folded position in his lap and he had black gloves on.

There was an amount of change on the center console.

"I observed one bullet hole in the center of the windshield, toward the top. It appeared that a bullet went through from the inside to the outside.

"I also observed on the passenger side of the windshield another bullet hole that didn't go through.

★

"I observed two footprints that were pointed out to me halfway between the car and the road in back of the car. One of the prints measured approximately 10 inches. The other footprint measured approximately 11 and one half inches and was super-imposed on the tire marks that led to the Thunderbird.

Q—In your opinion what was the direction of the bullet that went through the windshield?

A—The direction was from inside to outside.

Q—Did you observe bullet holes in the head of the victim? A—Yes. Three in the back of the head, one in the forehead in the center about one-inch inside of the hairline.

★

Cross examination of McNulty by Ballirò

Q—Your search of the area showed there was no glass in front of the car on the ground? A—Yes, sir.

Q—Did you know that other officers made a thorough search the next morning? A—Yes, sir at my direction.

Q—And you know the next morning they found glass that was not found the night before? A—Yes, sir.

The judge then excused the jury until 9:30 Monday morning and cautioned them to "try not to let this case bother you over the weekend, because you are not in a position to make any conclusions until you have heard all the evidence and heard my instructions."

JUDGE EUGENE HUDSON
Gavel Restores Order

GENNARO ANGIULO
Listens Intently

DEFENDANTS IN DISEGLIO DEATH CASE
Marino Lepere, Richard Hallinent, Bernard Zinna (L. to R.)

Cont.

Judge HARRINGTON. It is correct, we were attentive to what was in the logs. And he was I think the first of the Mafia leaders to be convicted in the United States since I think Frank Nitti was convicted in 1943.

Mr. HORN. Did you use any information obtained from the Patriarca wiretap to help prepare for the Marfeo trial?

Judge HARRINGTON. We did not. That would have been tainted evidence and that was one of the reasons we reviewed the 3-years of logs of the Patriarca bug to ensure that we did not use anything that would taint our case.

Mr. HORN. And I take it you did not get much testimony out of Barboza, is that right? Because after the Deegan trial, the protective custody Witness Protection Program came about for Barboza.

Judge HARRINGTON. That is right. He indicated that he was willing to testify in three cases, one Federal and two State.

Mr. HORN. That is an interesting program the Witness Protection Program. Was it created strictly for Barboza or was he the first one in it?

Judge HARRINGTON. He was the first one and, as I indicated in my opening statement, the experience gained in administering his protection formed the basis for the Congress a year and a half later to establish the program on a formal basis. And I still think the program is in effect and is used quite successfully over the years.

Mr. HORN. Who defined the terms and the conditions of a person in the program, let's take Barboza, what was he supposed to get out of this witness program?

Judge HARRINGTON. I think it was formulated by a unit within the Organized Crime and Racketeering Section of the Criminal Division. At that time, I think it was, my memory is it was Mr. Jerry Shur was in charge of the Witness Protection Program and maintained certain supervision of the members of the program throughout the United States.

Mr. HORN. Was Barboza's going there to protect him from other people in the Mafia, was that basically——

Judge HARRINGTON. We hoped that it would have. But it is obvious that later when Baron left prison he no longer was desirous of being a member of the program and within 2 months he was assassinated by a Mafia hoodlum from Boston in retaliation for his testimony on behalf of the United States.

Mr. HORN. In the process, you all testified on behalf of Barboza's defense at the Clay Wilson murder trial, is that correct?

Judge HARRINGTON. That is correct, sir.

Mr. HORN. What was the situation there with Clay Wilson, had he been involved or attempted to be using Barboza, or what?

Judge HARRINGTON. Would you please repeat the question.

Mr. HORN. Did the terms and conditions of the program really require the Federal Government to assist and support Barboza in his defense on any future crimes that he might commit?

Judge HARRINGTON. In October 1970, the Congress formulated or established the Witness Protection Program. A few months prior thereto was when it came to the Government's attention that he was involved in a killing. It was a time I think that the Government was desirous of doing all it could to assist Barboza in order to protect the viability of the Witness Protection Program and, as

I indicated previously, to send a signal to other potential accomplice witnesses that the Government would abide by its commitments.

Mr. HORN. Now you testified at the Clay Wilson murder trial, is that correct?

Judge HARRINGTON. I did.

Mr. HORN. And what led you to that?

Judge HARRINGTON. It was a decision made by the Organized Crime and Racketeering Section that we had to support the first witness in the Witness Protection Program and one who had made a singular contribution to the Government's fight against organized crime. It was a judgment made at the beginning of this effort against organized crime. Whether 35 years later the same decision would be made, I am not sure. But it was a unanimous decision and a belief by all those who participated that it was in the best interest of the United States.

Mr. HORN. You wrote a letter to the director of the parole board for the Montana State Prison urging the board to consider parole for Barboza. That is exhibit No. 26. Is it true that you wrote a letter?

[Exhibit 26 follows:]

JUN 4 1973

Copy returned
mr. Bentley
Prison Records
Benefits

1703 John W. McCormack Building
Boston, Massachusetts 02109
June 1, 1973

Mr. Robert Miles
Director of the Parole Board
Montana State Prison
Deer Lodge, Montana

Dear Mr. Miles:

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. I am the former Attorney in Charge of the Department of Justice's Organized Crime Strike Force for New England and am extremely knowledgeable of Bentley's contribution to law enforcement in its efforts against organized crime.

Bentley was the chief federal government witness in the prosecution which resulted in the conviction of Raymond L. Patriarca, "boss" of the New England Cosa Nostra Family, his "underboss" Henry Tameleo, and underworld enforcer Ronald Cassesso, for the offense of traveling in interstate commerce to commit a crime of violence to further an illegal gambling enterprise. He was also the chief State of Massachusetts witness in the Boston gangland murder trial of Edward Deegan, a loanshark, which resulted in the conviction for first-degree murder of six major underworld figures including Peter Limone, who was the "underboss" to Gennaro Angiulo, Cosa Nostra boss in Boston, Massachusetts, syndicate enforcers Louis Grieco, Joseph Silvati and Roy French, as well as Henry Tameleo and Ronald Cassesso. The conviction of Patriarca is considered by knowledgeable law enforcement officials to have been the most important organized crime case in the history of New England law enforcement.

Government witnesses John J. "Red" Kelley, alleged mastermind of the Plymouth mail robbery, and Vincent C. Teresa, who were developed by the United States subsequent to Bentley and whose testimony resulted in the conviction of many major syndicate leaders in the New England area have advised that one of the reasons that they decided to cooperate with the federal government was on account of the fact that Bentley had first broken the syndicate's "code of silence" and had survived the underworld's reprisal. Bentley'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.

PENGAD-Bayonne, N.J.
EXHIBIT
26

Bentley's significant contribution to law enforcement as the pivotal figure in the government's effort to combat organized crime should be weighed when his eligibility for parole is considered.

Please advise me if the appearance of witnesses before the Montana Parole Board is in conformity with your practices.

Very truly yours,

Edward F Harrington

EDWARD F. HARRINGTON

Judge HARRINGTON. I have no memory that I wrote it, but I most likely did. And not only did I write a letter in his behalf, but I was assigned, even though I was in private practice, assigned by Attorney General Elliot Richardson to appear at the parole hearing sometime in 1973.

Mr. HORN. In fact, you later testified on Barboza's behalf before the parole board, is that right? Exhibit No. 27.

[Exhibit 27 follows:]

BARON, Edward H. 3rd.

Baron asks parole from life sentence

8/30/73

By Richard Connolly
Globe Staff

Joseph (Barboza) Baron, who failed on his former associates in The Mob in New England, is attempting to win parole from a five years-to-life prison sentence for a 1970 murder in California.

The reputed underworld enforcer, a former resident of Swampscott, is in protective custody at the State Prison in Deer Lodge, Mont. He was moved from a California prison after his life was threatened.

The 41-year-old Baron, who has been serving his sentence since Dec. 14, 1971, pleaded guilty to second degree murder in Sonoma County, Calif. He was accused of killing Ricky Clay Wilson, 28, in an argument over $250,000 in stolen securities and burying the body in a rural section near Glen Ellen, Calif.

When the body was discovered, Baron was at State Prison in Walpole for violation of parole in a previous conviction for illegal possession of weapons. But two fellow Walpole inmates testified that Baron told them he killed Wilson.

The California Adult Authority, which has jurisdiction over Baron, recently requested that the Montana Parole Board determine if Baron should be paroled.

The board recommended his release after a hearing July 31, according to George M. Cuff, assistant director of the Montana board. The hearing was held at Deer Lodge and among those who testified in Baron's behalf was Atty. Edward F. Harrington, former head of the Justice Department's Strike Force in New England.

It was through Baron's cooperation with the Strike Force that a number of alleged leaders of The Mob were imprisoned.

Despite the Montana Parole Board's recommendation, based on Baron's conduct at Deer Lodge and the testimony of witnesses, he must convince the California Adult Authority that he has been rehabilitated.

"With his background and experience, we have decided to hold our own hearing," said Joseph A. Spangler, an official of the California authority. He said the authority could act solely on Montana's recommendation or hold its own hearing on Baron's eligibility for parole.

Baron testified during the murder trial that he decided to cooperate with Federal investigators after becoming disenchanted with The Mob when ordered to assassinate two friends. He moved to California under the assumed name of Joseph Beatley.

Baron admitted that he had been a loan shark but denied that he was an enforcer for The Mob. Federal investigators have reported that Baron, with a long criminal record and close ties to the leaders of The Mob, was perhaps the most important witness developed in recent years.

His testimony led to the imprisonment of Raymond L.S. Patriarca of Providence, reputed head of The Mob, and his right-hand man, Henry Tameleo, who is serving a murder sentence at Walpole. Four other associates [illegible]

During his California trial, Baron testified that his life was in danger. Federal investigators put him in protective custody at various locations, including Ft. Knox, Ky., and that The Mob offered him $500,000 to recant his testimony against his old pals.

The underworld also agreed to let him return to Boston "forgiven," but he refused to change his story, Baron said. Investigators indicated their concern over Baron's welfare when they moved him to the Montana prison.

BARON, Edward H. 3rd.

Baron in Parole Plea For 1970 Cal. Murder

HERALD AUG 31 '73

DEER LODGE, Mont. (AP) — A reputed underworld enforcer from Massachusetts who turned informer and now is in protective custody in Montana has asked to be paroled from a prison sentence for a 1970 murder in California.

Joseph (Barboza) Baron, 41, formerly of Swampscott, Mass., pleaded guilty Dec. 14, 1971, to second degree murder in Sonoma County, Calif.

He was accused of killing Ricky C. Wilson, 28, during an argument over $250,000 in stolen securities. He was charged with burying the body near Glen Ellen, Calif.

Baron was sentenced to five years-to-life. Said was moved from a California prison to the state prison here after his life was threatened.

After a hearing July 31, at the request of the California Adult Authority, the Montana Parole Board recommended his release based on Baron's conduct at Deer Lodge and the testimony of witnesses. However the California Adult Authority has said it would hold its own hearing, the newspaper said.

During the trial, Baron testified that he decided to cooperate with federal investigators after becoming disenchanted with the underworld when ordered to kill two friends. He said he moved to California under the assumed name of Joseph Beatley.

Officials said it was testimony by Baron that led to the imprisonment of Raymond L.S. Patriarca of Providence, reputed head of organized crime in southeastern New England, and Patriarca's aide, Henry Tameleo, who is serving a murder sentence at Walpole, Mass. Four other men were also convicted on Baron's testimony.

Baron said at his trial that he was offered $500,000 to recant his testimony and was told he could return to Boston, but he said he refused. He also testified that his life was in danger.

When the body of Wilson was discovered, Baron was at Walpole for violation of parole in a previous conviction for illegal possession of weapons. Two Walpole inmates testified that Baron told them he killed Wilson.

Among those who testified on his behalf at the parole hearing was Edward F. Harrington, former head of the Justice Department's Strike Force in New England.

EXHIBIT
27

PENGAD-Bayonne, N.J.

Judge HARRINGTON. I did. The Attorney General, at that time Mr. Richardson, asked me to come out of private practice because I was aware of the Patriarca case and asked me to go to Butte, MT to testify on his behalf.

Mr. BARR [presiding]. Does the gentleman have a final question and then we will——

Mr. HORN. One final question. When was he moved to Santa Rosa, CA?

Judge HARRINGTON. I remember that he finished his testimony in the Deegan murder case sometime in the summer of 1968. I think for some months he was sent to Fort Knox, KY, I would say approximately 4 to 6 months, that is my best memory, and that sometime in 1969 he was relocated by the Department of Justice pursuant to the Witness Protection Program to Santa Rosa, CA.

Mr. HORN. I am just curious as a Californian why this nice little town of orchards and blossoms and all that. He was put down in the middle of it I take it, and here is a guy that has more than 20 murders. Whose great decision was that one?

Judge HARRINGTON. I think it was a joint decision by those—ultimately, I would think it was the head of the Organized Crime and Racketeering Section of the Justice Department.

Mr. HORN. Thank you, Judge. We appreciate having you here.

Mr. BARR. Thank you. The gentleman from Massachusetts is recognized for 5 minutes.

Mr. DELAHUNT. Judge, I want to get back to that statement about "throughout my tenure as a Federal prosecutor I never knew the identity of an FBI informant."

Judge HARRINGTON. That is true.

Mr. DELAHUNT. And you also in your written statement indicated it was also the policy of the FBI to protect the confidentiality of the identity of informants to ensure their safety and thereby maintain the FBI's continued access to criminal intelligence. Why during your entire tenure did you not know the identity of informants?

Judge HARRINGTON. Because I always considered myself a professional. I know this, that if any attorney for the Department of Justice or an assistant U.S. attorney ever asked an FBI agent the identity of an informant, that not only would they not tell you but they would lose confidence in you. Because in those days people worked for the Government 3 or 4 years and then they would be outside. So I would never ask and I was never told and I was not interested.

Mr. DELAHUNT. Right. And that was the context of the time.

Judge HARRINGTON. Absolutely.

Mr. DELAHUNT. But we have learned a lot since, and I understand that. It was as if you were asking questions which should not be asked.

Judge HARRINGTON. That is true.

Mr. DELAHUNT. As if the FBI implicitly did not trust you—I do not mean you Ted Harrington, but you who were not part of that particular agency.

Judge HARRINGTON. I think it is fundamental in order to have a relationship with an informant, especially in the deadly world of organized crime, that confidentiality of the identity has to be abso-

lutely maintained and any breech thereof would have I think dire consequences.

Mr. DELAHUNT. I would suggest that the time has come to reassess that. That those who benefit from their status as informants and their status as accomplice witnesses, in the case of accomplice witnesses it is revealed, but over the course of the past several decades, particularly in Boston, there has been misconduct, there have been indictments of FBI agents. Because of the court order in the decision and the opinion rendered by Judge Wolf, information was revealed which I suggest is eroding the confidence not only of the FBI, but of our system of justice. It is unfortunate.

We have members of the U.S. Senate describing a culture of concealment, a culture of arrogance within the agency. You heard the Chairman today in his remarks directed to the Department of Justice. And this is not just peculiar to the Boston area. It really goes I believe to the heart of our system. Because by that concealment, and there is a series of reports filed here by Special Agent Rico that clearly would have exculpated Joseph Salvati, that you never had knowledge of and, according to press reports, neither did Assistant District Attorney Jack Zalkind have knowledge of, and I am confident that if Mr. Zalkind had knowledge of it, if you had knowledge of it, the miscarriage of justice that occurred in that case never would have occurred. He lost 30 years because of a culture, because of an attitude. And, yes, I respect the need for confidentiality, I think it is really important. But it is about time that culture change. It ought to be considered as a check and balance, if you will. There is not a U.S. attorney that I am aware of that is not an individual of appropriate ethics that would never risk the life or the personal safety of an individual.

But there has to be oversight of the FBI and there is none today. In fact, Judge Wolf, before the names of Bulger and Flemmi were revealed, Judge Wolf, whom you served with and continue to serve with, had to threaten the Deputy Attorney General of the United States with contempt before they did it. That is wrong. That is wrong. And Mr. Horn was asking the question of how Joe Barboza, who was an animal, ended up in a community and committed another crime, committed a murder. I do not know if you are aware, Ted, but two of the investigators in the homicide investigation of Mr. Wilson are present here, yesterday they testified that they had no idea that Joe Barboza was in their community. And here is someone who was acknowledged by J. Edgar Hoover to be one of the most vicious of criminals in the annals of criminal justice, and he committed a murder there. I think we can presume that because he pled guilty to it.

There has to be a policy, since it is this Congress that makes policy, there truly in my opinion has to be a hard look at the FBI as an agency and its appropriate role and function in a democracy. I understand in the early 1960's Bobby Kennedy was there and there was a zeal to get organized crime. It has been part of our history of the "red scares," if you will, the "blacklisting," etc. But what America is about, and I think you agree with this, sure, we are about public safety, but we are about individual rights and not seeing injustices done. It has been painful to sit here over the past 4 or 5 months and see what has happened to people like Joe Salvati

and his wife and his children and his family. It is painful. And here we are today, the chairman of this committee has to threaten the Department of Justice to get information. I will give you an opportunity to examine the exhibits in this case.

And let me ask Mr. Bybee, these are the redactions that we are talking about. This is exhibit No. 15, March 19, 1965, Mr. Chairman. Someone thought it was necessary to redact the following—if the staff could provide Mr. Bybee, Mr. Harrington, if you could provide him. What was so important, Mr. Bybee, if you know, to redact the name of the Director of the FBI? Is that some state secret?

[Exhibit 15 follows:]

3/19/65

AIRTEL

TO : DIRECTOR, FBI [redacted] F

FROM: SAC, BOSTON [redacted] P

CRIMINAL INTELLIGENCE PROGRAM
BOSTON DIVISION

The following are the developments during the current week:

On 3/12/65, EDWARD "TEDDY" DEEGAN was found killed in an alleyway in Chelsea, Mass. in gangland fashion.

Informants report that RONALD CASESSA, ROMEO MARTIN, VINCENT JAMES FLEMMI, and JOSEPH BARBOZA, prominent local hoodlums, were responsible for the killing. They accomplished this by having ROY FRENCH, another Boston hoodlum, set DEEGAN up in a proposed "breaking & entering" in Chelsea, Mass. FRENCH apparently walked in behind DEEGAN when they were gaining entrance to the building and fired the first shot hitting DEEGAN in the back of the head. CASESSA and MARTIN immediately thereafter shot DEEGAN from the front.

ANTHONY STATHOPOULOS was also in on the burglary but had remained outside in the car.

3-Bureau
1-Boston

JFK:po'b
(4)

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EXHIBIT
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000321

[redacted] F

When FLEMMI and BARBOZA walked over to STATHOPOULOS's car, STATHOPOULOS thought it was the law and took off. FLEMMI and BARBOZA were going to kill STATHOPOULOS also.

Immediately thereafter, STATHOPOULOS proceeded to Atty. Al FARESE. FARESE called the Chelsea, Mass. PD before Chelsea knew of the killing and FARESE wanted to bail out ROY FRENCH and "TEDDY" DEEGAN. Shortly thereafter the Chelsea PD found the body of DEEGAN and immediately called Atty. FARESE's office, and Atty. JOHN FITZGERALD, FARESE's law partner, came to the Chelsea PD.

Efforts are now being made by the Chelsea PD to force STATHOPOULOS to furnish them the necessary information to prosecute the persons responsible.

It should be noted that this information was furnished to the Chelsea PD and it has been established by the Chelsea Police that ROY FRENCH, BARBOZA, FLEMMI, CASESSA, and MARTIN were all together at the Ebb Tide night club in Revere, Mass. and they all left at approximately 9 o'clock and returned 45 minutes later.

It should be noted that the killing took place at approximately 9:30 p.m., Friday, 3/12/65.

[redacted]

[redacted] B

Informant also advised that [redacted] had given the "OK" to JOE BARBOZA and "JIMMY" FLEMMI to kill [redacted] who was killed approximately one month ago.

Mr. BYBEE. Congressman, the "F" next to that I understand indicates that that was an administrative designated file number and that is what has been redacted from there is the file number.

Mr. DELAHUNT. God forbid if we should get those file numbers.

Mr. BYBEE. I understand, Congressman.

Mr. DELAHUNT. Now from the SAC Boston "P"—is that another administrative file number?

Mr. BYBEE. I do not know what the "P" would indicate.

Mr. DELAHUNT. Was that a national security interest that required the redaction of that name?

Mr. BYBEE. Well, the FBI when it provides these documents there are certain things that we have to designate, some things are for national security, some things are because we have confidential informants, some——

Mr. DELAHUNT. Is it confidential the name of the FBI Director and the name of the Boston Special Agent in Charge in March 1965?

Mr. BYBEE. Congressman, I have not seen this document in its original form. Again, from the code that is on there, I believe that would not disguise the name of the Director of the FBI J. Edgar Hoover, but it would have been a file number.

Mr. DELAHUNT. I only point this out because it is absurd, isn't it. This is truly absurd. This gives credence to everything that Chairman Burton has said, everything that Senator Grassley has said, everything that a variety of Members of Congress have said. This is about a culture of concealment. And when you operate in this level of secrecy without any transparency whatsoever you become very susceptible to the miscarriages of justices that have occurred in this case. And here we have the prosecuting attorney back in the 1960's, sure, I know he is reflecting the attitude you did not dare ask the FBI the name of an informant because they would have believed that you were going to do something nefarious with it. Times are changing and the FBI has to be held accountable and that culture has to change.

This is totally unacceptable. We have a series of documents here that are going on 40 years old that have no relevancy whatsoever to any investigation that I am aware of that are redacted in a way that just—imagine getting this document being a Member of Congress trying to make some decisions as to public policy. Again, the Director of the FBI is redacted—this is exhibit No. 16, Mr. Chairman—and the SAC in Boston is again redacted. I mean, this could not have happened in the Soviet Union. I bet they do better in Iran. Look at that. Who made the decisions, Mr. Bybee, about the redaction?

[Exhibit 16 follows:]

DIRECTOR, FBI [redacted] 6/9/65

SAC, BOSTON [redacted]

BS 919-PC

[redacted]

Rebulet to Boston dated 6/4/65.

The following are the efforts to effect the development of the above-captioned target:

[redacted]

On 5/10/65, BS 919-PC was contacted on [redacted]

Informant advised that on the evening of 5/3/65 he left his home at approximately 10:30 p.m. He was going to meet with JOSEPH BARBOZA. As he approached his car two individuals stepped out of the bushes and fired at him with a shotgun. Informant said that he turned around as he fell and both of them were running with handkerchiefs to their faces.

2-Bureau
1-Boston
HPR:po'b
(3)

EXHIBIT 16

000024

00034

F [redacted]

Informant said that he fired back at them and one of them hollered, and they both ran towards the back of the building and drove away in a late model, light brown Chevrolet.

M

B.P. [redacted]

It is known through other informants and sources of this office that this individual has been in contact with RAYMOND L. S. PATRIARCA and other members of La Cosa Nostra in this area, and potentially could be an excellent informant.

Concerning the informant's emotional stability, the Agent handling the informant believes, from information obtained from other informants and sources, that BS 919-PC has murdered [redacted], [redacted], [redacted], [redacted], EDWARD "TEDDY" DEEGAN, and [redacted], as well as a fellow inmate at the Massachusetts Correctional Institution, Walpole, Mass., and, from all indications, he is going to continue to commit murder.

R

Some of the information provided by the informant has been corroborated by other sources and informants of this office. Although the informant will be difficult to contact once he is released from the hospital because he feels that [redacted] will try to kill him, the informant's potential outweighs the risk involved.

R

3

Mr. BYBEE. Congressman, now that I have a copy of the document, again the "F" next to the SAC Boston is a file number. It is a routine redaction by the FBI.

Mr. DELAHUNT. OK. Let's go up to the Director of the FBI, no number there, no letter there.

Mr. BYBEE. I do not know whether the "F" up there indicates that would be also part of a file number or not, I do not know. I do not think that we would see any reason for us to hide the name of the Director of the FBI.

Mr. DELAHUNT. Right.

Mr. BYBEE. The "M" down there indicates that it was irrelevant to the request from the committee.

Mr. DELAHUNT. Irrelevant. You made the decision that it was irrelevant to the request of the committee?

Mr. BYBEE. Well——

Mr. DELAHUNT. Can I ask this, who makes these decisions as to redactions?

Mr. BYBEE. Congressman, there is a——

Mr. DELAHUNT. Is there a special redaction room? [Laughter.]

Mr. BYBEE. No. There is a Civil Discovery Review Panel over at the FBI that responds to all of these requests.

Mr. DELAHUNT. A what kind of panel?

Mr. BYBEE. There is a review panel, a Civil Discovery——

Mr. DELAHUNT. What are the names of the——

Mr. BYBEE. I do not have their names.

Mr. DELAHUNT. Can you provide the committee with the names of those people?

Mr. BYBEE. I am not sure. I will see whether we can provide you with those names.

Mr. DELAHUNT. Because that might violate some sense of national security too?

Mr. BYBEE. Well, Congressman, we are happy to respond on the documents and try to get you the information that you need. But we do not generally provide the names of attorneys or other employees of the Department or the FBI who are involved at a much lower level.

Mr. DELAHUNT. Un-huh. Well I——

Mr. BARR. Would the gentleman yield?

Mr. DELAHUNT. I yield to the Chair.

Mr. BARR. Certainly, if the chairman asked you for those names, you would have no problem furnishing them to the chairman.

Mr. BYBEE. Again, Congressman, if we are talking about providing you with the names of line attorneys, that is not something that we ordinarily provide simply because we want our people to be able to provide us with candid advice and not be subject to inquiry by Congress. We are happy to provide the decisionmakers——

Mr. BARR. This is candid advice, what you just said, if routine redactions require candid advice such as might require the invocation of executive privilege, where would it end, Mr. Bybee?

Mr. BYBEE. Well, Congressman, let me see if I can back up. When the committee sends us a request for documents we have to exercise some kind of judgment as to what is responsive to you and what is not responsive to you. You do not want us dumping all of

the files of the Department of Justice that are found in Boston. That would bury all of us. It would not serve you, it would not serve us, it would not serve any purpose to do so.

Mr. BARR. I do not believe, staff correct me, I do not believe that was the request, that every document——

Mr. BYBEE. No. But what I am getting at, Congressman, is that when we get a request from the committee we have to exercise some kind of judgment as to what is responsive and if there are matters that are not responsive——

Mr. BARR. Hold on just a second. I think all the gentleman from Massachusetts is saying is if we then have a subsequent possible argument over your, the Department's judgment, we might like to know who it was that made that judgment so we can get to the bottom of it. And you are saying even that information would be protected and would not be provided to the committee.

Mr. BYBEE. Well, again, we do not ordinarily make the—we can make the decisionmakers, the ultimate policy decisionmakers at the Department or the FBI available to talk with the committee. But we generally do not make our line attorneys, whether that is an assistant U.S. attorney, or it is an attorney in the Federal program——

Mr. BARR. I do not think the gentleman from Massachusetts is arguing with the general policy. We are saying that in a situation where there is a specific request from the committee, the committee Chair and there is a potential disagreement, what is there that is so secret or would do great injustice to the policies of the Department or its ability to carry out its legitimate functions by providing the names that Mr. Delahunt is asking for?

Mr. BYBEE. Well, Mr. Chairman, if you want to make that request, I will certainly take it back to the Department. If you want to challenge the information that has been omitted here, then again we will be happy to discuss that with you——

Mr. BARR. Well, thank you very much. That is very big of you.

Mr. DELAHUNT. Reclaiming my time for a minute. It is interesting that we can challenge what we do not know. Because we do not know obviously what information is redacted, do we? And that puts the member of a committee that has oversight jurisdiction at a somewhat disadvantage. Would you agree with that, Mr. Bybee.

Mr. BYBEE. Congressman Delahunt, that would be true of any document that we did not provide to the committee.

Mr. DELAHUNT. Right.

Mr. BYBEE. Some judgment would have to be exercised as to any document in our possession.

Mr. DELAHUNT. But then you make the statement that if the committee or a member wishes to challenge the information that is redacted, then proceed. That is similar in my mind to what two families are experiencing in Massachusetts today. The family of one McIntyre, I think his name is James or William, where it is claimed, it is alleged that he was murdered as a result of the misconduct of the FBI providing information to Mr. Bulger and Mr. Flemmi. The family, the estate then proceeds to file a civil suit against the Government. The Government's response is you should have known about it, it was in the newspaper. Without any access to the documents, without any access to any of the information. My

colleague from Massachusetts, Mr. Frank described that action as representative not of a Department of Justice but a Department of Litigation.

Recently, it was brought to my attention that another family is experiencing the same response. They filed a claim but the claim was too late because they should have known somehow without access to information that the deceased in their family, who was also allegedly murdered because of information provided by FBI agents, appeared in the newspaper. What is happening? Are you familiar with those cases?

Mr. BYBEE. I am not, Congressman.

Mr. DELAHUNT. Well, I know myself and Mr. Meehan and Mr. Frank sent a letter and we got no response.

I will yield.

Mr. BARR. I thank the gentleman from Massachusetts.

Judge Harrington, going back to the prosecution of Patriarca, there has been discussion of the Marfeo case which was a Federal case, as I understand it, because it involved a conspiracy to travel across State lines to commit murder.

Judge HARRINGTON. That is correct.

Mr. BARR. In the Deegan prosecution, Barboza and Flemmi went to Rhode Island to ask Patriarca's permission to kill Deegan and then they went back across State lines to kill Deegan in Massachusetts. Why was a Federal case against Patriarca not brought for the Deegan murder?

Judge HARRINGTON. 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 was accomplished, therefore at that time it had to be a State prosecution.

Mr. BARR. So you are saying that according to the case law at that time, if the object of a conspiracy which was a murder was actually carried out, the case could not be brought federally, but if the object of the conspiracy was somehow frustrated or thwarted or was not carried out that it could be. Are you saying that?

Judge HARRINGTON. No. What I am saying, sir, is that the DeSeglio and Deegan cases involved murders, therefore they had to be tried in State court.

Mr. BARR. But they also involved interstate travel in support of a conspiracy to commit murder.

Judge HARRINGTON. I know, but you would not prosecute someone for conspiracy to commit murder where you could get 5 years at that time when you could prosecute them for murder in the State court. That is what was done. With respect to the Marfeo case, that conspiracy was a conspiracy to travel interstate under Title 18 United States Code 1952 to commit the murder which was not accomplished at that time. Therefore, since there was no murder case that we had information on with regard to Willie Marfeo, we proceeded under the travel act and the conspiracy to violate it.

Mr. BARR. Was there any consideration given to prosecuting Patriarca federally for the Deegan murder, the conspiracy relating thereto?

Judge HARRINGTON. To prosecute Patriarca federally? No, there was not because the Deegan murder case was developed and prosecuted by State authority, not by the Federal authority. It was a murder case. The State had jurisdiction. The Federal Government did not.

Mr. BARR. Well, the Federal Government could have on the conspiracy if nothing else, interstate travel in support of——

Judge HARRINGTON. But you would not have split the case if it even had been considered. It was a murder case. Deegan was dead. Garrett Byrne was going to prosecute it.

Mr. BARR. Who killed him?

Judge HARRINGTON. Who killed who?

Mr. BARR. Deegan.

Judge HARRINGTON. The jury found the seven defendants plus, my understanding, that there were other people who were involved in it who died prior to the prosecution.

Mr. BARR. Mr. Salvati did not kill him, right?

Judge HARRINGTON. I cannot make a judgment with regard to that. I did not try the case. Why ask me that question? I had nothing to do with it. I have read the opinion and I know, as I said in my statement——

Mr. BARR. As we sit here today, Mr. Salvati—would you stand please, Mr. Salvati—who spent 30 years in jail for a crime he did not commit, you are still not willing to say as you sit here today that this man is innocent, you still think he might have been guilty of that murder?

Judge HARRINGTON. Here is what I say. I am not accusing this man. But I do not think I can make that opinion. But I say this. If he is innocent, I sympathize with him. And if through any inadvertence that my conduct did to cause problems with him and his wife and his family, I am immensely sorry. But I will tell you at that time I considered myself conducting myself with competence and with integrity and I thought I was making a great contribution to the Government's fight against organized crime.

Mr. BARR. Do you realize now that swept up, that zeal to prosecute mafioso, swept up an innocent man and caused him to spend 30 years in jail?

Judge HARRINGTON. If that is so, I am extremely sorry. But I was not there. All I have done in the last 6 or 8 weeks, maybe 6 weeks, read the opinions on that case. And I would say that because of people like Dan Rea and other people who believe in his innocence, there is no doubt that I have some doubt at this time, at least with respect to Mr. Salvati. But I did nothing knowingly, willfully, or even through inadvertence to cause him the injustice that at least he believes and other people believe was rendered against him.

Mr. BARR. Thank you, Mr. Salvati. On December 20th of last year you told our staff that you did not believe that any of the Deegan defendants were innocent. Why did you reach that conclusion, and that includes Mr. Salvati?

Judge HARRINGTON. Because I read the Supreme Judicial Court's opinion. I knew that Baron had been corroborated by three other witnesses in part.

Mr. BARR. So you believed Barboza?

Judge HARRINGTON. Yes, I did. And in addition, I knew the background of the hit. I understood, without going into all the details of why Deegan was killed and why his two associates, Hannan and Delaney, were hog-tied and killed, there was one clear thing—it was a sanctioned hit.

Mr. BARR. We can all agree that these were bad guys.

Judge HARRINGTON. I am not saying they were bad guys. I am saying it was a sanctioned hit. And a sanctioned hit means two things—it meant it was approved by Raymond Patriarca and Henry Tameleo in Providence and it was concurred in by Gennaro Angiulo and Peter Limone in Boston.

Mr. BARR. And we also know that Mr. Barboza had told the Government that he would never testify in a way that would result in Mr. Flemmi, who was truly culpable, being found guilty.

Judge HARRINGTON. I understand that.

Mr. BARR. Well then how can you continue to this day to profess such great confidence in Mr. Barboza and yet there is still doubt in your mind that Mr. Salvati is innocent? I am trying to get at what is there about Mr. Barboza that he has this hold on you all, that even in his death you still——

Judge HARRINGTON. I am just saying that he was a strong witness, he carried a lot of baggage but he was corroborated, and the fact that——

Mr. BARR. But you know he lied.

Judge HARRINGTON. I do not know that. I always believed, I always believed that Baron was telling the truth. Whether he lied, now in retrospect I am not sure. But I believed firmly in his testimony.

Mr. BARR. But he told the Government on March 8, 1967 that he was going to lie. He said I will give you information on murders but I am not going to say anything that would put Flemmi in jail. And yet then they testify later and put this man in jail. I mean, if that is not a lie, Judge, what is?

Judge HARRINGTON. Well, the fact of the matter is, according to *Commonwealth* v. *Limone* that the Superior Court rendered in the year 2001, the judge in that case who reviewed the entire trial transcript in the Deegan murder case, which I have never done, testified that Baron testified—no, the judge cited in her opinion that Baron testified that Flemmi was involved in the scheme to kill Deegan. The fact that he was not indicted was a decision made by the prosecutors.

Mr. BARR. By the Government.

Judge HARRINGTON. Not by the Government. By the State prosecutors.

Mr. BARR. That is the Government.

Judge HARRINGTON. Well it is not the Federal Government.

Mr. BARR. I did not say Federal Government. It is the Government. The Government made a decision not to prosecute him because they wanted to protect Barboza and they did not care wheth-

er an innocent man went to jail in order to protect him in order to go after these other folks.

Judge HARRINGTON. All I can say, Congressman, that decision was not made by the Federal——

Mr. BARR. But you do agree that is an accurate statement?

Judge HARRINGTON. I agree that the Federal Government, the U.S. Attorney's Office did not make the decision whether to prosecute James Flemmi in the Deegan murder case.

Mr. BARR. The gentleman from Massachusetts.

Mr. TIERNEY. Thank you. Judge, in 1970 there came a point in time where you became aware and I think others with the FBI and the prosecutor's office that attorney Bailey was representing Mr. Barboza and there were indications that he was ready to recant his testimony and that, in fact, he had signed an affidavit and there was speculation that he was going to take a lie detector test. Do you recall that period in time?

Judge HARRINGTON. I remember the time period. I remember that what Baron advised me as to who Mr. Bailey was representing.

Mr. TIERNEY. And that was?

Judge HARRINGTON. He was representing Barboza and he was representing other interests.

Mr. TIERNEY. Which were?

Judge HARRINGTON. The organization.

Mr. TIERNEY. And you found this out on a visit that you made to Mr. Barboza while he was imprisoned at around that time?

Judge HARRINGTON. Joseph, according to my memorandum of that date, Joseph Barboza requested that Walter Barnes, the head of the Strike Force at that time, and Dennis Condon go down to see him at Walpole. I accompanied Mr. Barnes.

Mr. TIERNEY. Why?

Judge HARRINGTON. Because we were requested to go down and see him. He wanted to see us.

Mr. TIERNEY. Now you say that you have a memorandum of that occasion?

Judge HARRINGTON. I have and it was attached to my opening statement.

Mr. TIERNEY. Did you make any personal notes of that visit?

Judge HARRINGTON. Yes. As soon as I came back, Barnes and I wrote a memorandum of our interview with Joseph Baron to James Featherstone, Deputy Chief, Organized Crime and Racketeering Section, and I indicate at the last paragraph that Garrett Byrne was so advised.

Mr. TIERNEY. Now those documents were in your possession all this time, or they have been given to you recently?

Judge HARRINGTON. I think it was given to me by, I think, by members of the staff of this committee. I really had no, I do not think I had, no memory of this. Like I did not have a memory of my pros memo when I spoke with the staff, I do not know whether I had a memory of this.

Mr. TIERNEY. Would that be the only document that you prepared as a result of that visit?

Judge HARRINGTON. Yes, it was.

Mr. TIERNEY. Now flashing back to the California Clay Wilson scenario when you went out there and visited Mr. Barboza in jail prior to that prosecution, did you file a report or any other written documentation of that visit?

Judge HARRINGTON. I do not recall any but I am sure I reported to my superiors at the Department of Justice that, in essence, it was not a frame, Baron was——

Mr. TIERNEY. But you would have put that report in writing, is that correct?

Judge HARRINGTON. I do not know whether I put it in writing or—we were, in those days we were in constant communication with Washington. Our superior, the Deputy Chief, Mr. Featherstone, we talked to him three or four times a day. I do not know whether I put it in writing or not.

Mr. TIERNEY. Well wouldn't it be your general practice that when you go on official business and you have an appointment with somebody and do an interview that you would commit that to writing in some fashion, either file it in your office files or send it to Washington, or both?

Judge HARRINGTON. I very well could have. But I just have no memory of doing it. But I know that I reported to Featherstone the result of my trip to see Baron in California.

Mr. TIERNEY. Was it your practice, Judge, at that time generally to file that kind of report after meeting with somebody to interview?

Judge HARRINGTON. I suppose it would be.

Mr. TIERNEY. When you met with Mr. Barboza in Boston at the time of the reported recantation, what transpired during that meeting?

Judge HARRINGTON. You mean at Walpole?

Mr. TIERNEY. That is correct.

Judge HARRINGTON. It is set forth in detail.

Mr. TIERNEY. But generally for us, if you would.

Judge HARRINGTON. Well, the main thing is that he said that he was being paid by money funded by the mob to induce him to change his testimony, that his testimony in the Deegan case was truthful and that any recantation would have been perjurious.

Mr. TIERNEY. And what did anybody, either you or the others from the Government side, say to him?

Judge HARRINGTON. My only memory of that entire interview is contained therein. I would like to find out what I did say. But what transpired on that meeting is fully reported in this memorandum.

Mr. TIERNEY. Which was prepared simultaneously with your return from that visit?

Judge HARRINGTON. As soon as I returned. In fact, it does show there in the first paragraph that Baron requested in writing to speak to Barnes and Special Agent Dennis Condon. My memory of the interview with Baron on that date is contained in that memorandum.

Mr. TIERNEY. Did anybody tell him not to go forward with his lie detector test and not to go forward with his affidavit or recantation?

Judge HARRINGTON. I did not, nor anybody in my presence. Because the only two who went down was, my memory, although he asked for Condon, I accompanied Barnes down there.

Mr. TIERNEY. And the fact of the matter is that shortly after that visit, however, Mr. Bailey was fired and there never was a recantation and there never was a lie detector test, as far as you know, right?

Judge HARRINGTON. He had already signed his recantation.

Mr. TIERNEY. The affidavit.

Judge HARRINGTON. The affidavit.

Mr. TIERNEY. But after that visit that you made, Mr. Bailey was fired and there was no further action on that. Is that correct?

Judge HARRINGTON. There were hearings on motions for new trials.

Mr. TIERNEY. But no lie detector test?

Judge HARRINGTON. No lie detector test.

Mr. BURTON. Would the gentleman yield real quickly.

Judge, your memory is remarkable on most issues, except you cannot remember that 5 month period when you were trying to get Patriarca, you were trying to nail him and you heard that bugged conversation where he gave his OK to murder Deegan. You have forgotten that. But your memory is very, very good on all this other stuff.

Judge HARRINGTON. Well, I will tell you this, as I indicated previously, I have spent the last 6 weeks refreshing my recollection with respect to a matter that occurred 35 years ago because I wanted when I came down here, I was invited down and I was happy to come, to provide you, Mr. Chairman, with as much information as I had.

Mr. BURTON. I appreciate that. But it just seems strange to me that when you were after the head of the mob and you heard him give the OK to murder somebody that you would forget that in 5 months. But sometimes our memories do slip. And you being a judge, I am sure that you have a lot on your mind.

One thing I want to followup on. Now Mr. Bailey, who you say was representing the mob, I presume, or the organization in addition to——

Judge HARRINGTON. Well, Baron told me he was representing Raymond Patriarca.

Mr. BURTON. OK. And you believed this man who killed 27 people? I am sure he would not lie to you.

Judge HARRINGTON. Well somebody was paying him the money. Baron said he was receiving money as an inducement to recant.

Mr. BURTON. OK. So Mr. Bailey is about to have him take a lie detector test, and then you go see Mr. Barboza without telling his counsel, without telling the prosecuting attorney you are there until after you have talked to him, and he immediately changes his mind and does not take the lie detector test. Did you say anything to him at all about that lie detector test?

Judge HARRINGTON. I did not.

Mr. BURTON. You did not. Was anybody else there besides the two of you when you talked to him?

Judge HARRINGTON. Barnes and I were there and we said nothing with respect to the lie detector test.

Mr. BURTON. Barnes and you?

Judge HARRINGTON. Yes, Barnes and I.

Mr. BURTON. Who is Barnes?

Judge HARRINGTON. Barnes was the attorney in charge of the Strike Force at that time.

Mr. BURTON. And he went with you when you went to see Barboza?

Judge HARRINGTON. He was called—Baron asked him to come down.

Mr. BURTON. So that when you went to the prison he was with you?

Judge HARRINGTON. That is right. And we both prepared that memorandum.

Mr. BURTON. I see. And the two of you never mentioned anything about the lie detector test?

Judge HARRINGTON. Baron mentioned the lie detector test. He said as soon as I do a lie detector test for Bailey, I will be killed. And he said he would not do it because—well, it is contained right in the paragraph.

Mr. BURTON. And you did not encourage him in any way?

Judge HARRINGTON. I did not.

Mr. BURTON. OK.

Mr. TIERNEY. Thank you, sir. Judge, where do our prosecutors in the Government draw the line of where an informant's value is outweighed by the potential harm that would be done by protecting that witness in a particular situation?

Judge HARRINGTON. It is a judgment call. But you have to put yourself back in the context of 35 years ago.

Mr. TIERNEY. Can I interrupt. Just policy-wise going forward, I am really asking for your judgment on today's situation. And knowing what you know now, if we were crafting policy or reviewing the situation, what process should exist for reviewing those situations where those kind of decisions must be made and how do we go about making sure that any determination is done properly and has appropriate scrutiny and review before a situation arises that we might regret later?

Judge HARRINGTON. I think you would have to weigh two factors. On the one hand, the quality of the intelligence. And on the other hand, the type of criminal activity that the informant must, by definition, be engaged in.

Mr. TIERNEY. And who would you have making that determination?

Judge HARRINGTON. I think that the FBI should make that decision under rules propounded by the Congress of the United States, as Mr. Delahunt so eloquently professed.

Mr. TIERNEY. Would you have anybody in the Justice Department other than the FBI reviewing the determination or overseeing that, or would you leave it with the agency?

Judge HARRINGTON. I do not know, I am not an expert in that area. But I think that in the investigation of crime and the cultivation of intelligence that is an investigative function and not a legal decision. But I could be wrong.

Mr. TIERNEY. My curiosity on that is how do we find out or how do we make sure that relationship between the informant and the

FBI agents who are supposedly working with them does not become so cozy that it creates a problem, and that if there is no other person or entity reviewing what is going on we end up with a situation that we may well have—or it looks like we do have here—a couple of rogue agents out there getting too close and causing us all sorts of difficulty?

Judge HARRINGTON. Maybe you could have a unit in the Department of Justice, people who might review that type of decision.

Mr. TIERNEY. Hopefully, not the same one that reviews documents. But let me ask another question. How would you describe your relationship with Baron or Barboza?

Judge HARRINGTON. I think I had a good relationship with him.

Mr. TIERNEY. What was your responsibility professionally with respect to the Department and his activities?

Judge HARRINGTON. Well, I was involved with the prosecution of the Federal case. I was kind of a liaison with the Marshal's Office and the District Attorney to ensure his protection and his transportation for purposes of trial. So I had a relationship with him.

Mr. TIERNEY. Did you have regular contact with him?

Judge HARRINGTON. Not regular. During that period of time he was guarded by 16 marshals in a mansion on an isthmus or tangent out in Gloucester and periodically Paul Markum, Walter Burns and I, who were the prosecutors on the Patriarca case, would go up and speak to him about the testimony in the Federal case.

Mr. TIERNEY. Would you say that you were closer to him than the other gentlemen that you mentioned, Barnes and Markum?

Judge HARRINGTON. I think we were all close to him but I think he liked me better. And I think the reason might be because Joseph Barboza came from New Bedford, MA, I came from Fall River, MA, both of them are in southeastern Massachusetts, and we had I think a little regional rapport.

Mr. TIERNEY. Did you have anything to do with his whereabouts, his travels, or his eventual situation where he was imprisoned on the Wilson murder and then eventually ended up on the street in a relatively short period of time? What was your involvement with him or with that process where he got sort of run through the system and out?

Judge HARRINGTON. I think that I testified in the Wilson murder case, as I have testified here, about his extent of his cooperation. I think I most likely was in contact with the Parole Board and I know that I testified before the Parole Board.

Mr. TIERNEY. In California?

Judge HARRINGTON. He was transferred from California to Montana.

Mr. TIERNEY. Did you arrange for that transfer?

Judge HARRINGTON. I do not want to say yes or no. I have no memory of what happened. But at that time, you have got to realize——

Mr. TIERNEY. No, no, I understand that there were other things——

Judge HARRINGTON. But I think, to tell you the truth, my best memory is that the authorities in California wanted to get him out of that area because of the risk that he would be assassinated in

prison because of his cooperation with the Government against the organization.

Mr. TIERNEY. Is there any potential that he called you and he asked you to help him go somewhere else?

Judge HARRINGTON. I have no memory of that.

Mr. TIERNEY. But it would have been the kind of relationship that you had with him?

Judge HARRINGTON. I will tell you this, I do not recall contacting the authorities in California to have him transferred to Montana. I could have done it. It would have been standard practice if we thought he was going to be killed in California. I just have no memory of it.

Mr. TIERNEY. How did it end up that you ended up in Montana testifying in front of the Parole Board?

Judge HARRINGTON. Because Elliot Richardson called me while I was in private practice and asked me to go out there because I was involved with Baron in the Patriarca case and had some connection with him and knew his contribution to the Government in its fight against organized crime.

Mr. TIERNEY. And Mr. Richardson's position at that time?

Judge HARRINGTON. He was Attorney General of the United States.

Mr. TIERNEY. And he personally called you and asked you to go up there?

Judge HARRINGTON. I do not want to say that he personally did. But I was advised that the Attorney General, and I must have got some authority because I was not a member of the Department of Justice, he reinstated me to be a Special Attorney for the purposes of that trip.

Mr. TIERNEY. And then you went up there with the intention that your testimony would be helpful to Mr. Barboza's cause?

Judge HARRINGTON. Absolutely.

Mr. TIERNEY. And last, why would you suspect, as was reported I guess in the Hartford Current by a gentleman named Edmund Mahoney who wrote an article back on February 10th of this year, "When Barboza wrote his book, 'Barboza,' it was billed as the nakedly brutal story of his life in crime and he dedicated it to Edward Harrington with respect."

Judge HARRINGTON. What is your question?

Mr. TIERNEY. Did you have that great a relationship with the man?

Judge HARRINGTON. He must have liked me.

Mr. TIERNEY. Thank you.

Mr. BURTON. You know, Barboza did like you. I am not sure I would want to brag about that too much. He murdered at least 27 people even if he did come from your neck of the woods. And he wrote you a nice letter saying, you know, I did not even have to say one word to the parole board. Here is a guy that murdered Wilson while in the Witness Protection Program. You go out and testify on his behalf along with two FBI agents. The guy does not get the death penalty, they plea bargain and he gets 5 years in prison, goes to Montana, and his defense attorney says it was like a country club because he was calling him all the time, he was smoking pot, and he was just living the life of Riley. And then he writes to

you and says the parole board said this is the "fastest hearing in the history of Montana" that I made parole, "I did not even say one word." Do you know, you did a great job. He really was your friend. You did a great job for him.

Mr. Horn.

Mr. HORN. Thank you, Mr. Chairman. Judge Harrington, let me go into just a couple of other exams. Prior to Condon's testimony, moving to that, was he restricted in any manner by the FBI or the Department of Justice authorities regarding what information related to the Deegan murder you could reveal? The information is in our records from the Patriarca tapes or either from FBI informants. Did you have a chance to look at that material?

Judge HARRINGTON. Is your question, did I have a chance to look at the logs from the Patriarca bug? If that was your question, yes, I did in preparation for my prosecution memo.

Mr. HORN. OK. And what did you think of Condon's testimony?

Judge HARRINGTON. Think of what?

Mr. HORN. What did you think about the testimony of Condon?

Judge HARRINGTON. At the Deegan case, or in the Shore case?

Mr. HORN. This would be the Deegan trial. Condon testified there and prior to his testimony in the Deegan murder case that he received permission from the Department of Justice.

Judge HARRINGTON. I do not know whether he received permission. I assume that he did because that was the practice at that time. I do not know what Condon testified to in the Deegan murder case, so I cannot evaluate the quality of his testimony.

Mr. HORN. Were you involved in that decision as to whether Condon would testify or not?

Judge HARRINGTON. I was not.

Mr. HORN. OK. Let me move then to, prior to that, was he restricted in any manner by the FBI or the Department of Justice authorities regarding what information related to the Deegan murder. Could you reveal any of that for us?

Judge HARRINGTON. All I can say is that at that time, and I think even today, when a Federal witness is asked to testify in a State trial he testifies under explicit written authorization of the Attorney General and must contain his testimony within the ambit of that authority.

Mr. HORN. Now Mr. Condon then, did he use the Patriarca tapes or were they using FBI informants?

Judge HARRINGTON. Again, I do not know what Mr. Condon testified to in the Deegan murder case. So I cannot answer your question, sir.

Mr. HORN. Prior to Condon testifying, did you review with him the Deegan murder information that was obtained from the FBI's secret monitoring devices or from the FBI informants?

Judge HARRINGTON. I had absolutely—absolutely—no involvement in the Deegan murder case.

Mr. HORN. Did you perceive any ethical obligation to ensure that all the information developed by you and other Federal sources indicated that some of the Deegan defendants, Mr. Salvati, or Greco, Tameleo, and Limone, were innocent and were they provided to the Suffolk County District Attorney's office at the time of the Deegan trial? If not, why not?

Judge HARRINGTON. I know, or I believe from reviewing the record that no orders issued from the State court. And I had no involvement in it. So I gave no advice to anyone with regard to that matter.

Mr. HORN. On another part of this interesting parade. Jimmy Flemmi before the grand jury, did he ever testify before a grand jury regarding the Deegan murder?

Judge HARRINGTON. Not that I know of.

Mr. HORN. Was he called before the grand jury to give him cover?

Judge HARRINGTON. At the early stages, after Baron was turned in March or early April 1967, James Flemmi and a fellow by the name of Fabiano were brought in to speak with the FBI in an attempt to see if the FBI could turn them. My understanding is, I did not talk with Flemmi, but my understanding from talking with the Bureau agents is that he was unwilling to turn State's evidence and that he was put before the grand jury in a pro forma manner so as to provide him with an excuse when he returned to prison.

Mr. BURTON. Would the gentleman yield real briefly. Was this a Federal or State grand jury?

Judge HARRINGTON. Federal.

Mr. BURTON. Federal.

Mr. HORN. Did you put Jimmy Flemmi before the grand jury?

Judge HARRINGTON. I did.

Mr. HORN. And we have been told that he was brought before a grand jury in order to give him cover, and that is what we are curious about.

Judge HARRINGTON. By the term "cover," Congressman, it meant that he would be able to advise his prison associates that he was brought in to the U.S. Attorney's Office because of his testimony before a grand jury, where the real purpose was to talk with FBI agents to see if they could turn him.

Mr. HORN. Let me mention Jack Zalkind, is that——

Judge HARRINGTON. Jack Zalkind.

Mr. HORN. Zalkind. He refused to cooperate with the committee and was the prosecutor in the Deegan case. His assistant has signed an affidavit that he had exculpatory evidence at the time of the trial and that evidence was not turned over to the defense. Do you know whether Zalkind had information that Jimmy Flemmi was involved in the Deegan murder?

Judge HARRINGTON. I have no information. And as I indicated previously, Jack Zalkind said in the Boston Herald Tuesday of this week that he never discussed the Deegan murder case with me.

Mr. HORN. Was any information from the Patriarca logs discussed with him at all?

Judge HARRINGTON. I have no memory that anything on the Patriarca logs were discussed with Zalkind because I never discussed that case with him. However, as I indicated previously, the Patriarca logs were made available to two of the defense counsel who subsequently defended the same defendants in the Deegan murder case. So they were available.

Mr. HORN. Did Barboza tell Zalkind or any State law enforcement officials that he would not provide information against Jimmy Flemmi?

Judge HARRINGTON. I do not know what he said to Zalkind or State law enforcement officials.

Mr. HORN. Did you tell Zalkind or any State law enforcement officials that Barboza had said he would not provide information against Jimmy Flemmi?

Judge HARRINGTON. I did not. I never talked with Zalkind about the prosecution of this case.

Mr. HORN. That is fine. The first sentence of one document reads: "The investigation is being initiated in connection with the TECIP"—perhaps you know that, Mr. Bybee, what is the TECIP?

Mr. BYBEE. I do not know what that is, Congressman.

Mr. HORN. Judge, was that a group within the Department of Justice?

Judge HARRINGTON. What is it?

Mr. HORN. T-E-C-I-P. For short, probably TECIP.

Judge HARRINGTON. I do not recall the term at this time.

Mr. HORN. And the question was, "Investigation is being initiated in connection with TECIP," this group, "to develop the subject as a top echelon criminal informant. Therefore, subject is being designated a target under this program." The date of this document is April 14, 1969. And I do not see an exhibit on this, counsel.

Mr. BURTON. Excuse me, Mr. Horn. We have about 4 or 5 minutes left on this vote. If you would like, we can come back and you can wrap it up then. Would you like to do that?

Mr. HORN. OK. Fine.

Mr. BURTON. OK. We will try to wrap this up very shortly as soon as this vote is over. We will be back very shortly. Thank you.

Judge HARRINGTON. Thank you.

[Recess.]

Mr. BURTON. The committee will reconvene.

I think we have covered everything we need to cover. So rather than have you sit around, even though we have more questions for the Justice Department, because of the lateness of the day, we will adjourn this hearing and we will conduct further hearings down the road.

Judge HARRINGTON. Mr. Chairman, I want to thank you and the courtesy you have shown me.

Mr. BURTON. Thank you, Judge.

So we stand adjourned.

[Whereupon, at 2:10 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[The exhibits referred to follow:]

Form DJ-150
(Rev. 4-26-65)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

Enclosed
73A 1023 #77

TO : James J. Featherstone, Deputy Chief
Organized Crime & Racketeering Section

DATE: 11/15/71

RECEIVED
NOV 16 1971
CRIMINAL DIVISION

FROM : Edward F. Harrington, Attorney in Charge
Boston Field Office, Organized Crime
and Racketeering Section

SUBJECT: Subpoenaes Directed to Special Attorney Harrington and Special Agents Rico and Condon to Appear on Behalf of Defendant Joseph Baron

This is in response to your telephonic request of November 12, 1971 to set forth the testimony expected from Special Agents Rico and Condon and me on behalf of the defendant in the case of California v. Joseph Baron.

It is my judgment that the federal officials involved should respond to Baron's subpoena as it is essential that the government should fulfill its commitment to Baron to do all within its power to insure that he suffers no harm as a result of his cooperation with the federal government. (See my memoranda to you dated March 23, 1971 and October 12, 1971.)

Greg Evans, Chief Investigator, Sonoma County Public Defender's Office, has advised me that the defense wishes me to testify in substance to the extent of Baron's cooperation with the federal government, the names and stature of the individuals convicted as a result of his testimony and the steps taken by the federal government to insure his personal security from retaliation by the underworld, namely, relocation to Sonoma County, California, change of identity, and the obtaining of a job.

The defense wishes Special Agent Condon to testify in substance as an expert witness regarding organized crime in the New England area, about certain clandestine movements undertaken by the underworld during the Spring and Summer of 1970, whose purpose was to "set Baron up for" extermination.

DEPARTMENT OF JUSTICE
NOV 16 1971
R.A.D.
CRIMINAL DIVISION
Organized Crime and Racketeering Section

The defense wishes Special Agent Rico to testify as an expert in organized crime in the New England area, about information he received in the period from the Spring of 1969 through the Winter of 1969 concerning underworld plans and movements, whose purpose was to exterminate Baron, which information was conveyed by Rico to Baron in order to preserve his personal safety.

EXHIBIT
1

FBI/BOS-CRM-00005

It is requested that Special Attorney Albert F. Cullen, Jr., who is intimately cognizant of all details relating to the Baron situation, be authorized to accompany Special Agents Rico and Condon and myself to California to insure that the interests of the government are preserved.

Office of the District Attorney
County of Sonoma
HALL OF JUSTICE
2555 MENDOCINO AVENUE
SANTA ROSA, CALIFORNIA 95401

KIERNAN R. HYLAND
DISTRICT ATTORNEY

JOHN W. HAWKES
ASSISTANT DISTRICT ATTORNEY

~~HARRINGTON~~

October 26, 1971

73A 1023
#77

RECEIVED
NOV 1 1971
CRIMINAL DIVISION

John Mitchell, U.S. Attorney General
United States Department of Justice
Washington, D.C.

Attention: Director of Organized Crime Division

Dear Sir:

The Sonoma County District Attorney's Office is in the process of prosecuting one Joseph "Baron" Barbosa for a murder. The Baron, as he is known, was an enforcer for the Mafia in the Boston area and worked under Patriarca there. He later split with Patriarca and testified against him.

The enclosed copy of a news article which appeared in our local Sunday paper indicates that the defense intends to call Francis Harrington, attorney in charge of the U.S. Crime task force, as a witness for the Baron. This is disconcerting for the prosecution because it presents a picture of a house divided against itself. The murder for which we are prosecuting the Baron has nothing to do with his Mafia connections.

When and if Mr. Harrington testifies as a defense witness, it would be appreciated if he would do me the courtesy of contacting me first and allowing me to interview him concerning his possible testimony.

Very truly yours,

KIERNAN R. HYLAND
District Attorney

KRH:hn
Enclosure

123-66
DEPARTMENT OF JUSTICE
OCT 28 1971
R.A.C.
CRIMINAL DIVISION
Organized Crime and Racketeering Section

EXHIBIT
2

FBI/BOS-CRM-00007

THE DEFENSE STRATEGY:

10-24-71

Mafia Planned To Kill Baron

By BONY SALUDES

A crime-busting government attorney will reveal aspects of the intriguing subculture of the underworld at the murder trial of gangland informer Joseph Baroza Baron.

Public Defender Marteen Miller disclosed Friday he will call as a defense witness Edward Francis Harrington, attorney in charge of the U.S. crime task force for the Justice Department.

Mr. Harrington's planned appearance is not unexpected since he visited the 39-year-old New Bedford, Mass., man twice in the county jail — Oct. 13 and last March 25.

Mr. Miller's announcement confirmed speculation the Justice Department is trying to help Mr. Baron, one of its top informants against Mafia figures on the East Coast.

Mr. Baron, a reputed underworld enforcer turned informer, is on trial for the July 7, 1970 slaying of Clay Wilson, a 26-year-old Santa Rosa heavy equipment operator.

Mr. Wilson's decomposed body — with two bullet holes in the skull — was found in a shallow, hornet-infested grave in Glen Ellen, near the Jack London Estates, on Oct. 12, 1970.

Self-Defense

During last week's attempt to seat a jury panel, Mr. Miller repeatedly stated Mr. Baron will take the stand to admit he killed Mr. Wilson, but killed him while "exercising his lawful right to self defense."

Both Mr. Miller and District Attorney Kiernan Hyland have informed jurors Mr. Wilson and Mr. Baron were mixed up in "criminal activities" at the time of the slaying.

This and other courtroom disclosures tend to confirm reports the two men were deeply involved in the alleged attempt to convert into cash $200,000 to $300,000 worth of stocks and bonds stolen in a residential burglary in Petaluma a couple years ago.

Mr. Miller said he plans to call Mr. Harrington and two FBI agents from the East to support Mr. Baron's contention he killed Mr. Wilson in self defense.

He said the government officials, among other things, will explain why Mr. Baron carried a gun in spite of the fact he was on parole from Massachusetts and it was illegal for him to carry guns.

Protection

The reason is simple, Mr. Miller said. It was for Mr. Baron's protection against Mafiosos who have tried to kill him for turning state's evidence against his former underworld associates.

Mr. Baron's testimony was instrumental in convicting six men for the 1965 murder of Edward (Teddy) Deegan in a Chelsea, Mass., alley.

Four of them, Louis Grieco, Peabody, Mass.; Peter Limone, Medford, Mass.; Henry Tameleo, Cranston, R.I.; and Ronald Cassesso, Somerville, Mass., were sentenced to the electric chair.

Two others, Henry Salvati, Boston, Mass., and Wilfred Roy French, Everett, Mass., got life sentences for murder.

In another trial, Mr. Baron's testimony aided in the conviction of reputed New England Mafia chief Raymond Patriarca of conspiracy to murder Willie Marfeo of Providence, R.I.

In a third trial, Gennaro Angiulo, an alleged Boston Mafia chief, was acquitted in spite of Mr. Baron's testimony.

Mr. Miller said Mr. Harrington, who has communicated with Mr. Baron in the past on gangland matters, will give details of Mr. Baron's cooperation with the Justice Department and explain why it was necessary, for the defendant's personal safety, for him to carry a gun.

"Government Attorney"

The public defender has referred to Mr. Harrington in court only as a "government attorney." He has not mentioned him by name, but in answer to a reporter's question, he confirmed he was talking about Mr. Harrington.

Mr. Miller has disclosed to the jurors at this early stage h...

(Continued on Page 6A, Col. 6)

ENCLOSURE

202

Office of the District Attorney
County of Sonoma
HALL OF JUSTICE
2555 MENDOCINO AVENUE
SANTA ROSA, CALIFORNIA 95401

KIERNAN R. HYLAND
DISTRICT ATTORNEY

JOHN W. HAWKES
ASSISTANT DISTRICT ATTORNEY

October 26, 1971

John Edgar Hoover, Director
Federal Bureau of Investigation
United States Department of Justice
Washington, D.C.

Dear Sir:

The Sonoma County District Attorney's Office is in the process of prosecuting one Joseph "Baron" Barbosa for a murder. The Baron, as he is known, was an enforcer for the Mafia in the Boston area and worked under Patriarca there. He later split with Patriarca and testified against him.

The enclosed copy of a news article which appeared in our local Sunday paper indicates that the defense intends to call two F.B.I. agents from the East as witnesses for the Baron. This is disconcerting for the prosecution because it presents a picture of a house divided against itself. The murder for which we are prosecuting the Baron has nothing to do with his Mafia connections.

When and if F.B.I. agents testify as defense witnesses, it would be appreciated that they do me the courtesy of contacting me first and allowing me to interview them concerning their possible testimony.

Very truly yours,

Kiernan R Hyland

KIERNAN R. HYLAND
District Attorney

KRH:hn
Enclosure

BEST COPY

92-9828-22

EXHIBIT
3

Office of the Attorney General
Washington, D. C. 20530

Mr. H. Paul Rico
Special Agent
Federal Bureau of Investigation
Miami, Florida

Dear Mr. Rico:

In response to the subpoena served upon you in the case of State of California v. Joseph Barbosa, you are hereby authorized to testify concerning the following facts and their surrounding circumstances:

(1) That when Barbosa was in a protective status in Massachusetts awaiting call as a witness you advised him that efforts were being made by criminal elements to locate him for the purpose of killing him before his appearance as a witness; and

(2) On or about February 3, 1970, you advised Barbosa to leave the Massachusetts area immediately because of a potential threat to his life.

This authorization is subject to the following requirements:

(1) You may not disclose any information which might result in the identification of a confidential informant or source of information;

(2) You may not identify any of the places where Barbosa was held in protective status;

(3) 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; and

92-9828-38

ENCLOSURE

EXHIBIT
4

(4) Any information concerning material in Department of Justice files may not be provided without express authority from the Department of Justice.

Sincerely,

Attorney General

Office of the Attorney General
Washington, D.C. 20530

Mr. Dennis M. Condon
Special Agent
Federal Bureau of Investigation
Boston, Massachusetts

Dear Mr. Condon:

In response to the subpoena served upon you in the case of State of California v. Joseph Barbosa, you are hereby authorized to testify concerning the following facts and their surrounding circumstances:

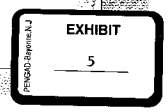
(1) That when Barbosa was in a protective status in Massachusetts awaiting call as a witness you advised him that efforts were being made by criminal elements to locate him for the purpose of killing him prior to his appearance as a witness; and

(2) That on or about January, 1970, Harry Johnson and Allan Fidler traveled from the Boston area to the San Francisco area, that they traveled extensively in the northern California area, and that they were apprehended and the circumstances surrounding their apprehension, detention and identification by local police, as well as the facts concerning these events of which you advised Barbosa.

This authorization is subject to the following requirements:

(1) You may not disclose any information which might result in the identification of a confidential informant or source of information;

(2) You may not identify any of the places where Barbosa was held in protective status;



(3) 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; and

(4) Any information concerning material in Department of Justice files may not be provided without express authority from the Department of Justice.

Sincerely,

Attorney General

FEDERAL BUREAU OF INVESTIGATION
COMMUNICATIONS SECTION

DEC 2 1971

TELETYPE

Mr. Tolson
Mr. Felt
Mr. Rosen
Mr. Mohr
Mr. Bishop
Mr. Miller, E.S.
Mr. Callahan
Mr. Casper
Mr. Conrad
Mr. Dalbey
Mr. Cleveland
Mr. Ponder
Mr. Bates
Mr. Tavel
Mr. Walters
Mr. Soyars
Tele. Room
Miss Holmes
Miss Gandy

NR 008 SF PLAIN

3:20 PM URGENT 12/2/71 MCC

TO DIRECTOR (92-9828)

BOSTON (92-1132)

FROM SAN FRANCISCO (92-2061) (P) 4P

JOSEPH BARON, AKA. AR.

RE BOSTON TEL TO BUREAU AND SAN FRANCISCO, NOVEMBER TWENTYFOUR LAST, ENTITLED "JOSEPH BARON, AKA; ET AL; UNSUB, AKA VICTOR L. DI CARLI, VICTOR DI CARL, ITSP, OO NEW YORK."

ON DECEMBER ONE LAST, SAS DENNIS M. CONDON, BOSTON OFFICE, AND H. PAUL RICO, MIAMI OFFICE, WITH ATTORNEY EDWARD F. HARRINGTON, BOSTON STRIKE FORCE, WERE INTERVIEWED BY DISTRICT ATTORNEY KERNAN HYLAND, SONOMA COUNTY, CALIF., AND MEMBERS OF HIS STAFF REGARDING THEIR POSSIBLE TESTIMONY ON THE CASE OF STATE OF CALIFORNIA VS. BARON. DISTRICT ATTORNEY ADVISED THAT STATE HAD NOT RESTED, AS HE CALLED AN UNEXPECTED SURPRISE WITNESS, LAWRENCE HUGHES OF NEW BEDFORD, MASSACHUSETTS. HYLAND ADVISED THAT HUGHES TESTIFIED THAT IN JULY, NINETEEN SEVENTY, BARON PROVIDED HIM WITH ACCESS TO BONDS STOLEN IN CALIFORNIA (THE STATE'S THEORY IS THAT BARON KILLED WILSON AS A RESULT OF AN ARGUMENT OVER THE DISPOSITION OF THESE BONDS) AND THAT BARON ALLEGEDLY ADMITTED TO HUGHES THAT HE, BARON, HAD

END PAGE ONE

EX-100 REC 35 92-9828-37

12 DEC 10 1971

EXHIBIT 6

PAGE TWO

SLEPT WITH WILSON'S WIFE ONE HOUR AFTER HE HAD KILLED WILSON. HYLAND INDICATED THAT THE SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE HAD BEEN TOLD THIS IN MARCH OF NINETEEN SEVENTYONE AND IMPLIED THAT HUGHES ALSO TOLD THE FBI THAT BARON HAD POSSESSION OF THE AFOREMENTIONED BONDS.

REFERENCED TELETYPE SETS FORTH INFORMATION PROVIDED BY HUGHES TO THE FBI AT THE TIME OF THIS INTERVIEW ON NOVEMBER TWENTYFOUR LAST, AT NEW BEDFORD, MASSACHUSETTS. PERTINENT INFORMATION CONTAINED IN REFERENCED TELETYPE WAS PREVIOUSLY MADE AVAILABLE BY FBI, SAN FRANCISCO, TO SONOMA COUNTY DISTRICT ATTORNEY'S OFFICE. JUST PRIOR TO USING HUGHES AS A PROSECUTION WITNESS, THE DISTRICT ATTORNEY TURNED OVER TO DEFENSE COUNSEL THE SUBSTANCE OF THE REFERENCED TELETYPE. REFERENCED TELETYPE HAD SET FORTH THEREIN THAT HUGHES HAD BEEN IN CONTACT WITH BOSTON OFFICE OF THE FBI IN SEPTEMBER NINETEEN SEVENTY, AND HAD NOT MADE ANY STATEMENTS RE ANY KNOWLEDGE OF BARON'S INVOLVEMENT IN CALIFORNIA HOMICIDE.

AS THE BUREAU IS AWARE, HUGHES, AFTER HIS CONTACT WITH THE FBI IN SEPTEMBER OF NINETEEN SEVENTY, WAS PUT IN TOUCH WITH SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, AS HIS INFORMATION HAD A BEARING ON THE ORGANIZATION'S ATTEMPTS TO OVERTURN THE

END PAGE TWO

58 DEC 17

PAGE THREE

DEEGAN MURDER CASE IN WHICH BARON HAD TESTIFIED. HUGHES WAS MAINTAINED BY THE SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE FROM SEPTEMBER, NINETEEN SEVENTY THROUGH APRIL NINETEEN SEVENTYONE, IN ORDER TO BE AVAILABLE IN THE EVENT A HEARING ON A MOTION FOR A NEW TRIAL IN THE DEEGAN CASE WAS HELD.

DISTRICT ATTORNEY HYLAND STATED THAT THERE WAS NO QUESTION IN HIS MIND THAT HUGHES WAS SENT OUT FROM THE BOSTON AREA TO SOLIDIFY THE CASE AGAINST BARON. STRIKE FORCE ATTORNEY IS OF OPINION THAT HUGHES HAS BEEN CORRUPTED BY LCN AND INSTIGATED TO FURNISH FALSE TESTIMONY.

IN INTERVIEW OF SAS CONDON, RICO, AND STRIKE FORCE ATTORNEY HARRINGTON BY PUBLIC DEFENDER, HE REQUESTED THE RESULTS OF THE FBI INTERVIEW IN SEPTEMBER NINETEEN SEVENTY, OF HUGHES AND IDENTITY OF AGENT WHO CONDUCTED THE INTERVIEW. STRIKE FORCE ATTORNEY ADVISED PUBLIC DEFENDER THAT SA CONDON HAD INTERVIEWED HUGHES BUT COULD NOT TESTIFY CONCERNING INTERVIEW WITHOUT OBTAINING A GRANT OF AUTHORITY.

STRIKE FORCE ATTORNEYS FROM BOSTON, MASSACHUSETTS, HAVE THIS DATE REQUESTED THAT SA CONDON'S GRANT OF AUTHORITY BE EXPANDED TO INCLUDE THAT FACT THAT ON SEPTEMBER TWENTYTHREE, NINETEEN SEVENTY, HE INTERVIEWED LAWRENCE HUGHES WITH SA DAVID DIVAN.

END PAGE THREE

PAGE FOUR

AT THIS TIME HUGHES TOLD HIM ABOUT THE ALLEGED MEETING BETWEEN BAILEY AND BARON IN JULY, NINETEEN SEVENTY, AT WHICH TIME THE FIGURE OF FIVE HUNDRED THOUSAND DOLLARS WAS AGREED UPON FOR A CHANGE OF TESTIMONY, AND AN EARLIER MEETING BETWEEN BARON AND FRANK DAVIS, CLOSE ASSOCIATE OF RAYMOND PATRIARCA AND OTHERS, IN MAY OF NINETEEN SEVENTY. BUT HUGHES FAILED TO GIVE ANY INFORMATION CONCERNING BARON'S INVOLVEMENT WITH STOLEN BONDS OR THE MURDER. STRIKE FORCE ATTORNEYS FEEL STRONGLY THAT IN THE BEST INTEREST OF THE GOVERNEMENT, THIS REQUEST FOR TESTIMONY SHOULD BE GRANTED.

COPY OF FD THREE ZERO TWO OF INTERVIEW OF HUGHES ON SEPTEMBER TWENTYTHREE NINETEEN SEVENTY, IN POSSESSION OF SUPERVISOR THOMAS EMORY, FBI HEADQUARTERS.

DEFENSE ALSO CALLING JOHN DOYLE, CHIEF INVESTIGATOR, SUFFOLK COUNTY DISTRICT ATTORNEY'S OFFICE, BOSTON, MASSACHUSETTS, AS DOYLE HAS BEEN IN CONSTANT TOUCH WITH HUGHES SINCE SEPTEMBER OF NINETEEN SEVENTY AND NEVER RECEIVED ANY INFORMATION FROM HUGHES RELATIVE TO BARON'S ALLEGED ADMISSION OF INVOLVEMENT IN CALIFORNIA MURDER.

BUREAU WILL BE KEPT ADVISED.

END

TMT FBI WA

CC: MR. CLEVELAND

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO: Director
Federal Bureau of Investigation

DATE: 7 DEC 1971

HEP:ADP:par
123-36-0

FROM: Henry E. Petersen
Acting Assistant Attorney General
Criminal Division

SUBJECT: Testimony of Federal Bureau of Investigation Agent in the case of State of California v. Joseph Barbosa, a/k/a Joseph Baron

This is a supplement to my memorandum of December 2, 1971, to you concerning the above matter.

Attached for your information is a copy of a communication from the Attorney General to Agent Dennis M. Condon enlarging the scope of the testimony which he is authorized to provide at the Barbosa trial.

Attachment

EXP. PROC. DEC 8 1971

EX-112

REC-30 92-9828-39

18 DEC 8 1971

58 DEC 17 1971

EXHIBIT 7

Typed: 12/7/71
123-36-0
JEM:REP:JJF:ADF:lp

17 DEC 1971

Mr. Dennis K. Condon
Special Agent
Federal Bureau of Investigation
Boston, Massachusetts

Dear Mr. Condon:

The authority to testify in the case of State of California against Joseph Barbosa extended to you on December 2, 1971, is enlarged to authorize you to testify concerning the following facts:

(1) That on September 23, 1970, you interviewed Lawrence Patrick Hughes in the presence of Special Agent David Sivan;

(2) That the interview took place in a Federal Bureau of Investigation vehicle in the parking lot of the Veterans Administration Hospital, Brockton, Massachusetts;

(3) That the interview was of a certain duration;

(4) That the matters related in the interview dated from the Winter of 1969 to the time of the interview; and

(5) That at no time during the interview did Hughes give you any information concerning Barbosa's involvement with stolen bonds or the murder with which Barbosa is charged.

The limitations detailed in the letter directed to you on December 2, 1971, are also applicable to this authorization.

Sincerely,

Attorney General

Records
Chron
Attorney General
Director, FBI
Petersen
Lynch
Featherstone
Harrington
Porcella (2)
Holmes

BEST COPY

92-9888-34

ENCLOSURE

SUBJECT: VINCENT JAMES FLEMMI, Aka.

[redacted] F.B

Memo of SA Dennis M. Condon 5/25/64 captioned: [redacted]

B

[redacted] was contacted on 5/22/64, advised that within the last few days he was in contact with [redacted] and JAMES FLEMMI. FLEMMI told him that all he wants to do now is to kill people, and that it is better than hitting banks. FLEMMI said that [redacted] have taken money for about six contract hits which they have not fulfilled. They spent the money for these hits drinking.

Informant said, FLEMMI said that he feels he can now be the top hit man in this area and intends to be.

[redacted]

FLEMMI told the informant that there was a big piece of money that came out of the hit on [redacted] and the informant gathered from FLEMMI's talk that he, FLEMMI, had made the hit.

[redacted] F.B

Boston letter to Director & SAC, Newark 5/25/64 captioned: [redacted]

[redacted] Informant stated that it appears that JAMES FLEMMI, a Roxbury, Mass. hoodlum, will probably become the "contract man" in the Boston area.

[redacted]

Boston letter to Director 6/4/64 captioned: [redacted]

F.B

This letter sets out information to the Bureau on [redacted] Under the heading CRIMINAL ASSOCIATES the following information appears concerning JAMES FLEMMI.

The informant is presently associated with [redacted] and JAMES FLEMMI. FLEMMI

EXHIBIT 8

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F

[redacted] (Cont'd)

M [redacted]

Informant advised 10/5/64, that he is friendly with the FLEMMI's, but VINCENT FLEMMI is an extremely dangerous individual. For example, he said that approximately Monday night, 9/28/64, VINCENT FLEMMI came into [redacted] bar room and immediately engaged [redacted] in a fight. During the fight FLEMMI took something out of his pocket and threw it into [redacted] eyes and then knocked him unconscious. [redacted] has not regained his sight since this episode and is under a doctor's care. Informant also advised that he suspects that FLEMMI had committed several murders, but he did not wish to discuss them.

B

Informant advised that [redacted]

M [redacted] and "JIMMY" FLEMMI wanted to be considered the "best hit man" in the area.

Informant advised also that he has had no unfavorable reaction over [redacted] arrest from either FLEMMI or from Romeo Martin.

B

[redacted] B.F

Memo of H. Paul Ricolo 8/6/64 to SAC, Boston entitled: [redacted]

M [redacted]

Informant advised he again met with [redacted] at approximately noontime on 10/6/64, and [redacted]

M

At this time [redacted] offered to help VINCENT FLEMMI and his brother "whack out" an individual that the FLEMMI's were having trouble with in [redacted] Cafe in [redacted] if the FLEMMI's would first join him in "whacking out [redacted]

B

000327

000010

EXHIBIT 9

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F, M

[redacted] (Cont'd)

Deegan told FLEMMI that he intends to remain in hiding for a few weeks in order to avoid being questioned by police.

FLEMMI told the informant that Deegan told him that [redacted] was going to hit one of the members of the Boston Italian group at the Coliseum Restaurant. FLEMMI told informant that his was obviously an attempt to get the Italian element in Boston interested in eliminating [redacted] B

FLEMMI told informant that he wants to kill Deegan. Information relating to Deegan's participating in the killing of [redacted] was furnished to the Everett, Mass., Police Department on 10/18/64. [redacted] mentioned as [redacted] B

[redacted]

F, M. B

Boston airtel to Director, FBI 10/15/64 captioned: [redacted]

M

[redacted] FLEMMI told the informant that [redacted] had offered to help FLEMMI and his brother to "whack out" an individual with whom the FLEMMI'S were having trouble at [redacted] Cafe in [redacted] provided the FLEMMI'S would first join him in "hitting" [redacted] B

[redacted]

F, B

Memo of H. Paul Rico to SAC, Boston 10/8/64 and captioned: [redacted]

B

M

[redacted]

0000 9

040326

EXHIBIT 10

DIRECTOR, FBI 3/9/65

SAC, BOSTON [redacted]

VINCENT JAMES FLEMMI, aka
"Jimmy" Flemmi
[redacted]

Rebulet dated 9/10/63 and Boslet to Bureau dated 10/3/63 entitled, "TOP ECHELON CRIMINAL INFORMANT."

VINCENT JAMES FLEMMI, aka "JIMMY" FLEMMI, is being designated as a target in this program.

VINCENT JAMES FLEMMI is presently operating an after-hours drinking establishment and a blackjack game upstairs over Walsh's TV store, Dudley Street, Boston, according to [redacted] FLEMMI also is believed to be involved in the murders of the following individuals:

[redacted]

In addition, he and [redacted] were tried for the murder of a fellow inmate at the Massachusetts Correctional Institution, Walpole, Mass. He was acquitted of this crime.

VINCENT FLEMMI, according to [redacted] has been visiting RAYMOND L. S. PATRIARCA on a fairly frequent basis in the past two months.

It is known, through [redacted], that FLEMMI, although he now has a lucrative business, has lost considerable money gambling and his only hope of bailing out is to continue to operate this illegal after-hours establishment and card game. He therefore should be susceptible to pressure.

2-Bureau
2-Boston [redacted]

HPR:[redacted]
(4)

Lindquist

Rio

EXHIBIT
11

000752A

F

[redacted]

FLEMMI is described as follows:

Name:	VINCENT JAMES FLEMMI
Alias:	"Jimmy" Flemmi
Race:	White
Sex:	Male
Born:	9/5/35
Height:	5'10"
Weight:	200 lbs.
Hair:	Dark brown, receding
Eyes:	Brown
Complexion:	Dark
Arrest Record:	Convicted of Larceny, Breaking and Entering, Using a Car Without Authority, Assault and Battery, Unarmed Robbery, and Armed Robbery.

In addition, he was the subject of an "Unlawful Flight to Avoid Prosecution" for armed robbery and was apprehended by Bureau Agents of this office as a result of this warrant.

Memoranaum

TO : SAC [redacted] F

DATE: 3/15/65 [redacted]

FROM : SA H. PAUL RICO

☒ CI ☐ SI

☐ PCI ☐ PSI

SUBJECT: [redacted] B

Dates of Contact
3/10/65

Titles and File #s on which contacted
EDWARD F. DEEGAN
[redacted] B1

Purpose and results of contact

☐ NEGATIVE
☒ POSITIVE

Informant advised that he had just heard from "JIMMY" FLEMMI that FLEMMI told the informant that RAYMOND PATRIARCA has put out the word that EDWARD "TEDDY" DEEGAN is to be "hit" and that a dry run has already been made and that a close associate of DEEGAN's has agreed to set him up.

FLEMMI told the informant that the informant, for the next few evenings, should have a provable alibi in case he is suspected of killing DEEGAN. FLEMMI indicated to the informant that PATRIARCA put the word out on DEEGAN because DEEGAN evidently pulled a gun and threatened some people in the Ebb Tide restaurant, Revere, Mass.

☒ Informant certified that he has furnished all information obtained by him since last contact.

Rating

Coverage
92'B

Personnel Copy
[redacted] 1- (DEEGAN) F

[redacted] 314

HPR:po'b
(5)

Below

EXHIBIT
12

000753

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F [redacted]-2597pg.2

Boston Airtel to Director, 3/10/65 entitled: [redacted]

B, M

F [redacted] advised on 3/3/65 that [redacted] contacted Patriarca and stated he had brought down VINCENT FLEMMI and another individual (who was later identified as Jos Barboza from East Boston, Mass.) It appeared that [redacted], Boston hoodlum, was giving orders to FLEMMI to "hit this guy and that guy".

B

Raymond Patriarca appeared infuriated at [redacted] giving such orders without his clearance and made arrangements to meet FLEMMI and Barboza in a garage shortly thereafter. He pointed out that he did not want FLEMMI or Barboza contacting him at his place of business.

F [redacted]-2597pg.5

Angiulo told Patriarca that VINCENT FLEMMI was with Joe Barboza when he, Barboza, killed [redacted] in Revere, Mass. several months ago. It appeared that [redacted], Boston hoodlum, had ordered the "hit". Patriarca again became enraged that [redacted] had the audacity to order a "hit" without Patriarca's knowledge.

B

Patriarca told Angiulo that he explained to FLEMMI that he was to tell [redacted] that no more killings were to take place unless he, Patriarca, cleared him.

Jerry explained that he also had a talk with FLEMMI. He pointed out that Patriarca has a high regard for FLEMMI but that he, Patriarca, thought that FLEMMI did not use sufficient common sense when it came to killing people.

Angiulo gave FLEMMI a lecture on killing people, pointing out that he should not kill people because he had an argument with him at any time. If an argument does ensue, he should leave and get word to Raymond Patriarca who, in turn, will either "OK" or deny the "hit" on this individual, depending on the circumstances.

M [redacted]

SUBJECT: VINCENT JAMES FLEMMI, Aka.

F

[redacted] (Cont'd)

M [redacted]

According to Patriarca, another reason that FLEMMI came to Providence to contact him was to get the "OK" to kill Eddie Deegan of Boston who was "with [redacted] It was not clear to the informant whether he received permission to kill Deegan; however, the story that FLEMMI had concerning the activities of Deegan in connection with his, Deegan's, killing of [redacted] was not the same as Jerry Angiulo's. B

[redacted] F/B

Boston's Airtel to Director and SACS Albany, Buffalo, Miami 3/12/65 captioned: [redacted]

B [redacted] advised on 3/9/65 that JAMES FLEMMI and Joseph Barboza contacted Patriarca, and they explained that they are having a problem with Teddy Deegan and desired to get the "OK" to kill him.

They told Patriarca that Deegan is looking for an excuse to "whack" [redacted] who is friendly with [redacted] B

FLEMMI stated that Deegan is an arrogant, nasty sneak and should be killed.

Patriarca instructed them to obtain more information relative to Deegan and then to contact Jerry Angiulo at Boston who would furnish them a decision.

M [redacted]

EXHIBIT 13

UNITED STATES GOVERNMENT

Memorandum

TO : SAC [redacted]

DATE: 3/15/65

FROM : SA H. PAULSTICK B, F

☒ CI ☐ SI ☐ PCI ☐ PSI

SUBJECT: [redacted]

Dates of Contact

3/13/65

Title and File #s on which contacted

EDWARD F. DEEGAN

[redacted] F, M B

Purpose and results of contact

☐ NEGATIVE

☐ POSITIVE

X

Informant advised that "JIMMY" FLEMMI contacted him and told him that the previous evening DEEGAN was lured to a finance company in Chelsea and that the door of the finance company had been left open by an employee of the company and that when they got to the door ROY FRENCH, who was setting DEEGAN up, shot DEEGAN, and JOSEPH ROMEO MARTIN and RONNIE CASESSA came out of the door and one of them fired into DEEGAN's body. While DEEGAN was approaching the doorway, he (FLEMMI) and JOE BARBOZA walked over towards a car driven by TONY "STATS" and they were going to kill "STATS" but "STATS" saw them coming and drove off before any shots were fired.

FLEMMI told informant that RONNIE CASESSA and ROMEO MARTIN wanted to prove to RAYMOND PATRIARCA they were capable individuals , and that is way they wanted to "hit" DEEGAN. FLEMMI indicated that they did an "awful sloppy job."

☐ Informant certified that he has furnished all information obtained by him since last contact.

Rating

Coverage 92'6 F

Personal Data

[redacted] F, B

[redacted] (DEEGAN)

[redacted] UPRipo'b (5)

0000 2

EXHIBIT 14

FENCAD Bayonne, N.J.

[redacted] 2/6/79

FBI — F

Rippner CAR

[redacted] F.B

This information has been disseminated by SA DONALD V. SHANNON to Capt. ROBERT RENFREW (NA) of the Chelsea, Mass. PD.

000320

0000 3

2

3/19/65

AIRTEL

TO : DIRECTOR, FBI [redacted]

FROM: SAC, BOSTON [redacted]

CRIMINAL INTELLIGENCE PROGRAM
BOSTON DIVISION

The following are the developments during the current week:

On 3/12/65, EDWARD "TEDDY" DEEGAN was found killed in an alleyway in Chelsea, Mass. in gangland fashion.

Informants report that RONALD CASESSA, ROMEO MARTIN, VINCENT JAMES FLEMMI, and JOSEPH BARBOZA, prominent local hoodlums, were responsible for the killing. They accomplished this by having ROY FRENCH, another Boston hoodlum, set DEEGAN up in a proposed "breaking & entering" in Chelsea, Mass. FRENCH apparently walked in behind DEEGAN when they were gaining entrance to the building and fired the first shot hitting DEEGAN in the back of the head. CASESSA and MARTIN immediately thereafter shot DEEGAN from the front.

ANTHONY STATHOPOULOS was also in on the burglary but had remained outside in the car.

3-Bureau
1-Boston

JFK:po'b
(4)

SEARCHED ____
SERIALIZED 0
INDEXED ____
FILED 0

[redacted] 1820

0000 4

EXHIBIT
15

000321

[redacted] F

When FLEMMI and BARBOZA walked over to STATHOPOULOS's car, STATHOPOULOS thought it was the law and took off. FLEMMI and BARBOZA were going to kill STATHOPOULOS also.

Immediately thereafter, STATHOPOULOS proceeded to Atty. AL FARESE. FARESE called the Chelsea, Mass. PD before Chelsea knew of the killing and FARESE wanted to bail out ROY FRENCH and "TEDDY" DEEGAN. Shortly thereafter the Chelsea PD found the body of DEEGAN and immediately called Atty. FARESE's office, and Atty. JOHN FITZGERALD, FARESE's law partner, came to the Chelsea PD.

Efforts are now being made by the Chelsea PD to force STATHOPOULOS to furnish them the necessary information to prosecute the persons responsible.

It should be noted that this information was furnished to the Chelsea PD and it has been established by the Chelsea Police that ROY FRENCH, BARBOZA, FLEMMI, CASESSA, and MARTIN were all together at the Ebb Tide night club in Revere, Mass. and they all left at approximately 9 o'clock and returned 45 minutes later.

It should be noted that the killing took place at approximately 9:30 p.m., Friday, 3/12/65.

[redacted]

[redacted] B

Informant also advised that [redacted] had given the "OK" to JOE BARBOZA and "JIMMY" FLEMMI to kill [redacted] who was killed approximately one month ago.

DIRECTOR, FBI [redacted] 6/9/65

SAC, BOSTON [redacted]

BS 919-PC

[redacted]

Rebulet to Boston dated 6/4/65.

The following are the efforts to effect the development of the above-captioned target:

[redacted]

On 5/10/65, BS 919-PC was contacted on [redacted]

Informant advised that on the evening of 5/3/65 he left his home at approximately 10:30 p.m. He was going to meet with JOSEPH BARBOZA. As he approached his car two individuals stepped out of the bushes and fired at him with a shotgun. Informant said that he turned around as he fell and both of them were running with handkerchiefs to their faces.

2-Bureau
1-Boston
HPR:pob
(3)

EXHIBIT 16

000024

00034

[redacted]

F [redacted]

Informant said that he fired back at them and one of them hollered, and they both ran towards the back of the building and drove away in a late model, light brown Chevrolet.

M

B.P. [redacted]

It is known through other informants and sources of this office that this individual has been in contact with RAYMOND L. S. PATRIARCA and other members of La Cosa Nostra in this area, and potentially could be an excellent informant.

Concerning the informant's emotional stability, the Agent handling the informant believes, from information obtained from other informants and sources, that BS 919-PC has murdered [redacted], [redacted], [redacted], [redacted], EDWARD "TEDDY" DEEGAN, and [redacted], as well as a fellow inmate at the Massachusetts Correctional Institution, Walpole, Mass., and, from all indications, he is going to continue to commit murder.

R

Some of the information provided by the informant has been corroborated by other sources and informants of this office. Although the informant will be difficult to contact once he is released from the hospital because he feels that [redacted] will try to kill him, the informant's potential outweighs the risk involved.

R

3

[redacted]

JOSEPH BARON, also known as JOE BARBOZA, was interviewed at the Massachusetts Correctional Institution, Walpole, Massachusetts.

BARON stated that he would not mind talking to the Agents if the Agents would not end up testifying against him for what he said. BARON was told that if he wanted to talk in confidence that "we would respect his confidence."

BARON advised that he has always tried to make a living outside of the law and that if anyone in law enforcement could prove that he was doing wrong, he is willing to pay the consequences. However, he said, when you find that a police officer that you know "fingered scores, acted as lookout when scores were being pulled, and divided up the proceeds of these scores" turns around and manufactures evidence and testimony against you, you have a feeling that maybe you, the criminal, have played by the wrong standards.

BARON said that he never wanted to physically hurt anyone in law enforcement but added that "If my life is ruined by this individual trying to benefit his own ambitions, the day I come out of jail could be the day this Lieutenant becomes nervous."

BARON said that he knows that INGEGNERI is friendly with the "connected people" and that these people wanted to see him hurt. BARON advised that he has always tried to get along with ~~these~~ people and that, as a matter of fact, he used to see RAYMOND PATRIARCA and get an "OK" before he made most of his moves. Since they killed three of his friends, however, (THOMAS J. DE PRISCO, ARTHUR C. BRATSOS and JOSEPH W. AMICO) and stole $70,000 from him (This is in reference to the money allegedly in BRATSOS' possession when he was murdered), he had made statements that he was going to kill several of them. BARON said that after thinking the entire situation over, he realized that he could not possibly

On 3/8/67 at Walpole, Massachusetts File # [redacted]

by SA's DENNIS M. CONDON and H. PAUL RICO:po'b 3 Date dictated

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

EXHIBIT 17

000786

[redacted]

DMC:HPR:pob

2

[redacted] BARON, knows what has happened in practically every murder that has been committed in this area. He said that he would never provide information that would allow JAMES VINCENT FLEMMI to "fry" but that he will consider furnishing information on these murders.

4

000787

[redacted]

"Baron [Barboza] told the Bureau, and I was informed of it, that of all the murders he was involved in, and Baron [Barboza] was reputed to be in over 20 murders, he would not testify in those murders in which Jimmy Flemmi was involved."

PENGAD-Bayonne N J
EXHIBIT
18

Judge Edward Harrington
February 11, 2002

August 5, 1968

PERSONAL

Mr. H. Paul Rico
Federal Bureau of Investigation
Boston, Massachusetts

Dear Mr. Rico:

The manner in which you performed in the investigation of a local murder case involving Roy French and others was splendid and I want to commend you.

The successful prosecution of these subjects was a direct result of your noteworthy development of pertinent witnesses. I want you to know that I am most appreciative of your fine services.

MAILED 27
AUG 5 - 1968
COMM - FBI

Sincerely yours,

J. Edgar Hoover

1 - SAC, Boston (Personal Attention)

1 - Miss Usilton (Sent Direct)
JMP
(5)
67-458484
Based on Boston teletype 7/31/68 and addendum Special Investigative Division 8/1/68 re Criminal Intelligence Program, Boston Division.

67- 458484-144
Searched Numbered
AUG 6 1968

REC-136

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

AUG 9 1968

MAIL ROOM ☐ TELETYPE UNIT ☐

EXHIBIT
19

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.

UNITED STATES GOVERNMENT

Memorandum

TO : Director, FBI

DATE: June 20, 1967

FROM : SAC, Boston

SUBJECT: SA H. PAUL RICO
EOD: 2-26-51

SA DENNIS M. CONDON
EOD: 1-29-51

RECOMMENDATIONS FOR QUALITY SALARY INCREASE

SA H. PAUL RICO has been assigned exclusively to the development of Top Echelon Criminal Informants in the Boston Office since September 16, 1963. SA DENNIS M. CONDON has been assigned to the Top Hoodlum Program since 1962.

SA RICO was successful in developing [redacted] Based on the development of [redacted] SA RICO was able to determine the basic reasons for each gangland slaying, the identities of the majority of individuals involved, the latter information, where significant, disseminated to pertinent law enforcement agencies. Only as a result of this informant was the Boston Office able to separate the true reasons for the slayings as distinguished from the camouflage put forth by the [redacted] and/or the LCN.

During this period, SA RICO and SA CONDON were making continuing efforts to develop as an informant an active LCN member. When intensified efforts in this area were not immediately productive, SA RICO was able to have [redacted] and through this contact, able to follow the philosophy of the LCN, particularly concerning the infamous Boston gangland slayings. [redacted] and through these contacts the Boston Office had continuing high quality information concerning LCN activities. [redacted] was based on the guidance and counsel said informant received from SAS RICO and CONDON.

67-123766-150

REC-145

Searched ..... Numbered .....
JUL 7 1967

4 - Bureau
2 - Boston
JLH:CAK JUL 12 1967
(6) 73

THREE

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

EXHIBIT
19 A

B

[redacted] The handling of this source, obviously, was an extremely delicate and sensitive problem requiring not only continuous skillful direction, but almost 24-hour contact on a daily basis with [redacted]

B

Realizing the potential that [redacted] 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 was developed by these agents and via imaginative direction and professional ingenuity utilized said source in connections with interviews of JOSEPH BARON, 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.

B, D

SAS RICO and CONDON contacted BARON in an effort to convince him he should testify against the LCN. BARON initially declined to testify but through utilization of BS 955 C-TE, the agents were able to convey to BARON that his present incarceration and potential for continued 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 BARON from BS 955 C-TE, said individual said he would testify against the LCN members.

[redacted]

The indictments against PATRIARCA, TAMELEO and CASSESSO are the first major blow to the LCN in New England. PATRIARCA, as LCN boss and possible Commission member, and his top lieutenant, HENRY TAMELEO, were felt to be beyond prosecution by top state and local police officials based on what for years resulted in frustration in securing witnesses who would testify. The Providence, Rhode Island Police and Rhode Island State Police have, for over twenty years, concentrated a large number of men in efforts to secure even a minor prosecution, unsuccessfully.

SAS CONDON and RICO were assigned to develop a prosecutable quality case against top LCN members in New England. They have done so via highest devotion to duty, requiring personal sacrifices, in time, on a continuing basis. Their time would have been wasted were it not for the skillful, unprecedented ability to develop the highest type criminal intelligence data, coupled with securing as a witness a professional killer who, in the past, would never furnish data other than his name to any law enforcement agency. Their performance for over twelve months

has been of the highest caliber; their drive and desire to fulfill a vital objective of the Bureau have been rewarded with the prosecution of top LCN members.

In view of the above, noting we have broken what at times has seemed to be an insurmountable barrier, I am recommending Quality Salary Increases be awarded to SAS RICO and CONDON.

Sheridan,
Garrahan
&
Lander
Attorneys At Law

JOHN P. GARRAHAN
JAY J. LANDER
JOHN J. VITAL
JOHN D. MULLIN
MICHAEL C. DONAHUE
GEORGE E. McCARTHY, JR.
JAMES D. NATHANSON
JOANNA COMMOLLY
OF COUNSEL
MICHAEL E. GATTIS
MICHAEL W. GRADY
MICHAEL R. JOHNSTON
MICHAEL A. MAGALDI

OF COUNSEL
EDWARD F. WARRINGTON
JOSEPH J. MULLIN

January 20, 1988

Senator Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
Washington, D.C. 20510-6275

Dear Senator Biden:

This is in response to your letter dated January 12, 1988, requesting my answers to additional questions raised since the second hearing on my nomination.

Q. 1. The committee received a letter from Attorney Stephen Delinsky, a copy of which is enclosed, raising concerns about a number of actions taken by you. Please explain the circumstances of your actions in responding to the following charges by Mr. Delinsky:

(a) That as a result of prosecutorial actions taken by you as U.S. Attorney, cooperation deteriorated between federal and state law enforcement officials in Massachusetts. (In responding to this charge, it would also be helpful if you would address yourself to the events described in the enclosed column from the Boston Globe dated June 14, 1981 and the enclosed column from the Boston Herald dated September 26, 1986.)

(b) That after the Judicial Nominating Council turned down your application for a State Judgeship, you publically and privately berated Mr. Delinsky for his role in the nominating process, using extremely harsh language.

A. 1. (a) There was excellent cooperation between federal and state authorities while I was U.S. Attorney, as evidenced by the Masiello-Manzi state corruption prosecution, the historic Ward Commission hearings into corruption in the award of state contracts, the joint federal-state investigation of the notorious criminal figure Myles Connor, and the Jarabek bribery investigation. See Boston Globe article dated October, 1981. However, the federal prosecution of Richard Paul, an employee of the Attorney General's office, and the F.B.I.'s investigation of Myles Connor, an informer for District Attorney Delahunt caused some strains between the offices. I will set forth the background of each case.

The Meadows • 161 Worcester Road — P.O. Box 807 • (617) 875-1760 • Telecopier (617) 872-1403 • Framingham, Massachusetts 01701

PENGAD-Bayonne, N.J.
EXHIBIT
20

Sheridan, Gerrahan & Lander

Senator Joseph R. Biden, Jr.
Page 2

U.S. v. Richard Paul - As U.S. Attorney, my office prosecuted an agent assigned to the consumer protection unit of the Massachusetts Attorney General's Office for "shaking down" used car dealers under his regulatory jurisdiction. The prosecution resulted from a six-month joint F.B.I. - State Police investigation which involved the use of electronic surveillance. The case was prosecuted in the federal court after the Attorney General declined to prosecute and decided to handle the matter administratively. Paul has been a campaign worker for the Attorney General. Defendant Paul's electronically intercepted conversations contained remarks which proved embarrassing to the Attorney General and led to a deterioration in our working relationship. The defendant was sentenced to an eighteen month term of imprisonment.

Commonwealt v. Connor - This was a state prosecution against a notorious criminal figure for his alleged involvement in the double-murder of two young women who were killed because they had been witnesses to a prior murder. The investigation was conducted jointly by the F.B.I. and the Boston Police Department. As U.S. Attorney, I requested the Massachusetts Attorney General to appoint a Special Prosecutor in place of District Attorney Delahunt to prosecute the case. The reason for this action was that Connor was the District Attorney's informer and the investigative agencies believed that, because of this relationship, the District Attorney might not be vigorous in pressing the case. The Attorney General agreed with my request and appointed a Special Prosecutor to try the case. Connor was convicted at the first trial. The District Attorney and his First Assistant testified on Connor's behalf that he was not involved in the murders. I called on the Attorney General to investigate the District Attorney's role in the conduct of the double-murder investigation to determine what influence his relationship with Connor had on his less than vigorous investigative efforts. The double-murder probe had been conducted in an atmosphere of intense mistrust between the F.B.I./Boston Police Department and the District Attorney's Office because Connor had allegedly been an accessory to the murder of a Boston Police Officer and the Boston Police Department felt the District Attorney had been protecting his informer. This animosity pre-dated my becoming U.S. Attorney. It should be noted that Mr. Dalinsky testified on behalf of Connor.

I had a close working relationship with former District Attorneys Byrne and Droney (as well as then Assistant District Attorney and now Senator Kerry) and current District Attorneys Flanagan, Ryan, Conte, and Rollins. (Flanagan, Byrne, and Ryan have contacted the Senate Judiciary Committee on my behalf, as have former and current Massachusetts State Police officials Keogh and Condon.) Current District Attorney Harshbarger was not in office when I served as U.S. Attorney, but when I left office, he, as Chairman of the Ethics Commission, wrote me a note lauding my accomplishments. He also told me personally that I was his model as a prosecutor.

As a public prosecutor, I developed such significant accomplice witnesses as Joseph Baron, Vincent Teresa, "Red" Kelley, William Masiello and many others whose use as witnesses I always made available to local prosecutorial authorities. Cooperation with local law enforcement was my hallmark.

Peter Lucas' political column in the midst of a partisan political campaign reflected that all Democratic District Attorneys were supporting my Democratic opponent, which is hardly surprising. The sole Republican District Attorney, Rollins, supported me.

(b) I spoke with Mr. Delinsky on the telephone on one occasion and that was two days prior to my appearance before the Nominating Council in May, 1983. I placed this call because I had been told that he was soliciting votes against me and I did not believe this to be so. I asked him if this allegation were true and he denied it and, in fact, said that he was going to support me because "your record speaks for itself".

After my rejection, I spoke to him on only one occasion. I was standing up having a sandwich with a group of attorneys at the Steaming Kettle sandwich shop in City Hall Plaza. Mr. Delinsky came into the lower store, saw me, blushed, and immediately turned and hurriedly departed the premises. The six or seven attorneys who were conversing together laughed, including myself, for it was obvious that Mr. Delinsky was not desirous of speaking to me. In a jocular manner, I said to him as he was departing, "Steve, there's no need to run away, we're all friends here" or words to that effect.

See Boston Globe articles dated May 23, 1983 and July 18, 1983. Also see Boston Herald article dated September 1, 1983.

Q. 2. According to a report that appeared in the Boston Phoenix in June of 1981, a copy of which is enclosed, you used crude language to describe U.S. District Judge Joseph Tauro after Judge Tauro declared a mistrial in a hotly contested public corruption case that your office had been prosecuting. Please explain the circumstances of your remarks in that situation, and respond to the following additional charges made in the article:

(a) That you were well aware of a potential conflict of interest between Judge Tauro and the defendant in the case long before the case went to trial, but waited until after the mistrial in the case to move for recusal.

(b) That you provided information to the press about the potential conflict of interest between Judge Tauro and the defendant and then later promised your motion to recuse the Judge in part on the fact that the Judge's impartiality "has been questioned in the public media".

Sheridan, Garrahan & Lander

Joseph R. Biden, Jr.

A. 2. The Kelly case was a most significant public corruption case, as it was one of the few, if not the sole prosecution to come from the celebrated Lord Commission hearings. It was a very intensely contested trial conducted over a six week period. The jury stood 11-1 for conviction after only approximately twelve hours of deliberation. I was called to the court room under the belief that the jury was returning a guilty verdict. I was met in the corridor outside of the court room by Assistant United States Attorney Macdonald and the F.B.I. agent assigned to the case who motioned me to huddle privately with them in a corner of the corridor, which I did. Mr. MacDonald surprised me by saying that a mistrial was going to be declared. I uttered an oath in a private conversation with Mr. Macdonald and the agent because I was absolutely shocked that a mistrial would be granted after such a short period of deliberation. The corridor was crowded at the time, as the trial was in a brief recess, and that is why we had to huddle in a corner where we remained to devise our argument to persuade the Judge not to declare a mistrial under the circumstances.

(a) I was not aware of any facts sufficient to lead me to believe that any potential conflict of interest existed before the case was tried.

(b) I did not provide any such information to the press. The David Wilson article caused the U.S. Attorney's office to request the F.B.I. to conduct an investigation into the matter and the motion to recuse was based upon the results of this probe. U.S. District Judge Douglas Woodlock (then an Assistant U.S. Attorney) was in charge of the probe and drafted the motion.

Q. 3. In March of 1977, several years after your service as Chief of the Organized Crime Strike Force in Boston, you appeared in court with Attorney Albert Cioffi at a hearing on reduction of sentence for a criminal defendant named Louis Catania. Catania believed that he had received a stiff sentence because of allegations that he was involved with organized crime. According to a transcript of the hearing, a portion of which is enclosed, Mr. Cioffi reported to the court that you had checked with sources in the Organized Crime Strike Force and found that there was no indication that Mr. Catania had ties to organized crime. This transcript raises a number of questions:

(a) Was the information you obtained from the Organized Crime Force about Mr. Catania confidential information or derived from confidential information? If so, was it appropriate for you to disclose the information?

(b) Did you or your firm receive a fee for your appearance in this action?

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Senator Joseph R. Biden, Jr.
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(c) Did you ever receive a fee on any other occasion to provide representation or testimony concerning an individual's links to organized crime? If so, please describe the circumstances.

(d) When you were U.S. Attorney or Chief of the Organized Crime Strike Force, did you ever provide information to a private attorney concerning an individual's links to organized crime? If so, please describe the circumstances.

A. 3. Four years after I had left the Strike Force, I was called by my then private law partner, Paul Markham, to be available to testify as an expert witness in a hearing relating to a motion to revise and revoke the defendant Catania's sentence. It was Mr. Markham's understanding, which turned out to be erroneous, that at least part of the basis for the defendant's sentence was his alleged involvement in organized crime. At that time I was one of the state's most prominent experts on organized crime and was always being called upon to lecture and comment on the subject. Mr. Markham asked me if the defendant was a member of the organized criminal element and I advised him that based on my knowledge and experience he was not as I had never heard of him. I told Mr. Markham that I would verify my personal knowledge with various sources of mine who were knowledgeable about criminal matters whom I asked if they had heard of Mr. Catania. I never received any confidential information from any source; I only learned that my sources had no information regarding the defendant, as they had never heard of him either.

(a) I did not ask for nor receive any confidential information from the Organized Crime Strike Force about Mr. Catania. No source I contacted had any information regarding him whatsoever. No source had ever heard of him. A lawyer has the responsibility to seek from all sources, governmental or others, appropriate information in order to fully represent his client and to clear him from false allegations.

(b) I did not personally receive a fee. Mr. Markham, I am sure, received a fee for representing his client.

(c) No.

(d) No.

Very truly yours,

Edward F. Harrington Jr.

Edward F. Harrington

/pw

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Sullivan, Brennan & Sullivan
Attorneys At Law

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MICHAEL B. COHEN

OF COUNSEL
RONALD P. MANCHESTER
JOSEPH J. HURLEY

January 29, 1988

Senator Joseph R. Biden, Jr.
Chairman
Committee on the Judiciary
Washington, D. C. 20510-6275

Dear Senator Biden:

Since I responded on January 20, 1988, to the questions raised by Stephen Delinsky's letter, the Senate Judiciary Committee has received letters from Attorney Carle C. Cooley and from the Women's Bar Association concerning my nomination. Although these letters do not appear to raise any new matter requiring a response, I submit this clarification so that the record will be complete.

(1) Mr. Cooley's Letter Although I have known Mr. Cooley for years and respect him as an attorney, our principal professional involvement has been as adversaries in intensely litigated criminal matters relating to Mr. Cooley's client, Myles Connor. While I was U. S. Attorney my office was involved in the federal bank robbery prosecution and the joint Boston Police/FBI double murder investigation of Connor. Matters relating to Myles Connor were discussed in my response to Mr. Delinsky and in the newspaper articles attached to that response. Mr. Delinsky testified on behalf of Connor in the double murder case. Mr. Cooley defended Connor in both the state and federal cases. And Attorney Alice Richmond was the attorney for Connor's gir) friend in the federal case.

Mr. Cooley's letter focuses upon the government's use of witnesses involved in the Federal Witness Protection Program. Mr. Cooley and I have a longstanding and fundamental philosophic difference regarding the Witness Protection Program. It has been my belief since my involvement in the "labor-racketeering" investigations of the early 60's that the successful prosecution of organized crime requires the establishment of such a program to insure the safety of the so-called accomplice witness. The Congress, under the same belief, created the Witness Protection Program as part of the Organized Crime Control Act of 1970. The program is administered by the U. S. Marshall's Service.

The testifying accomplice witness in many cases is the pre-requisite to the prosecution of a major criminal figure because of the essential character of organized crime - the "insulation" of the "boss" from the overt criminal

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act. This necessitates the testimony of an associate of the "boss" who can provide the evidentiary link between the criminal command and the criminal act. This type of witness is rare because of the underworld's code of silence and fear of reprisal. Skilled law enforcement is ever alert to circumstances which are ripe for the development of this type witness growing out of the ever-occurring fallings-out between underworld associates, and is prepared to provide the protection detail while the accomplice witness is waiting to testify and the change of identity and geographic relocation when his testimony is completed.

I have been involved in almost every major public corruption and organized crime investigation conducted in Massachusetts from the early 60's to the early 80's and over that period I was engaged in the development of many significant accomplice witnesses. 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's part. No court has ever found fault with my handling of such witnesses.

Mr. Cooley's letter refers to three specific protected witnesses:

(a) Joseph (Baron) Barboza was the first of the major accomplice witnesses developed in this part of the county. He was the chief government witness in the successful prosecution of the syndicate leader Raymond L. Patriarca in 1968. His successful protection inspired the decision of other major accomplice witnesses to cooperate with the federal government, including Vincent C. Ierace and John J. "Red" Kelley, whose testimony had significant impact on the organized underworld in the late 60's and early 70's. Barboza's protection detail served as the prototype upon which the Witness Protection Program was established when it came into being in 1970. After Barboza completed his testimony and was released from the Program, having been relocated and provided with a new identity, he committed a homicide. Under authorization of the Justice Department, two F. B. I. agents and I provided the California Court with information relating to Barboza's cooperation with federal authorities. His punishment in the homicide case was determined by the California Court. When Barboza was released from prison after serving his sentence he was murdered gangland-style in retaliation for his testimony against organized crime.

(b) Thomas Sperrazza and Diane Wazen were associates of Myles Connor and were key witnesses in the double-murder and bank robbery cases. Sperrazza remained in prison under a new identity while he was in the witness protection program. No promise was ever made to him that he would be released from prison in exchange for his cooperation. He still remains in prison serving a life sentence.

Sheridan, Gerrahan & Lander

[illegible]tor Joseph R. Biden, Jr.
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(e) Diane Wazen was first developed as a witness by the Norfolk County District Attorney's Office in its successful prosecution of Thomas Sperrazza for his part in the double-murder. She later testified for the Attorney General's office in the double murder case against Connor and for my office in the federal bank robbery case against Connor. She was prosecuted by the Norfolk County District Attorney's Office for her involvement in a bad check scheme. My office did not interfere with that prosecution. The extent of her cooperation with law enforcement was brought to the attention of her sentencing judge.

(2) The Women's Bar Association Letter The Women's Bar Association stated that it based its action solely on the testimony of Alice Richmond before the Senate Judiciary Committee on December 9, 1987. Apparently the Women's Bar Association did not have available to it the record of the entire proceedings, including my testimony and that of four other witnesses. This additional evidence addressed fully matters raised by Ms. Richmond. I regret that the Association acted without all of the facts. There was significant evidence presented to the Committee of my efforts to advance the cause of women in the federal court, an interest to which I have always been committed. I would have welcomed the opportunity to address the matter before the Association.

I hope this letter provides clarification concerning the letters from Mr. Cooley and the Women's Bar Association.

Very truly yours,

Edward F. Harrington

Edward F. Harrington

EFH/mr

2224M

Via Federal Express
No. 6508548832

5/24/67

Airtel

To: SAC, Boston (92-1132)

From: Director, FBI (92-9828)

JOSEPH BARRON, aka
JOSEPH BARBOZA
ANTI-RACKETEERING

Reurtel 3/21/67.

A review of the Bureau records reveals that no investigation of Barron 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.

MAILED 2
MAY 24 1967
COMM-FBI

MMG:skh
(4)

Tolson
DeLoach
Mohr
Wick
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

MAY 29 1967

MAIL ROOM TELETYPE UNIT

REC 26 92-9828-2

8 MAY 25 1967

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DIRECTOR, FBI 4/14/69

[redacted]

JOSEPH BARON, aka,
Joseph Barboza,
[redacted]

B.F

Investigation is being initiated in connection with the TECIP to develop Subject as a top echelon criminal informant; therefore, Subject is being designated a target under this program.

The Boston Office by letter dated April 1, 1969, furnished pertinent background concerning Subject, which is set forth below. The Boston Office advised that there will be occasions when that office will desire that Subject be contacted on various matters of extreme importance to the Boston Division. Further, as PC becomes acquainted in the San Francisco area, he will undoubtedly be in a position to furnish worthwhile information concerning criminal activities.

M.B

[redacted]

P

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[redacted]

2 - Bureau (RM)
2 - Boston ([redacted]
2 - [redacted]

CNH:jab
(6)

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F. M. B

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[redacted] F

CNH:jab

B

[redacted] Federal convictions were obtained on March 8, 1968, on RAYMOND L. S. PATRIARCA, recognized leader of the LCN in the New England area; HENRY TAMELEO, LCN member and lieutenant for RAYMOND L. S. PATRIARCA; and RONALD CASSESSO, LCN member, for violating the AR Statutes. [redacted] the gangland death of EDWARD "TEDDY" DEEGAN [redacted] this information was disseminated to Suffolk County [redacted] in a murder trial which resulted in the conviction of LCN members HENRY TAMELEO, RONALD CASSESSO, PETER LIMONE and LOUIS GRIECO, all of whom received "the death sentence." Also convicted at this trial were ROY FRENCH and JOSEPH SALVATI, also known as "Joe, the Horse."

B

IDENTIFICATION RECORD

B [redacted]

L E A D

BOSTON

At Boston, Massachusetts. [redacted]

B [redacted]

000966

[redacted]

4 Freed in DiSeglio Killing Jury Out Less Than 2 Hours

PM GLOBE

By RONALD A. WYSOCKI

A visibly shaken Gennaro J. (Jerry) Angiulo and three other defendants were found innocent today by a Suffolk Superior Court jury on charges that they brought about the 1966 gangland murder of Raco DiSeglio.

The eight men and four women jurors spent only 1½ hours deliberating over the evidence after 13 trial days.

As jury foreman Kenneth L. Matthews Jr., of Roslindale, kept repeating "not guilty" in reply to court Clerk Francis Maguire's call for a verdict on each indictment, only Angiulo, among the four men in the prisoners' dock, displayed any emotion.

The man labeled before a Senate investigating committee as the boss of Cosa Nostra in Boston in 1963, Angiulo seemed to sag, his hands clutching the dock rail as he was acquitted.

Several times, he fought back tears by closing his eyes. He bit his lip and swallowed continuously.

Angiulo was acquitted of being an accessory before the fact of murder, a crime punishable by death.

Bernard Zinna, 34, of Revere; Marino (Moriah) Lepore, 48, of Revere, and Richard F. (Vinnie) DeVincent, 34, of Dorchester, were acquitted of murder charges.

All four were cleared of conspiracy indictments in connection with DiSeglio's death.

Principal witness for the Commonwealth was Joseph (Barbosa) Baron, hoodlum turned informer.

Cont.

Announcement of the verdict was delayed until presiding Judge Eugene A. Hudson could return from lunch. The short duration of deliberations caught everyone by surprise.

The jury left the eight-foot courtroom at 12:10 a.m. Matthews signaled court officer Bart Boller by a loud knock on the door that a verdict had been reached at 12:40 p.m.

Strain of the two-week trial and the wait before the jury announcement showed on the faces of both sides of counsel and the defendants.

Atty. Joseph A. Bulfin, strategist for the defense, kept his head lowered as the standing jury returned to verdicts. The defendants likewise stood during the return.

Other members of the defense team were Attys. William Hollingsworth, Albert Mution, Ronald Chisholm, and Lawrence O'Donnell.

Presenting the case for the government was Asst. Dist. Atty. John A. Pino.

After the judge had acknowledged that the defendants were now acquitted by a jury of their peers, Zinna moved to leave the courtroom via the public entrance to the jail lock-up instead of return to the cell room below to collect his personal belongings.

The spectators' seats were filled with relatives of the men freed.

This was the first of three trials planned by Federal and Suffolk County officials to which Baron was slated as the principal state's witness.

The judge thanked the jury and admonished the members not to discuss the case with anyone after their return to their normal lives.

Baron had testified that Angiulo ordered the murder of DiSeglio and was partners with the other three defendants in sticking up various gambling games run by persons friendly to Angiulo.

It was Baron's testimony that he was told by Zinna that he (Zinna), DeVincent and Lepore had committed the deed under threat that if they didn't Angiulo would have all four of them slain.

One of the main points in the case was whether DiSeglio was shot to death in East Boston as Baron maintained or in Topsfield where the defense claimed the slaying had taken place.

In his charge to the jury, the judge warned them that if they disbelieved Baron's location and accepted the defendants' claim, then they had to return a verdict of acquittal.

The four defendants, met with the press and relatives outside the courtroom after their release.

Angiulo said, "I'm going to see my 13-year-old daughter. I haven't seen her for six months.

"If I never knew why I fought for this country in World War II, I learned why today."

All Angiulo, Lepore and DeVincent said they were confident of acquittal throughout the trial despite the jury being for the jury's delib[illegible].

Asked about Baron, Lepore said, "I never knew the man and I don't want to know him."

Zinna was embraced by his mother who was in tears at the courtroom door.

His lawyer, Joseph A. Dulleg, said, "Mr. Baron-Barbosa was called a real killer before. Now he is known to be a liar."

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PENGAD Bayonne, N.J.

Patriarca, 2 Others Guilty; Face 5 to 15 Years

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By ROBERT J. ANGLIN
Staff Reporter

Reputed New England Cosa Nostra chieftain Raymond L. S. Patriarca and two codefendants were found guilty by a Federal Court jury Friday of conspiracy to murder.

U.S. Atty. Paul Markham called the verdict, reached after four hours of deliberation, a significant breakthrough in the battle against organized crime.

Markham said the jury "obviously believed, and believed 100 percent, the testimony of Joseph (Barbara) Barbo," gangland enforcer turned informer who was the prosecution's key witness.

Markham said also that Baron's inside knowledge of the underworld will be the basis of future trials of racket figures, although he said no such cases are pending.

Patriarca, 59, of Providence; Ronald Cassesso, 36, of Somerville, and Henry Tameleo, 65, of Cranston, R.I., were convicted of conspiring to kill Willie Marfeo, 41, of Providence.

The defendants face maximum sentences of five years in jail and fines of $10,000 on each count of the indictments. Tameleo was charged with three counts, Patriarca with two and Cassesso one.

Baron testified that he and Cassesso were asked in 1965 by the other two men to "whack out" Marfeo because he would not heed Patriarca's order to close down a dice game that was attracting too much police attention to the Federal Hill section of Providence.

U.S. District Court Judge Francis J. W. Ford set Mar. 25 for sentencing. Counsel for all three said they will appeal.

The defendants, who had remained impassive throughout the five-day trial, registered little emotion as the jury foreman, Neil Wallack of Malden, announced the verdicts on each of the counts.

Patriarca, who said later, "I'm an old man," leaned against the railing in front of the bar enclosure, gripping it with both hands with such force that his knuckles turned white.

Asked if he had any comment, he ballooned and replied: "No comment, sir."

Patriarca was called before a U.S. Senate investigating committee in 1962 as the Cosa Nostra head in New England, and Tameleo was named as his lieutenant and a member of the gangland organizational "Mafia Island council."

Judge Ford allowed Patriarca to remain free on $25,000 bail. When Markham asked that bail be discontinued, the judge answered: "Motion denied. Bail continued. Case dismissed. Next case."

Cassesso is serving a 5-to-10-year sentence in Norfolk Prison, mostly for armed robbery. Tameleo is held without bail in Charles Street Jail awaiting trial in Suffolk County on charges of conspiring and lifting an accessory in the slaying of Edward M. (Teddy) Deehan, 26, of Everett in March 1965.

Baron is scheduled to testify at this trial, also.

Seated in the front row of spectators as the verdicts were read were the two men largely responsible for motivating Barbo to tell all he knew about his gangland associates—Federal agents Paul Tiko and Thomas Condon.

Markham cited the two men for having performed "a great job."

"It's great to win a big one," he added.

"If Barbo's credibility has been established."

"The case in the main depended on his testimony. The jury obviously believed him, believed him 100 percent.

"It was a significant victory."

Asked how the outcome of the trial would affect the government's battle against organized crime, he replied: "To put it in a negative way, if we didn't win it, it would be all over."

Atty. Walter T. Barnes, who with Atty. Edward Harrington of Markham's staff did much of the work of preparing for the trial, said: "We can't overemphasize the importance of this case."

Barnes is a staff lawyer of the U.S. Department of Justice's organized crime section.

Harrington said: "Because of these convictions there may be more information coming to us, and because of this there may be further cases developing."

The 12 male jurors deliberated four hours before returning their verdicts shortly before 2 p.m.

Before going to the jury room, they heard an hour-long instruction on points of law from Judge Ford.

The defense team of Attys. Joseph J. Balliro for Tameleo, Ronald Chisholm for Cassesso and Charles Curran for Patriarca rested their case Thursday without calling any witnesses.

Judge Ford told the jury that Baron could be considered an accomplice in the alleged conspiracy. He was not a defendant in the indictments.

"The testimony of an accomplice should be received with caution and scrutinized with great care," the judge said.

"You may convict a person charged with a crime without corroboration, but only if you believe that the testimony of the accomplice is true.

"It is your domain to make a determination of the facts and draw a reasonable inference from those facts.

"You may apply your own test to the credibility of witnesses. Rely on appearance, consistency, self-interest, gender of, lack of candor, bias or prejudice, accuracy and reasonableness."

Baron had testified that he agreed to kill Marfeo at Patriarca's request and to do so for nothing because it would be good business to ingratiate himself.

He said the slaying was postponed in 1965 because the police became aware of the dispute between Marfeo and Patriarca.

Marfeo was shot to death in a restaurant a year later.

He said that he and Cassesso agreed to murder Marfeo at no charge in order to ingratiate themselves with Patriarca and Tameleo.

Baron said Patriarca wanted Marfeo murdered because Marfeo had refused to do Patriarca's bidding and shut down his dice game on Atwells Av. in the Federal Hill section of Providence.

Baron said Marfeo's continued operations had brought too much "heat" from the police.

Patriarca and Tameleo were named before a Senate Investigating Committee in 1962 as ranking members of a crimeing organization known as the Cosa Nostra.

Cassesso is currently serving a 8 and 1 year sentence at Norfolk Prison Colony for armed robbery.

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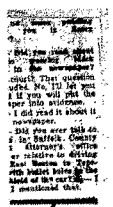

Baron's Past Record Bared by Defense Counsel

BOSTON SUNDAY ADVERTISER, JANUARY 14,

This is the testimony given Saturday in Suffolk Superior Court in cross-examination of Joseph (Barbosa) Baron who is standing trial charged for the four defendants.

Questioning the witness, at the start of the day's session, was Atty. Albert Hutton, Jr., representing Marino Lepore.

Baron testified he made two phone calls at about a half-hour interval, about 4 p.m. on June 16, 1966 (date body was found). They were to a Logan exchange from a pay phone in Chimbim's bar. He didn't recall the exact Logan number.

★

Q — Was the voice that answered the phone that Officer Fawcett? A—I asked for Officer Fawcett and spoke to him.

Q—Did you talk to him on the phone on other occasions? A — I don't think so. On the occasion, I talked to him only for 10 seconds—very briefly.

Q—Did you, on either occasion, put a handkerchief over the telephone to disguise your voice? A—Yes, on the second occasion.

Q—How long did you talk to Officer Fawcett on the second occasion? A—Forty-five seconds to a minute.

Q—What did the conversation consist of? A—I told him that it would be worth your while to go to the wooded area in Danvers to a road in the woods. You'll find something in a car.

Q—You wanted to relate this information directly to Officer Fawcett rather than some other officer? A—Yes.

Baron said at some time someone from the Suffolk County District Attorney's office talked with him and that they came to him, rather than he going to them.

★

Q—No one came to you from the Essex County District Attorney's office, did they? A — No.

Q—You do not like any pending indictments in Essex County, do you? A—No.

This ended the witness. At the start of the day's session, Atty. Albert Hutton, Jr., representing Marino Lepore.

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Q—What did the conversation consist of? A—I told him that it would be worth your while to go to the wooded area in Danvers to a road in the woods. You'll find something in a car.

Q—You wanted to relate this information directly to Officer Fawcett rather than some other officer? A—Yes.

Baron said at some time someone from the Suffolk County District Attorney's office talked with him and that they came to him, rather than he going to them.

★

Q—No one came to you from the Essex County District Attorney's office, did they? A — No.

Q—You do not like any pending indictments in Essex County, do you? A—No.

Q—Was there ever any talk as to whether this crime happened in Suffolk County or Essex County? A—I don't remember. Q—Did you read in the newspapers that the victim had black gloves on before you told anyone about it from the district attorney's office? (Fino objected. The judge at first excluded it, then decided to allow it.) Baron answered, "Yes."

★

Q—Did you also read in the same article that the body was found in Topsfield? A—Yes.

Judge Hudson then warned counsel that the article referred to could be introduced as an exhibit, because the defense introduced it into testimony.

Ralph again told the jury that he didn't talk to anyone from Suffolk County, that District Atty. Garrett H. Byrne's men came to him.

Q—Was there any talk when you were interviewed by some one from Suffolk County about driving from East Boston to Topsfield with bullet holes in the windshield. A—I think I mentioned that. I either heard it or read it in the newspapers that glass was sprayed on the top of the hood.

★

Q—At the time you spoke with the district attorney's office did you have information from a source that there were particles of glass sprayed in front of the car when it was found in Topsfield.

A—I thing I heard it or read it. I don't know which.

Defense counsel Hutton read into the record 12 indictments that Baron — then known as Barbosa — pleaded guilty to in Bristol County as a teenager.

★

Hutton ended his cross-examination after submitting the indictments as exhibits, whereupon Judge Hudson ruled that he would be admitted for reference purposes only, and would not go to the jury for their deliberation. He admonished the jury that they were being instructed for that limited purpose only, and had been offered only to affect the credibility of the witness, and the jury only had the right to judge whether the reading of the indictments affected their belief in the witness or did not.

Atty. Dan Atty. Fino then began his re-direct examination of Baron.

★

Q—Now, you were visited by law enforcement people in March of April of 1967 at Walpole? A—Yes, in March.

Q—And who were they? A—FBI agents (Dennis) Condon and (Paul) Rice.

Q—Did they come to talk to you about this case or other matters? A—Other matters.

Q—And did any member of the district attorney's office come to see you at Walpole? A—No, sir.

★

Q—And whether you were asked if you would talk to men from the district attorney's office? A—Yes sir.

Q—And were you visited later by members of the district attorney's office and they talked to you? A—Yes, sir.

★

Q—Whom did you speak to from the district attorney's office? A—Mr. Fallon (Capt. Joseph Fallon) the first time.

Q—And other times? A—Mr. Doyle, John Doyle.

Q—And you were also being visited by Condon and Rice. A—Yes.

Who made promises to you?

Q—The FBI and the D.A.'s office made promises to you? A—Yes.

Q—And what were those promises made to you? (After objections from defense counsel, Judge Hudson ruled Baron could answer on the matter of the district attorney's promises, but not any that might have been made by the FBI).

★

Q—Did either Det. Doyle or Mr. Fallon from the D.A.'s office make a promise to you?

A — Well my conversation, through my testimony, would be brought before a judge in the disposition of my cases and that was all that they could do. They couldn't promise the judge would do anything.

Q — Mr. Baron, will you please explain what you mean when you say the truth, more? A—Well, it's a sort of a thing for a financial gain.

Q—Would you be a little more exactly in your answer? A—Well, it is usually used by guys going out and stealing some money.

Q—The name of Brennan was brought out during cross-examination. Did you know him? A—Very well. He was a dear friend.

Q—And where is he today? A—He was murdered! He is dead!

Q—And where is he today? A—He was murdered! He is dead!

★

All defense counsel came to their feet, demanding that the questions and answers be stricken from the record. There was so much noise that one lawyer, Atty. Lawrence O'Donnell did not hear Judge Hudson rule that he would allow the answers to stand only as to the fact that the two men were dead, not murdered, that the fact the two men were named and were said to be dead could not be taken in any way as evidence against any of the four defendants.

O'Donnell missed this, because he was shouting, too, and he finally said:

"I would suggest that Mr. Baron is the only best authority on murder."

Hutton replied angrily:

"Will you please yield to me, sir!"

Order was finally restored and O'Donnell was asked what he wanted to say. It developed that he wanted Hutton to instruct the jury as the judge had actually done.

Q—You testified yesterday the one thing you had in mind was your freedom. Can you tell us what prompted you to testify in open court regarding the death of Roger DiSaglio?

The question was objected to, a bench conference was held and then a long recess.

After recess, the judge excluded the question.

Baron was taken under re-direct examination by Fino.

Q—Are you testifying here in court to the truth as you know it?

A—Certainly.

Q—Does the fact that there are cases pending against you have anything to do with the truth of your testimony in this case?

A—No.

Q—You testified the other day that you had decided to tell your story in open court for your peace of mind. Just what did you mean by that?

★

Baron started to answer and the defense objected. Atty. Hutton moved for a mistrial. Judge Hudson snapped at Hutton. "If Assistant defense counsel the other day not to make motions of that nature in open court."

Hutton said "I apologize your honor."

The judge then cautioned the witness not to answer when objections were made by defense counsel.

cont.

Pino—During your previous testimony you were asked what your frame of mind was while you were incarcerated and you told us you were thinking about getting out of jail. Were there other things on your mind? A—Yes.

Q—What was on your mind? Before he could answer, objection was made and the question was excluded.

★

Q—Did you receive any messages regarding the welfare of your family while you were in jail?

Another objection was made and the question was excluded.

Q—Do you remember talking to the district attorney of Suffolk County?, A—Yes.

Q—Did you ever testify before the Suffolk County grand jury? A—Yes.

Q—When? A—August, 1967.

Q—Concerning your grand jury testimony when did you talk to Mr. Byrne? A—After I left the grand jury room.

Q—Was this after you had testified under oath? A—Yes.

Q—And where did you talk to Mr. Byrne? A—In his office.

Q—Did you have any talk regarding promises? A—Yes.

Q—Were you given any assurances on the disposition of cases now pending against you? A—No.

Pino went back to previous testimony Baron had given about his occupation during 1960-61.

Q—Is this the skyjacking business you spoke about? A—Yes.

Ballirò took Baron in recross-examination.

Q—During your previous testimony, when you were asked to define a scene, you said it was a financial gain? A—Yes.

Q—If you can convince 12 people of the guilt of these four defendants, that would be a score wouldn't it.

Pino objected and the question was excluded.

Q—Well, if these defendants are found guilty, you stand to make a financial gain on this case, don't you?

Pino jumped to his feet objecting, while the witness repeated from the stand, "No, no, no." The judge excluded the question and answer.

Q—Did you keep notes on your goings on for the purpose of writing or having a book written? A—No.

Q—Did you keep news clippings? A—I gathered some together, yes.

Q—For the purposes of the book? A—Originally, no.

Q—You had a different purpose? A—Yes.

Q—For making scrapbooks? A—Scrapbooks?

The question was excluded.

The judge prevented Ballirò from pursuing this line any further.

Q—Did you threaten to kill Mr. Angiulo? A—Did I threaten to kill Angiulo?

★

Objection was made by Pino, and the judge said to Ballirò "Is this something which you are prepared to prove?"

Ballirò said, "Yes, your honor, I'd like a bench conference." The judge denied it.

Q—Did you threaten to kill some 50 people, whether they were innocent or not?

Pino objected and the question was excluded.

Q—Did you threaten that if you were released from Charles St. Jail, you would do something in three days which never had been done before in the history of the world?

Another objection was made and the question was excluded.

Ballirò said to the judge, "I can prove it."

Q—Would you please take a look at this document (which he placed in Baron's hand).

Judge Hudson said, "Read it to yourself, not aloud."

Pino asked to look at the document which appeared to be a plain piece of paper with some writing on it. The judge allowed him to look.

Q—Did you make this writing in the last two years? A—Yes, sir.

★

Ballirò then introduced it for identification after asking, "Was this written since the death of Rosaco and DePrisco. A—Yes, sir.

Baron was excused after his fourth day on the stand.

The final question by O'Donnell was, "Is that a diamond stickpin that you have in your tie?"

The question was excluded by Judge Hudson.

The next witness was State Police Det. Leo F. McNulty.

Q—By Pino—Was your attention directed to the area of Topsfield the night of June 16, 1966? A—Yes Sir.

Q—What time did you get there? A—Approximately 9:45 to 10 p. m.

Q—After your arrival did you become the principal investigating officer, A—Yes.

Q—At the scene you found a car? A—Yes.

Q—And where was the car located? It was located on a little used path off Rawley Bridge Road. Trooper Bailey was at the scene. The car was located about 85 and one-half feet from the road on the path. I observed in the front of the car a party obviously dead later identified to me to be Rocco DiSeglio.

Blood was coming from his nostrils, mouth and left eye. His hands were in a folded position in his lap and he had black gloves on.

There was an amount of change on the center console.

"I observed one bullet hole in the center of the windshield, toward the top. It appeared that a bullet went through from the inside to the outside.

"I also observed on the passenger side of the windshield another bullet hole that didn't go through.

★

"I observed two footprints that were pointed out to me halfway between the car and the road in back of the car. One of the prints measured approximately 10 inches. The other footprint measured approximately 11 and one half inches and was super-imposed on the tire marks that led to the Thunderbird.

Q—In your opinion what was the direction of the bullet that went through the windshield?

A—The direction was from inside to outside.

Q—Did you observe bullet holes in the head of the victim? A—Yes. Three in the back of the head, one in the forehead in the center about one-inch inside of the hairline.

★

Cross examination of McNulty by Ballirò

Q—Your search of the area showed there was no glass in front of the car on the ground? A—Yes, sir.

Q—Did you know that other officers made a thorough search the next morning? A—Yes, sir at my direction.

Q—And you know the next morning they found glass that was not found the night before? A—Yes, sir.

The judge then excused the jury until 9:30 Monday morning and cautioned them to "try not to let this case bother you over the weekend, because you are not in a position to make any conclusions until you have heard all the evidence and heard my instructions."

JUDGE EUGENE HUDSON
Gavel Restores Order

GENNARO ANGIULO
Listens Intently

DEFENDANTS IN DISEGLIO DEATH CASE
Marino Lepere, Richard Hallinent, Bernard Zinno (L. to R.)

Cont.

JUN 4 1973

1703 John W. McCormack Building
Boston, Massachusetts 02109
June 1, 1973

Mr. Robert Miles
Director of the Parole Board
Montana State Prison
Deer Lodge, Montana

Dear Mr. Miles:

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. I am the former Attorney in Charge of the Department of Justice's Organized Crime Strike Force for New England and am extremely knowledgeable of Bentley's contribution to law enforcement in its efforts against organized crime.

Bentley was the chief federal government witness in the prosecution which resulted in the conviction of Raymond L. Patriarca, "boss" of the New England Cosa Nostra Family, his "underboss" Henry Tameleo, and underworld enforcer Ronald Cassesso, for the offense of traveling in interstate commerce to commit a crime of violence to further an illegal gambling enterprise. He was also the chief State of Massachusetts witness in the Boston gangland murder trial of Edward Deegan, a loanshark, which resulted in the conviction for first-degree murder of six major underworld figures including Peter Limone, who was the "underboss" to Gennaro Angiulo, Cosa Nostra boss in Boston, Massachusetts, syndicate enforcers Louis Grieco, Joseph Silvati and Roy French, as well as Henry Tameleo and Ronald Cassesso. The conviction of Patriarca is considered by knowledgeable law enforcement officials to have been the most important organized crime case in the history of New England law enforcement.

Government witnesses John J. "Red" Kelley, alleged mastermind of the Plymouth mail robbery, and Vincent C. Teresa, who were developed by the United States subsequent to Bentley and whose testimony resulted in the conviction of many major syndicate leaders in the New England area have advised that one of the reasons that they decided to cooperate with the federal government was on account of the fact that Bentley had first broken the syndicate's "code of silence" and had survived the underworld's reprisal. Bentley'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.

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Bentley's significant contribution to law enforcement as the pivotal figure in the government's effort to combat organized crime should be weighed when his eligibility for parole is considered.

Please advise me if the appearance of witnesses before the Montana Parole Board is in conformity with your practices.

Very truly yours,

Edward F Harrington

EDWARD F. HARRINGTON

BARON, Edward H. 3rd.

Baron asks parole from life sentence

8/30/73

By Richard Connolly
Globe Staff

Joseph (Barboza) Baron, who fathed on his former associates in The Mob in New England, is attempting to win parole from a five years-to-life prison sentence for a 1970 murder in California.

The reputed underworld enforcer, a former resident of Swampscott, is in protective custody at the State Prison in Deer Lodge, Mont. He was moved from a California prison after his life was threatened.

The 41-year-old Baron, who has been serving his sentence since Dec. 14, 1971, pleaded guilty to second degree murder in Sonoma County, Calif. He was accused of killing Ricky Clay Wilson, 28, in an argument over $250,000 in stolen securities and burying the body in a rural section near Glen Ellen, Calif.

When the body was discovered, Baron was at State Prison in Walpole for violation of parole in a previous conviction for illegal possession of weapons. But two fellow Walpole inmates testified that Baron told them he killed Wilson.

The California Adult Authority, which has jurisdiction over Baron, recently requested that the Montana Parole Board determine if Baron should be paroled.

The board recommended his release after a hearing July 31, according to George M. Cuff, assistant director of the Montana board. The hearing was held at Deer Lodge and among those who testified in Baron's behalf was Atty. Edward F. Harrington, former head of the Justice Department's Strike Force in New England.

It was through Baron's cooperation with the Strike Force that a number of alleged leaders of The Mob were imprisoned.

Despite the Montana Parole Board's recommendation, based on Baron's conduct at Deer Lodge and the testimony of witnesses, he must convince the California Adult Authority that he has been rehabilitated.

"With his background and experience, we have decided to hold our own hearing," said Joseph A. Spangler, an official of the California authority. He said the authority could act solely on Montana's recommendation or hold its own hearing on Baron's eligibility for parole.

Baron testified during the murder trial that he decided to cooperate with Federal investigators after becoming disenchanted with The Mob when ordered to assassinate two friends. He moved to California under the assumed name of Joseph Beatley.

Baron admitted that he had been a loan shark but denied that he was an enforcer for The Mob. Federal investigators have reported that Baron, with a long criminal record and close ties to the leaders of The Mob, was perhaps the most important witness developed in recent years.

His testimony led to the imprisonment of Raymond L.S. Patriarca of Providence, reputed head of The Mob, and his right-hand man, Henry Tameleo, who is serving a murder sentence at Walpole. Four other associates in Massachusetts also turned informer and now are in protective custody in Montana.

During his California trial, Baron testified that his life was in danger while in protective custody at various locations, including Ft. Knox, Ky., and that The Mob offered him $500,000 to recant his testimony against his old pals.

The underworld also agreed to let him return to Boston "forgiven," but he refused to change his story, Baron said. Investigators indicated their concern over Baron's welfare when they moved him to the Montana prison.

BARON, Edward H. 3rd.

Baron in Parole Plea For 1970 Cal. Murder

HERALD AUG 31 '73

DEER LODGE, Mont. (AP) — A reputed underworld enforcer from Massachusetts who turned informer and now is in protective custody in Montana has asked to be paroled from a prison sentence for a 1970 murder in California.

Joseph (Barboza) Baron, 41, formerly of Swampscott, Mass., pleaded guilty Dec. 14, 1971, to second degree murder in Sonoma County, Calif.

He was accused of killing Ricky Clay Wilson, 28, during an argument over $250,000 in stolen securities. He was charged with burying the body near Glen Ellen, Calif.

Baron was sentenced to five years-to-life. Said was moved from a California prison to the state prison here after his life was threatened.

After a hearing July 31, at the request of the California Adult Authority, the Montana Parole Board recommended his release based on Baron's conduct at Deer Lodge and the testimony of witnesses. However the California Adult Authority has said it would hold its own hearing, the newspaper said.

During the trial, Baron testified that he decided to cooperate with federal investigators after becoming disenchanted with the underworld when ordered to kill two friends. He said he moved to California under the assumed name of Joseph Beatley.

Officials said it was testimony by Baron that led to the imprisonment of Raymond L.S. Patriarca of Providence, reputed head of organized crime in southeastern New England, and Patriarca's aide, Henry Tameleo, who is serving a murder sentence at Walpole, Mass. Four other men were also convicted on Baron's testimony.

Baron said at his trial that he was offered $500,000 to recant his testimony and was told he could return to Boston, but he said he refused. He also testified that his life was in danger.

When the body of Wilson was discovered, Baron was at Walpole for violation of parole in a previous conviction for illegal possession of weapons. Two Walpole inmates testified that Baron told them he killed Wilson.

Among those who testified on his behalf at the parole hearing was Edward F. Harrington, former head of the Justice Department's Strike Force in New England.

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LAST WRITES

Epitaph for a Hired Gun

By Hank Messick

Barboza's last dance on the killing ground

576 Boston

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Within hours after Joe Barboza, a man called "animal," was shotgunned to death on February 11th on the streets of San Francisco, attorney F. Lee Bailey was quoted as saying: "He told me he killed 26 people. With all due respect to my former client, I don't think society has suffered a great loss."

I disagree—and not just because Barboza handed Bailey a lot of "bullshit."

While I never met the stocky ex-boxer in person, I received from him many lonely letters in which he poured out his soul and dissected his past. I also talked to him on the phone several times following his parole from a California prison on October 30, 1975. And I knew Maggi, the woman who loved him in life and took his body back to New Bedford for burial.

Joe was a proud man, as proud as Bailey, whom he described as "a super egomaniac." They met in 1965. Barboza said he became angry when Bailey acted "superior"—"I banged my fist on his desk and told him that while he was nationally famous and I was just a little man, the important thing he lost sight of was that we were both *men*. I wasn't one of the robots in his office. Then I walked out, and he came after me and told me to come back, and after that we got along better."

According to Barboza, their last meeting took place "on or about July 13, 1970," in the New Bedford dining room of a well-known gangster. In the five-year interval Joe had become a federal witness, and his testimony had put Raymond Patriarca, alleged boss of the New England Mafia family known as the "Office," in prison. Joe had been paroled and had located in California under a new legal name. By coming east to see Bailey, he was violating his parole. He was also risking his life and he took precautions:

"Beside me in the chair was a .30 caliber M-1 with a folding stock, a sawed-off shotgun, a .45 pistol and, in my pocket, was a .25 automatic."

"Stop these James Bond moves," Joe remembered Bailey saying. But Barboza refused to get rid of the weapons. "I don't trust nobody," he told Bailey.

They were meeting to discuss a Mafia proposal that Barboza recant his previous testimony in exchange for $500,000 and his life. (Joe said that upon receiving the offer, he had asked the Mafia to provide a reputable attorney to arrange the deal, and, according to Barboza, Bailey was the one who got the job.) The lawyer claimed he wasn't concerned with the money angle, but he gave Joe an envelope containing eight $100 bills, which, he said, had been left in his office to cover Joe's expenses. Barboza told me that he didn't intend to recant; he planned to get a big down-payment on the half million and then disappear somewhere. So he gave Bailey some "worthless documents" and a "bullshit" promise to cause "a scandal that will shake the federal government." Bailey, he added, became "excited" and said, "This may be my biggest case yet."

A few nights later, racial disorders broke out in New Bedford, and police stopped Joe at a roadblock. They found a gun and took him to jail, where he was identified. While being held, he was "tricked"—his word—into telling a fellow prisoner about killing a man in self-defense in California. The prisoner squealed, and Barboza was sent west to be tried; he was convicted of second-degree murder and sentenced to five years-to-life.

While in prison, he wrote a collection of stories concerned mainly with Boston's famous gang war of the 1960s. For a man of little formal education, he wrote well, displaying real narrative ability. In time he smuggled out the manuscript. Maggi typed it and, on the recommendation of former Boston Strike Force chief Edward F. Harrington, brought it to me to make into a book. Since I had hundreds of questions, Joe and I began exchanging long letters each week. Some answers he didn't want to put on paper, where official eyes might see them. So he told them to Maggi, and she passed them on.

Putting the book together wasn't easy. Joe was moved repeatedly within the California prison system as his old identity was discovered and plots made against his life. He spent a year on loan to Montana, but even at isolated Deer Lodge, a gun was smuggled inside the walls to kill him. He was then returned to California. The pressures made Joe irritable at times, impatient for results on the book, and often he was certain I was going to screw him. But thanks largely to Maggi, he gradually began to trust me. When the galley proofs finally reached his cell, he was delighted. He even began suffering from first-book delusions of grandeur, and I had to cut him down a bit to keep him writing on a second manuscript we had projected. When he complained about a callous on his thumb from pencil pushing, I welcomed him to the club and listed other ailments common to writers: aching backs, strained eyes, boils on the bottom, etc. It made him laugh. *(continued on page 137)*

Hank Messick was the co-author, with Joe Barboza Baron, of Barboza, *published by Dell. An excerpt from that book appeared in the March '75 issue of* Boston.

Continued from page 100

So what kind of person was Joe Barboza? He was proud of his physical strength and boxing ability, just as he was proud of those other skills he had needed to survive in the jungle. There, conventional morality didn't matter. More important was the quality the Mafia calls *omerta*: manliness. For Joe it meant being loyal to people who were loyal to him; it meant defending one's rights; it meant respecting women because, physically at least, women were weaker.

Barboza fascinated women. After reading his book, several apparently respectable and intelligent women called me long-distance, asking to meet him. Maggi, a usually patient and reasonable person, became enraged when I told her—she was ready to fight any female who tried to steal her man. She believed that she had tamed the "animal" and that they could build a peaceful life in a remote area where Barboza was unknown.

Until his parole last October, Joe seemed to share that dream. But in his last conversation with me, shortly before he was blasted, he talked of other things. He had made contact with old friends in Boston and, apparently, with old enemies as well. That offer of $500,000 to recant his testimony was still open, he said, and he wondered why. He was running out of money. We talked about the second book, and he promised to come to my home and help put it together.

Worried about Joe, I made inquiries. What I heard worried me more. In Boston others shared my doubts that the animal was tamed. Survivors of the gang war had moved into the vacuum created when the "Office" was exposed. Some were former followers of Barboza, and they feared Joe would return to reclaim leadership, wealth and power he felt his due. That could cause another gang war; people would die and, besides, it would be bad for business.

It's my theory that Joe was killed not for what he had done, but for what he might do. The men who knew him best feared him most—and they eliminated him. Frankly, I think he half expected it. In one of several poems he wrote is this verse:

Life turns on you in so many ways,
who can predict its end?
We are born to die and death may come
at the hand of a friend.

For Joe Barboza I'll give the epitaph he supplied after his pal, Buddy McLean, was shot: "A *man* is dead."

■ ■

Supreme Court of Rhode Island.

Maurice LERNER
v.
John MORAN.

No. 87-187-C.A.

June 10, 1988.

Applicant, who had been convicted of murder and conspiracy to murder, sought postconviction relief. The Superior Court, Providence County, Bulman, J., denied relief. Applicant appealed. The Supreme Court, Shea, J., held that: (1) perjured trial testimony relating to factual circumstances surrounding murders was not material to issue of applicant's guilt; (2) perjured trial testimony relating to promises chief prosecution witness received in exchange for testimony was material to issue of applicant's guilt; and (3) even if witness had perjured himself before grand jury on matters relating to promises made in exchange for testimony, the perjury would not have warranted dismissal of indictment.

Conviction vacated, case remanded, and judgment affirmed in part and reversed in part.

West Headnotes

[1] **Criminal Law** 700(3)
110k700(3) Most Cited Cases

Chief prosecution witness' perjured trial testimony relating to events surrounding murders confirmed facts that were collateral to issue of murder defendant's guilt; therefore, the state's use of the testimony did not violate prohibition against suppression of exculpatory evidence by prosecution in criminal case.

[2] **Criminal Law** 706(2)
110k706(2) Most Cited Cases

Prosecutor cannot manufacture or knowingly present perjured testimony to secure conviction against defendant in criminal case.

[3] **Criminal Law** 700(4)
110k700(4) Most Cited Cases

Chief prosecution witness' perjured trial testimony, which was elicited by the Federal Bureau of Investigation and which concerned promises made to witness by the FBI in exchange for testimony, was material to issue of defendant's guilt, and thus, the state's use of the testimony violated prohibition against suppression of exculpatory evidence by prosecution and warranted reversal; it was fair to assume that had jury been made aware that witness had been promised income for remainder of his life, new identity, and relocation in exchange for his testimony, it would have found his credibility suspect. U.S.C.A. Const.Amend. 14; Const. Art. 1, § 10.

[4] **Indictment and Information** 10.1(1)
210k10.1(1) Most Cited Cases

[4] **Indictment and Information** 10.2(2)
210k10.2(2) Most Cited Cases

Indictment returned by legally constituted and unbiased grand jury, like information drawn by prosecutor, if valid on its face, is enough to call for trial of charge on merits; therefore, even if prosecution witness had perjured himself before grand jury on matters relating to promises made to him in exchange for his testimony, perjury would not have warranted dismissal of murder indictment.

***1089** Barbara Hurst, Asst. Public Defender, for plaintiff.

James E. O'Neil, Atty. Gen., Thomas Dickinson, Asst. Atty. Gen., for defendant.

OPINION

SHEA, Justice.

On March 27, 1970, the applicant for postconviction relief, Maurice R. Lerner, was convicted of one count of murder and ***1090** one count of conspiracy to murder Rudolph Marfeo and one count of murder of Anthony Melei. His convictions were affirmed by this court in *State v. Lerner*, 112 R.I. 62, 308 A.2d 324 (1973). In 1983, in the related trial of *State v. Manocchio*, John S. Kelley, the chief prosecution witness against Lerner, testified that he had committed perjury during Lerner's trial. Furthermore, he testified that his perjury was elicited by Paul Rico, a special agent of the Federal Bureau of Investigation (FBI) who was assigned to the Marfeo/Melei homicide investigation.

After the Luigi Manocchio trial, Lerner filed an application for postconviction relief, asserting that

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the perjury suborned by the special agent of the FBI, both before the grand jury and at trial, had deprived him of his right to due process of law, guaranteed under the Fourteenth Amendment to the United States Constitution and article I, section 10, of the Constitution of Rhode Island. A hearing on Lerner's application was held, and the application was denied. The trial justice ruled that the perjury committed did not rise above the level of harmless error and that the state prosecutor at Lerner's trial had been wholly without knowledge of Kelley's perjuries.

Lerner maintains that the trial justice erred on two grounds in denying him a new trial. He contends that the perjury committed was material and prejudicial under either the federal standard established in *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985), or the Rhode Island standard established in *In re Ouimette*, 115 R.I. 169, 342 A.2d 250 (1975). He also contends that the acts of the FBI should have been imputed to the state. We reverse.

This court's opinion in *State v. Patriarca*, 112 R.I. 14, 308 A.2d 300 (1973), discusses in detail the evidence presented at Lerner's trial. In this opinion we shall limit our discussions to those facts specifically relating to the issues before us.

Kelley's perjured testimony at Lerner's trial involved two different areas: the factual circumstances surrounding the murders and the factual circumstances relating to the full extent of the promises made to Kelley by Special Agent Rico in exchange for Kelley's testimony.

In the Manocchio trial Kelley admitted that during Lerner's trial, at the direction of Special Agent Rico, he testified falsely in certain matters relating to the factual circumstances surrounding the murders. For example, during Lerner's trial Kelley testified that he had personally "cut down" the shotgun used in the murders. However, during the Manocchio trial, Kelley stated that his armorer had actually "cut down" the shotgun. Kelley said that Special Agent Rico had directed him not to mention the armorer's role in the murders. It appears that the armorer was a valuable FBI informant that Special Agent Rico wanted to keep on the streets.

Similarly, during Lerner's trial Kelley testified that he had met with codefendant and reputed-crime-boss Raymond Patriarca at a particular restaurant before the murders. Kelley stated that at this meeting Patriarca ordered that the Marfeo murder be carried out expeditiously. Later, at the Manocchio trial, Kelley denied that this meeting occurred at the restaurant he had previously named. Again, he stated that his testimony was suggested to him by Special Agent Rico. According to Kelley, the FBI had been conducting an investigation attempting to connect the owner of the restaurant with Patriarca. This investigation had cost the FBI millions of dollars, according to Kelly, and had met with no success. Apparently, Special Agent Rico believed that placing this key meeting at this restaurant owner's establishment would create useful circumstantial evidence against the restaurant owner.

Shortly before the Manocchio trial, Kelley was asked why he had committed these acts of perjury. He responded, "[M]y life was in [the FBI's] hands. [Special Agent Rico] said I had no alternative."

[1] We are of the opinion that all Kelley's perjured testimony relating to the events surrounding the murders confirmed facts that were collateral to the issue of Lerner's guilt or innocence. Lerner argues that the use of this untruthful testimony ***1091** by the state constituted a violation of the holding in the landmark case *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). *Brady* prohibits the suppression of *exculpatory* evidence by the prosecution in a criminal case. Here, because Kelley's lies were not material to the issue of Lerner's guilt, we find that there were no *Brady* violations in regard to these matters.

We believe, however, 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.

At Lerner's trial Kelley was asked several questions about the benefits he was receiving in exchange for his testimony. He stated that Special Agent Rico promised him only immunity and "protection for his family." He stated that he was *not* promised income from the federal government, a new identity, or relocation. Kelley's testimony was then corroborated in all material aspects by Special Agent Rico. However, at the Manocchio trial, Kelley admitted that before the Lerner trial, Special Agent Rico had in fact promised him income from the federal government for the remainder of his natural life, a new identity, and relocation. When asked why he had lied during Lerner's trial about these 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

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everything would come out all right."

[2][3] One of the "fundamental conceptions of justice" is that a prosecutor can not manufacture or knowingly present perjured testimony to secure a conviction against a defendant in a criminal case. *Mooney v. Holohan,* 294 U.S. 103, 112, 55 S. Ct. 340, 342, 79 L. Ed. 791, 794 (1935); *see also Alcorta v. Texas,* 355 U.S. 28, 78 S.Ct. 103, 2 L.Ed.2d 9 (1957); *Pyle v. Kansas,* 317 U.S. 213, 63 S.Ct. 177, 87 L.Ed. 214 (1942). "Such a contrivance by a State to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." *Mooney,* 294 U.S. at 112, 55 S.Ct. at 342, 79 L.Ed. at 794. *See also In re Ouimette,* 115 R.I. at 175, 342 A.2d at 253 ("[w]here the prosecutor has deliberately caused false evidence to influence some part of the criminal trial, he has violated the most basic precepts of due process[;] [t]he courts cannot allow the integrity of the criminal system to be undermined by the over-zealous prosecutor").

This principle was extended in *Brady v. Maryland,* where the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87, 83 S.Ct. at 1196-97, 10 L.Ed.2d at 218.

One of the key issues that often arises in *Brady*-type-cases is whether the exculpatory evidence was "material." The standard of materiality under federal law went through several changes before finally being resolved in *United States v. Bagley,* 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985). [FN1] Under the *Bagley* standard of materiality, "[t]he evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Id.* at 682, 105 S.Ct. at 3384, 87 L.Ed.2d at 494.

FN1. For a lengthy discussion concerning the changes in the federal standard of materiality, *see United States v. Bagley,* 473 U.S. 667, 674- 683, 105 S.Ct. 3375, 3379-3384, 87 L.Ed.2d 481, 489-494 (1985), and *State v. Wyche,* 518 A.2d 907, 908-09 (R.I.1986).

Rhode Island has adopted a standard of materiality that provides even greater protection to criminal defendants than is constitutionally required under *Bagley.* Shortly before the United States Supreme Court first commented directly on the materiality issue in *United States v. Agurs,* 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976), ***1092** Rhode Island had cause to consider the issue in *In re Ouimette.* In *Ouimette* we adopted the approach taken by the Second Circuit in *United States v. Keogh,* 391 F.2d 138 (2d Cir.1968). *Ouimette,* 115 R.I. at 177, 342 A.2d at 254. *Keogh* established "a variable standard of materiality, differing in degree with the prosecutor's culpability in the nondisclosure." 115 R.I. at 177, 342 A.2d at 254. The *Keogh* court stated:

> "The easy cases--at least they now seem so--are where the prosecutor's suppression is 'deliberate,' by which we include not merely a considered decision to suppress, taken for the very purpose of obstructing, but also a failure to disclose evidence whose high value to the defense could not have escaped the prosecutor's attention. * * * Such cases rarely present a problem as to 'the degree of prejudice which must be shown'; almost by definition the evidence is highly material." *Keogh,* 391 F.2d at 146-47.

In *State v. Wyche,* 518 A.2d 907 (R.I.1986), we stated our preference for the *Keogh* standard, which provides a greater measure of protection for criminal defendants than the *Bagley* standard. We stated specifically that "[w]hen the failure to disclose is deliberate, this court will not concern itself with the degree of harm caused to the defendant by the prosecution's misconduct; *we shall simply grant a new trial.*" (Emphasis added.) 518 A.2d at 910. Under the *Keogh* standard of materiality, the perjured testimony by Kelley concerning the promises made to him by the FBI agent is the "easy case" that requires automatic reversal.

The same result would follow even if we were to apply the *Bagley* standard of materiality to Kelley's perjury. Well before *Bagley* was decided, the issue of whether evidence solely relevant to a prosecution witness's credibility is material to a defendant's guilt or innocence came squarely before the United States Supreme Court in *Napue v. Illinois,* 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959). In *Napue* the defendant was tried and convicted for the murder of a policeman. One of the defendant's accomplices, who had been previously convicted for the same crime, was the chief prosecution witness. During trial this

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witness denied receiving any consideration in exchange for his testimony. However, the prosecutor had in fact promised him consideration but did nothing to correct the perjury. The Court ruled that this credibility testimony was material and required reversal.

"The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend." *Napue,* 360 U.S. at 269, 79 S.Ct. at 1177, 3 L.Ed.2d at 1221.

See also Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972).

Bagley made clear that reversal is not required in all cases in which credibility evidence is withheld by the government. Rather there must be a finding that there is a "reasonable probability" that, had the evidence relevant to the witness's credibility been disclosed, "the result of the proceeding would have been different." *Bagley,* 473 U.S. at 682, 105 S.Ct. at 3384, 87 L.Ed.2d at 494. That standard is satisfied in this case. It is fair to assume that had the jury been made aware that Kelley had been promised income for the remainder of his life, a new identity, and relocation in exchange for his testimony, it would have found his credibility suspect. It is reasonably probable that his perjury in these matters affected the jury's verdict. [FN2]

FN2. Agent Rico in fact recognized the potential danger to the state's case if the truth were known about the promises made to Kelley in exchange for his testimony. When he directed Kelley to lie about these matters, he warned Kelley that if the jury knew that Kelley was a paid witness, it might not find his testimony to be worthy of belief.

***1093** Kelley's perjury cannot be seen as mere harmless error. In denying all the codefendants' motions for a new trial, the trial justice declared, "The State's case stands on the testimony of John J. Kelley." In specifically denying Lerner's motion for a new trial, the trial justice added, "The testimony of witness John J. Kelley ties defendant Lerner to these murders beyond a reasonable doubt."

Furthermore, this court, upon its first review of the evidence in this case, found that Kelley was the critical witness in the state's case. We stated "[T]he state relied primarily on the testimony of John J. Kelley of Watertown, Massachusetts, who testified after he had been granted immunity from prosecution." *State v. Patriarca,* 112 R.I. at 19, 308 A.2d at 305-06. We also noted that "it is clear that the testimony of Kelley, while it implicated all of the defendants in some degree in the case, was highly incriminatory of defendant Lerner." *State v. Lerner,* 112 R.I. at 98, 308 A.2d at 346. Given the central role of Kelley's testimony in the case against *Lerner,* Kelley's credibility as a witness was an extremely important issue facing the jury.

Having determined that a serious due-process violation was brought about by Special Agent Rico, we need not address the question of imputation of the federal agent's acts to the state. The due-process issue is dispositive. However, because the case is being remanded for a new trial, we shall consider Lerner's assertion that the grand jury indictment ought to be dismissed.

Lerner claims that Kelley committed the same acts of perjury before the grand jury that he had committed at trial. However, our review of the grand jury transcripts, presented as an exhibit during the hearing on the application for postconviction relief reveals no testimony by Kelley relating to promises he had received in exchange for his testimony. Rather, all his testimony before the grand jury contained in these transcripts concerned factual circumstances surrounding the murders. We have already established in this opinion that this area of untruthful testimony by Kelley was not material to Lerner's guilt or innocence.

[4] Even if Kelley had perjured himself before the grand jury on matters relating to promises made to him by the FBI in exchange for his testimony, we would not dismiss his indictment. In *State v. Acquisto,* 463 A.2d 122, 126- 27 (R.I.1983), the defendant alleged that the state suppressed certain exculpatory letters before the grand jury and that as a result the indictment against him should have been dismissed. We denied his appeal on the ground that even if the letters were exculpatory, the actions of the state did not constitute cause to invalidate the indictment. We quoted with approval the broad standard for affirming indictments established by the

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United States Supreme Court in *Costello v. United States*, 350 U.S. 359, 363, 76 S.Ct. 406, 408-09, 100 L.Ed. 397, 402-03 (1956): " 'An indictment returned by a legally constituted and unbiased grand jury, like an information drawn by the prosecutor, if valid on its face, is enough to call for trial of the charge on the merits. The Fifth Amendment requires nothing more.' " *Aquisto*, 463 A.2d at 127. Therefore, even if Kelley had perjured himself before the grand jury on matters relating to promises made to him in exchange for his testimony, dismissal of the indictment would not have been required.

We therefore hold that Kelley's perjury, elicited by the FBI, constituted material exculpatory evidence withheld in violation of the applicant's due- process rights. We also hold that the trial justice correctly denied the applicant's motion to dismiss his indictment.

For the reasons stated, the applicant's appeal from the denial of his application for postconviction relief is sustained and that portion of the judgment appealed from is reversed; the conviction of the applicant is vacated, and that case is remanded to the Superior Court for a new trial. That portion of the judgment denying the request for dismissal of the indictment is affirmed.

END OF DOCUMENT

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1 Q And going back to August of 1969, you received immunity
2 in Rhode Island, is that correct?
3 A I'm not sure of the date, but I received immunity; yes.
4 Q And at that time, or on earlier occasions, did you
5 testify as to any promises, or rewards, or inducements
6 made to you?
7 MR. LEPPO: Objection to the form of the question,
8 if Your Honor please.
9 THE COURT: Rephrase your question.
10 Q Did you make certain representations, sir, with respect
11 to any promises made to you by any governmental agency?
12 A Somewhere along the line --
13 MR. LEPPO: Objection. Calls for a yes or no
14 answer, if Your Honor please.
15 A Yes. Yes.
16 (No ruling.)
17 Q Did you, or have you indicated in the past what your
18 understanding of those promises or rewards or inducements
19 were?
20 MR. LEPPO: Objection.
21 THE COURT: Overruled.
22 A Yes.
23 Q And would you tell us what representations you made in
24 the past?
25 MR. LEPPO: Objection.

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30

THE COURT: Clarify your question. In the past of what?

MR. LEACH: Going back, sir, to 1972 and before.

MR. LEPPO: Same objection, if Your Honor please.

THE COURT: Overruled.

A I made the representation that I would testify truthfully in all of these cases that I was involved in.

Q And what would you receive in return?

A In return I would receive a new identity, my security would be secured, and subsistence money.

Q Now, did you ever indicate, sir, that you had some understanding as to what would happen to any cases pending against you?

MR. LEPPO: Objection; leading.

THE COURT: You may answer.

MR. LEPPO: Relevance, if Your Honor please.

THE COURT: This is relevant. You may answer.

A Yes.

Q And what did you indicate on earlier occasions back in '72 or before?

A That any testimony that I gave in any of these cases would be brought to the authorities of the jurisdictions that they happened in for a final disposition.

Q And if you would, sir, tell us, please, when you were arrested for the Brink's Armored Car robbery, were you

1 put in a jail?
2 A Yes, I was.
3 Q What jail was that?
4 A Charles Street, I think it was.
5 Q And if you remember, about how long did you remain
6 in the Charles Street jail?
7 A I have no idea. Not a long time, but I have no idea
8 of the time.
9 Q Would it be a matter of weeks?
10 A Days or weeks; whatever.
11 Q And at some point did you leave the Charles Street jail?
12 A Yes.
13 Q And to the best of your memory, where did you go?
14 A Down to Bedford, a jail in Bedford. A jail in Bedford,
15 Massachusetts.
16 Q Bedford or New Bedford?
17 A New Bedford, yes.
18 Q And for about how long were you there?
19 A I haven't any idea.
20 Q Would it be in terms of weeks or months?
21 A Weeks. Weeks. Days and weeks, I have no idea.
22 Q And during that span of time, were you talking to agents
23 of the government in one form or another?
24 A Yes.
25 Q From there, the Barnstable House of Correction?

1 MR. LEPPO: Objection, Your Honor. It's a
2 misquote of the testimony of this witness.
3 THE COURT: I believe it is the jail in New
4 Bedford.
5 MR. LEACH: Oh, I'm sorry.
6 THE COURT: Use the same terminology.
7 MR. LEACH: All right, I'm sorry. I stand
8 corrected.
9 Q From the jail in New Bedford, do you remember where
10 you went next?
11 A I think we went to a hotel in Boston.
12 Q And was there any form of security involved with that,
13 sir?
14 A Yes.
15 Q And could you explain what that was?
16 MR. LEPPO: Objection, if Your Honor please.
17 THE COURT: No. He can answer.
18 MR. LEPPO: May we approach the side bar?
19 THE COURT: Yes.
20 MR. LEPPO: It may be a good time for the after-
21 noon recess.
22 THE COURT: We'll take a recess at this point.
23 Jury may be excused.
24 * * * * *
25 (Jury is excused from the courtroom.)

1 MR. LEPPO: My objection is, Your Honor, that
2 I would suggest to the Court what Mr. Leach is trying
3 to elicit is to show he's on guard and security
4 to protect him, and the prejudicial effect of that
5 as it relates to this case, and it cannot be said that
6 it's for this case alone, because now he's involved in
7 the Brink's case, and the New York case, and other cases.
8 So how many guards do we have because of the Rhode
9 Island case? How many do we have because of the Brink's
10 case and the New York case? And I suggest to the
11 Court the prejudicial effect that he had to be kept in
12 protective custody with armed guards to ensure his
13 safety, that the probative value of that does not come
14 close at all to the prejudicial effect as it stands.
15 MR. LEACH: If my brother is indicating to the
16 Court that he has no intention of asking this witness
17 about his being at the Statler Hilton Hotel, and about
18 who paid for his meals, and whether his wife stayed
19 with him, or came to see him, and if he ordered off
20 the menu, and where he was and who paid his subsistence,
21 and how much money he received, and over how long a
22 period of time, and ad nauseum, then I would be glad to
23 get away from it.
24 But I don't have that assurance, and therefore --
25 THE COURT: The point of the security issue that

1 you're bringing up--

2 MR. LEACH: Your Honor, I think the word security

3 is being somewhat misinterpreted. He was in a jail

4 surrounding. He is now in a surrounding which is not

5 a jail, but he's not free to move about on his own.

6 THE COURT: Well, ask him that kind of question.

7 The problem is the security aspect of it. Somebody is

8 liable to blurt out, "I was afraid for my life," or

9 something. That just gets us into trouble. If he

10 didn't have his freedom, let him say it.

11 MR. LEACH: Well, I object, but whatever ruling

12 Your Honor makes. Your Honor, may I point out one

13 thing to remind my brother of 351 A.2d, 580, State Vs.

14 Ciulla ---

15 THE COURT: I don't want to get into any argument.

16 It has nothing to do with this objection.

17 MR. LEPPO: Thank you.

18 (End of colloquy.)

19 (Court recessed at 3:30 p.m.)

20 * * * * * *

21 R E C E S S

22 * * * * * *

23 (Court reconvenes at 3:50 p.m. Jury is present.)

24 * * * * * *

25

1 JOHN J. KELLEY, resumes the stand.

2 DIRECT EXAMINATION BY MR. LEACH (CONT'D)

3 Q Now, Mr. Kelley, I was asking you about after, after
4 the New Bedford jail, where were you staying after that
5 time?
6 A I believe we went to a hotel in Boston for awhile.
7 Q And if you remember, about how long were you in that
8 hotel in Boston?
9 A I have no idea; just for grand jury hearings. I have
10 no idea how long.
11 Q Was it in terms of weeks or months?
12 A I'd say weeks.
13 Q And at that time were you free to come and go as you
14 pleased?
15 A No.
16 Q Were you under constant supervision?
17 A Yes.
18 Q From members of any particular police agency?
19 A Many.
20 Q Different agencies?
21 A Different agencies, yes.
22 Q And without telling us the location, sir, after you
23 were no longer in that hotel, what type of place
24 were you at?
25 A Different types of places; motels, different areas all

1 over the country.
2 Q And was that always --
3 MR. LEACH: Strike that.
4 Q At those times, were you free to go -- to come and go
5 as you pleased?
6 A No.
7 Q Were you always under the control of some particular
8 police agency?
9 A I was in protective custody.
10 Q Now, at some point, did you come under the control of
11 the United States Marshals Service?
12 A Yes.
13 Q And at some point in time, without telling us where,
14 did you become settled in some other part of the
15 country?
16 A Yes.
17 Q And without telling us what, sir, at some point did you
18 start an existence under a different identity?
19 A Yes.
20 Q Now, were you aware that that would happen --
21 MR. LEACH: Strike that.
22 Q When did you first become aware that that would happen,
23 that you would be settled somewhere under a new identity?
24 A That had been said through these proceedings. I have
25 no idea just when. I can't place a time. That was part

1 of the talk and considerations.
2 Q Now, is there something -- or was there something --
3 that you were made aware of with respect to your
4 future that you did not make known to the Courts and jury
5 in 1970 and '72?
6 A Yes.
7 Q And would you tell us what that was, sir?
8 A I can't remember all of the things, but the subsistence
9 and agreements for protection for the rest of my life,
10 and different things like that. I'm not sure, but the
11 general thrust was in that way, but I'm not sure of
12 the exact content of the conversations.
13 Q And who made you aware of this?
14 A Paul Rico of the FBI.
15 Q And what did you at that time understand would happen?
16 A At that time I understood from what he said, what
17 he said to me was because of my age, my wife's age,
18 our ill health on both of us, that I would not be --
19 ever be able to go on the street again, and that the
20 government would subsidize me.
21 Q Now, you mentioned your wife's age. What's her age in
22 comparison to your own, sir?
23 A She's older than I am.
24 Q Now, did you, in fact, receive something in the form of
25 a subsistence allowance?

1 A Yes.
2 Q And can you tell us, sir, about how much that was?
3 A Yes, I can.
4 Q What was that?
5 A Approximately $800 and a few dollars. Might have been
6 $810, or $812 a month to pay all my rent, and all my
7 bills out of that; food. Everything had to be paid
8 out of the $800 a month.
9 Q And was that for both yourself and your wife?
10 A Yes.
11 Q And for how long a period, sir, did this continue?
12 A I'm not sure of the exact time, but up until, I think
13 in the vicinity of 1980. I think it continued until
14 that time.
15 Q Now, is there some particular reason, sir, why you did
16 not make known back in 1970 and '72 your understanding
17 with respect to what you were told by Agent Rico?
18 A Yes.
19 Q And what was that?
20 A Agent Rico told me I shouldn't tell all of these things
21 because it looked like I was being paid; that I should
22 just do as he said, and everything would come out
23 all right.
24 Q What was your chief concern at that time, going back
25 to 1969 and '70?

1 A A telephone call was to be made from a telephone in the
2 vicinity of the market, where I don't know, to instruct
3 Manocchio that the car had arrived with Marfeo and his
4 associates.
5 MR. LEACH: Your Honor, I would move 80(a), (b),
6 and (c) as full exhibits.
7 MR. LEPPO: May I see them again, please?
8 (Shown to counsel.)
9 MR. LEPPO: No objection, Your Honor.
10 THE COURT: They may be marked full exhibits.
11 (STATE'S EXHIBITS #80(a), thru 80(c) MARKED ID.)
12 Q Mr. Kelley ---
13 MR. LEACH: Just one moment, Your Honor.
14 (PAUSE.)
15 Q Sir, I think you previously indicated that at some point
16 you were receiving money in the form of a subsistence
17 allowance, is that correct?
18 A Yes, sir.
19 Q And was that given to you through any particular agency?
20 MR. LEPPO: Objection.
21 THE COURT: You may answer.
22 A Yes.
23 Q And what agency was that?
24 A The U.S. Marshals Service.
25 Q Are you still receiving any money from them?

1 Q In any event, Mr. Kelley--and I'll get off the subject--
2 the plan was to rob that truck on a Saturday either
3 before or after a major holiday, correct?
4 A That's correct.
5 Q And was there some talk about robbing it at Easter
6 Saturday?
7 A There may have been.
8 Q 1968, right?
9 A I'm not sure. I don't recollect that.
10 Q Do you remember the date of Easter Saturday, sir?
11 A It may have been Easter Saturday, 1967. I'm not sure.
12 Q 1968, Mr. Kelley.
13 A I don't remember ever having anything to say about 1968.
14 I followed it many times, and I can't remember just
15 when they were.
16 Q Mr. Kelley, at some time after you were arrested in
17 May of 1969, certain representations were made to you
18 by way of promises, rewards and inducements, is that
19 correct? By law enforcement officials?
20 A I don't remember anything said in the way that you're
21 saying it. I don't think anyone came out and said that.
22 Q Well, when you were arrested in May of 1969 and Mr. Rico
23 came to see you, did he ask you to become a witness for
24 the Commonwealth of Massachusetts on the Brink's case?
25 A He must have. I don't remember.

1 Q They had already arrested all the other people involved
2 in that at that time, hadn't they, Mr. Kelley?
3 A I don't know whether they had or not.
4 Q Well, you knew that they arrested the Brink's guard
5 who was involved, isn't that right?
6 A Yes.
7 Q Okay, and the Brink's guard had turned State's evidence
8 against you, isn't that right, Mr. Kelley?
9 A Yes, he had.
10 Q And that's how they got your name, isn't that right,
11 Mr. Kelley?
12 A That's correct.
13 Q Now, does that refresh your recollection if Mr. Rico
14 wanted you to be a witness in the Brink's case?
15 A Yes.
16 Q And with that refreshed recollection, is that what he
17 wanted you to testify in the Brink's case?
18 A That he wanted me to, yes.
19 Q And you were in jail on $250,000 bail then, and did he
20 make some promise to you at that point? Mr. Rico?
21 A Yes.
22 Q And did he promise to get you out of jail?
23 A No.
24 Q But you got out of jail, isn't that right, Mr. Kelley?
25 A Yes.

1 Q And you got out of jail and you were living at hotels,
2 isn't that right, Mr. Kelley?
3 A Yes.
4 Q And that was not a promise by Mr. Rico that you wouldn't
5 have to stay in the Suffolk County jail locked up 24
6 hours a day?
7 MR. LEACH: Objection, Your Honor.
8 THE COURT: It's cross-examination. You may
9 answer.
10 A I don't remember the question.
11 Q You don't remember? But you remember that Mr. Rico
12 saw you and took you out of that jail, correct?
13 A Yes, at some time. Yes.
14 Q And now at that point, did Mr. Rico -- If you say you
15 don't remember that he promised to take you out of jail,
16 did he make any promises to you at that point when you
17 first left the Charles Street Jail? Just yes or no.
18 A Yes.
19 Q And did he promise to put you in some type of protective
20 custody?
21 A Yes, he did.
22 Q And did he do that?
23 A Yes, he did.
24 Q And that protective custody was these various hotels,
25 right?

1 A I don't know.
2 Q And at some time, did Mr. Rico make other promises to
3 you? From 1969, the month of May until today, did
4 Mr. Rico make other promises to you?
5 A Yes.
6 Q And did he promise you at some time that you would be
7 given a new identity?
8 A Yes, he did.
9 Q And did he follow through on that promise?
10 A Yes, he did.
11 Q And did he promise you to relocate you in a different
12 part of the country from where you normally lived?
13 A Yes, he did.
14 Q And did that promise come true?
15 A Yes, it did.
16 Q And did he promise to provide money through the
17 appropriate Federal programs so that you would have
18 money for housing?
19 A Yes, he did.
20 Q And did he follow through on that?
21 A To a degree.
22 Q To a degree. Did he promise that you would have money
23 to take care of your food and clothing and laundry and
24 other sundry items?
25 A Yes, he did.

1 Q And did he follow through on that?
2 A Yes, he did.
3 Q So that the only thing that Mr. Rico didn't follow
4 through up to this point was to continue to give you
5 a place to live, correct?
6 A Yes.
7 Q And he lied to you about that, right?
8 A I can't say he lied.
9 Q Well, he told you something that was not true?
10 MR. LEACH: Objection, Your Honor.
11 THE COURT: Sustained.
12 Q You testified, Mr. Kelley, that Mr. Rico promised you
13 $810 a month?
14 MR. LEACH: Objection, Your Honor. It's not his
15 testimony.
16 THE COURT: I don't think it was his testimony,
17 either.
18 Q Did you testify you were receiving $810 a month up until
19 the year 1980?
20 A I may have. I don't recollect.
21 Q And do you remember what day of this week you might
22 have said that?
23 MR. LEACH: Objection, Your Honor.
24 THE COURT: Sustained.
25 Q How much money were you receiving from the Government,

1 Mr. Kelley, during the year 1969?

2 A I have no idea.

3 Q How much money -- Well, were you receiving money?

4 A Yes.

5 Q How much money were you receiving from the Government

6 in the year 1970?

7 A I have no idea.

8 Q Were you receiving money?

9 A I was receiving money, yes.

10 Q How much money were you receiving from the Government

11 in 1971?

12 A Around $700 -- I'm not sure of the figure, about $690

13 or $700 a month, I think. I'm not sure.

14 Q And did that increase in 1972?

15 A It increased at some time.

16 Q Were you receiving money in 1972?

17 A Yes.

18 Q Were you receiving money in 1973?

19 A Yes.

20 Q 1974?

21 A Yes.

22 Q 1975?

23 A Yes.

24 Q 1976?

25 A Yes.

Q 1977?

A Yes.

Q 1978?

A Yes.

Q 1979?

A I'm not sure.

Q 1980?

A I'm not sure.

MR. LEPPO: May I approach the witness, Your Honor?

THE COURT: Yes.

Q I show you this piece of paper, Mr. Kelley, and I ask you if you're John J. Kelley?

A Yes.

Q Even though that's Kelly spelled wrong in that?

A Yes.

Q There's an "E" missing in that, is that right?

A It's perfectly all right.

Q And I refer you to the line starting, "FY '80," meaning fiscal year '80. Would you just look at that and see if there are numbers that go all the way across on that line, Mr. Kelley.

A Yes, there are.

Q And now does that refresh your recollection that you were receiving money in 1980?

1 A Yes.
2 Q And for subsistence in 1980 you've got $2,984, correct?
3 A I don't remember it, but that's the figure.
4 Q And for housing you got $1,026?
5 A I don't remember, but that's the figure.
6 Q And there's money that you received for medical atten-
7 tion?
8 A I don't remember that.
9 Q Now, that was 1980. Did you receive any money in 1981,
10 Mr. Kelley?
11 A I don't remember it.
12 Q I show you this piece of paper again, Mr. Kelley, and
13 I show you fiscal year 1981, which is right on that
14 line, and does it show that you received some money,
15 Mr. Kelley?
16 A Yes.
17 Q And that was for moving expenses, correct? It says
18 moving?
19 A That's what it says, yes.
20 Q And do you remember receiving that money?
21 A No, I do not.
22 Q Did Mr. Rico tell you that you would be taken care
23 of for the rest of your life?
24 A Yes, he did.
25 Q Did he follow through on that?

1 A No, he did not.
2 Q And has that upset you a little bit about Mr. Rico?
3 A I didn't like it.
4 Q And you continue not to like it?
5 A Just a condition I have no control over.
6 Q Now, the Federal Government pay for your wife to go
7 to Europe to visit with your son?
8 A No.
9 MR. LEACH: Objection, Your Honor.
10 THE COURT: Sustained.
11 Q Did you pay for it, Mr. Kelley?
12 MR. LEACH: Objection, Your Honor.
13 THE COURT: Sustained.
14 Q Mr. Kelley, you told the ladies and gentlemen of this
15 jury yesterday, and the day before, that you had earned
16 your income as a thief, isn't that correct?
17 A I don't know as I said that.
18 Q Well, you earned your living as a thief. You're a
19 crook, isn't that right?
20 A I thought I said I was a thief. I don't think I said
21 I earned my living as a thief.
22 Q Well, you used to, prior to the time of your incarcera-
23 tion, you used to steal for a living, isn't that right?
24 A Yes.
25 Q And the only other employment you ever had was a sometime,

1 Q And as a result of that meeting you got immunity, isn't
2 that right?
3 A That's correct.
4 Q And that immunity was before you went in to testify
5 before the grand jury?
6 A Yes.
7 Q So that you knew when you went in to the grand jury,
8 whatever you said you could not be prosecuted for any
9 crime that you would talk about, right?
10 MR. LEACH: Objection, Your Honor.
11 THE COURT: Sustained.
12 MR. LEPPO: Pardon, Your Honor?
13 THE COURT: Sustained.
14 Q When you went before that grand jury, you knew that you
15 would not be prosecuted for the crime that you were
16 going to talk about, the two murders at Pannone's
17 Market, right?
18 MR. LEACH: Objection, Your Honor.
19 THE COURT: I'll overrule that. You may answer.
20 A For the crimes of the market? That is correct.
21 Q When you got that immunity, did they tell you that
22 you had to tell the truth or the immunity was no good?
23 MR. LEACH: Objection, Your Honor.
24 THE COURT: Sustained.
25 Q You lied before that grand jury, didn't you?

1 A Yes.

2 MR. LEACH: Asked and answered, Your Honor.

3 THE COURT: Asked and answered.

4 Q And you lied more than once before the grand jury,

5 didn't you, Mr. Kelley?

6 MR. LEACH: Objection, Your Honor.

7 THE COURT: Overruled.

8 Q Didn't you, Mr. Kelley?

9 A Yes.

10 Q And you lied more than three times before the grand

11 jury, didn't you, Mr. Kelley?

12 MR. LEACH: Objection, Your Honor.

13 THE COURT: You may answer.

14 A I don't know how many times.

15 Q Well, it was more than once in any event, correct?

16 A Correct.

17 Q And it's your testimony, Mr. Kelley, that somebody

18 told you to lie, correct?

19 A Yes.

20 Q And that is Mr. Rico, the man that you just told the

21 ladies and gentlemen of the jury about who had made all

22 these promises to you, isn't that right? The same

23 Paul Rico?

24 A Yes.

25 Q And the same Paul Rico that didn't follow through on the

1 last promise to take care of you for the rest of your
2 life, correct?
3 A It had nothing to do with that at the time.
4 Q That's the same Paul Rico, isn't it?
5 A That's the same Paul Rico.
6 Q And had you, after going before that grand jury, did
7 you go before some other tribunals in the State of
8 Rhode Island?
9 A Yes.
10 Q And were you sworn as a witness at those tribunals?
11 A Yes, I was.
12 Q And did you lie under oath on those occasions, sir?
13 A Yes.
14 Q Did you lie under oath in 1970 at the trial of
15 certain individuals involving the murders at Pannone's
16 Market? Did you lie under oath at that trial, sir,
17 in 1970?
18 THE WITNESS: Pertaining to what?
19 MR. LEPPO: I'm just asking you if you lied at
20 that trial, sir. Did you tell a lie? Yes or no.
21 A Not to my knowledge.
22 Q Did you testify about the Gaslight Restaurant in 1970
23 after being sworn and standing before the ladies and
24 gentlemen of the jury and a judge? Did you lie then?
25 A If I testified about the Gaslight, yes, I lied.

Q Now, in the course of any of your conversations with Mr. Kelley, did you make any promises to him regarding his making statements in your presence, any promises regarding the statements he might have made in your presence?

A I made no promises to him.

Q Now, regarding any testimony which he might give, did you make any promises to him regarding any testimony he might give?

A I made a statement to him.

Q And by that, I take it you deny that you yourself --

MR. ISRAEL: All right, I'll reframe the question.

Q You make certain statements to him?

A Yes, I did.

Q Regarding what?

A I told him that any cooperation that he gave to the United States Government will be brought to the attention of the proper authorities.

Q Now, did you make any statements to him regarding testimony that he might give in Rhode Island?

A No, I did not.

Q Did you make any statements to him regarding any conversation he might have with you regarding events in Rhode Island?

MR. SHEEHAN: I'll object to that, Your Honor please.

THE COURT: Grounds?

MR. SHEEHAN: Well, I think it's immaterial. He's already had immunity from Rhode Island.

THE COURT: Overruled.

MR. SHEEHAN: Exception.

(EXCEPTION OF MR. SHEEHAN NOTED)

THE COURT: Read the question to the witness, please.

MR. SHEEHAN: May the record indicate "he" means Kelley, Your Honor please.

THE COURT: May the record indicate what?

MR. SHEEHAN: That when I use the word "he" he means Kelley.

(Pending question read)

Q Do you understand the question?

A No.

MR. ISRAEL: I'll reframe it.

Q Did you make any promise or any statements to him as to what might happen if he were to make statements to authorities from Rhode Island?

MR. SHEEHAN: Object, Your Honor please.

THE COURT: Overruled.

MR. SHEEHAN: Exception.

(EXCEPTION OF MR. SHEEHAN NOTED)

A I made no such statements.

Q Now, were any statements made by you to Mr. Kelly regarding his personal security?

A Yes.

Q And what were those statements?

A I told him that the United States Government had agreed to give him personal security.

Q Now, by "United States Government," do you mean the Federal Bureau of Investigation?

A No. I mean the Department of Justice has informed me that the United States Marshals would protect him.

Q I take it, then, that you relayed a message to him in your statements to him; is that correct?

A That's true.

Q Now, of your own knowledge, at that time did the Federal Bureau of Investigation independently have authority to offer any protection or security to Mr. Kelley?

A No, they did not.

Q Did you describe to Mr. Kelley the kind of personal security and protection that he might expect from the United States Government?

A No, I did not.

Q Did you make any threats to Mr. Kelley?

A No, I did not.

Q Did you hear Mr. Sheehan make any threats?

A No, I did not.

Q And while Mr. Sheehan was present, with you during any of the conversations at which you, Mr. Sheehan and Kelley were present, did Mr. Sheehan make any threats?

A No, he did not.

Q Did you?

A No, I did not.

Q At anytime when you were present with Mr. Kelley, did you hear anyone make any threats?

A No, I did not.

MR. ISRAEL: May I just a moment, Your Honor please. You may inquire.

CROSS EXAMINATION BY MR. CHISHOLM

Q Mr. Rico, did Mr. Kelley tell you that on or about March 4, 1968, he met John Doe, Richard Roe, Maurice Lerner and Rudolph Sciarra at a motel room in Seekonk, Mass.?

MR. ISRAEL: Objection.

THE COURT: Sustained.

MR. CHISHOLM: Exception.

(EXCEPTION OF MR. CHISHOLM NOTED)

Q Mr. Rico, did you file an affidavit in the Federal District Court in Boston --

MR. ISRAEL: Objection.

THE COURT: Well, now --

MR. ISRAEL: I think Your Honor should examine him.

THE COURT: Let him finish the question.

MR. ISRAEL: Oh, I'm sorry.

Q (Continued) -- in August of 1969?

MR. ISRAEL: No, I object.

THE COURT: You may answer the question "yes" or "no," Mr. Rico.

A Yes.

Q And that affidavit was -- you did sign that under oath?

MR. ISRAEL: Objection.

Well, I withdraw it, I'm sorry.

THE COURT: That's what an affidavit is; isn't it?

MR. CHISHOLM: I want to make sure the witness understands.

Q (Continued) You signed under oath; didn't you?

A I did.

Q It was your oath?

A It was.

Q Now, I'll ask you again, whether or not --

MR. ISRAEL: I object.

Q -- Mr. Kelley told --

MR. ISRAEL: I object and I'm interrupting counsel deliberately.

THE COURT: The objection is sustained, this being far removed from direct-examination, as I view it, Mr. Chisholm.

Q Well, Mr. Rico, you're not going to leave the jurisdiction, are you, in the near future, next week or so?

A I hope to leave the State of Rhode Island. I'm going to leave the State of Rhode Island.

THE COURT: What counsel means, Mr. Rico, if he wants to call you as a witness for the defendant you will be available a little later on.

THE WITNESS: Gladly.

Q Without a subpoena being issued to you?

MR. ISRAEL: I object. I think he said "gladly."

THE COURT: Oh, well, let's not fool around, gentlemen. You said you'll be available, Mr. Rico?

THE WITNESS: Yes.

THE COURT: All right.

Q May I have the answer, Mr. Rico?

A Yes.

Q Now, did you tell Mr. Kelley he'd be provided with a new identity?

A No, I did not.

Q Did anyone in your presence tell him that?

A No.

Q Did you tell Mr. Kelley he'd be relocated in another part of the world after the completion of the outstanding charges against him in the Massachusetts Superior Court?

A I don't even talk like that. I'm sorry, I didn't say that.

MR. CHISHOLM: Your Honor, may the witness's comments be stricken.

THE COURT: No, let it stand.

Q Mr. Rico, did you tell Mr. Kelley that he would be relocated in another part of the world after the completion of the outstanding charges pending against him in the Massachusetts Superior Court?

MR. ISRAEL: Object. I think it's been answered.

THE COURT: Let him answer that.

MR. CHISHOLM: I don't consider that an answer.

A No.

Q Now, when you told us the United States Government agreed to give him personal security, what members of the United States Government were going to give him this personal security?

A The U. S. Marshals.

Q Well, who did you speak to?

A I spoke to the representative of the Department of Justice, Mr. --

Q What's his name?

MR. ISRAEL: He was just about -- oh, I'm sorry.

THE WITNESS: Theodore F. Harrington.

Q And is he a representative of the United States Marshals' Office?

A No, he is not.

Q Well, what United States Marshals did you speak to?

A I did not speak to United States Marshals.

MR. ISRAEL: Object -- I'm sorry. I think there's an answer, Your Honor.

Q Well, did other representatives of the United States Government talk to Mr. Kelley in your presence, other than Mr. Sheehan you've already referred to in your testimony?

A Yes.

Q And can you tell us the names of those persons?

A Yes.

Q And what are those names?

A Theodore F. Harrington, Special Agent David Divan and Special Agent Al Kohler.

THE REPORTER: Would you spell that, please

THE WITNESS: I think it's K-O-H-L-E-R.

Q Any others?

A Not that I can recall.

Q Now, what was the next date that you met with Mr. Kelley after June 5 of 1969?

A June 6th.

Q And the next date after that?

A Pertaining to this matter?

MR. CHISHOLM: Pertaining to any matter.

MR. ISRAEL: Object.

MR. CHISHOLM: All right, pertaining to this matter.

THE WITNESS: June 25.

Q And the next date after that?

A July 8th.

Q Next date after that?

A July 9th.

Q And the next date after that?

A July 10th.

Q Next date after that?

A July 17th.

Q Were there any dates after that?

A I cannot recall any specific dates after that.

Q Well, were there dates after that?

A There are dates after that that I've met Mr. Kelley.

Q Are you saying this subject of this case?

A I'd say yes.

Q Well, when you say you'd say "yes," are you guessing or --

A No, I'm not guessing. I'm just trying to answer the question.

Q And did you make some notes of your interviews?

A No.

Q You didn't make any notes?

A No.

Q And did you use any notes, or documents, or papers, or writings to refresh your memory --

MR. ISRAEL: I object.

Q -- before testifying?

MR. ISRAEL: I still object. Purpose, Your Honor?

THE COURT: I beg your pardon?

MR. ISRAEL: To refresh his memory as to what, Your Honor. I object.

THE COURT: Before testifying here meaning in this trial?

MR. ISRAEL: All right. I'll withdraw the objection.

MR. CHISHOLM: Yes.

A Yes.

Q And may I see those?

(Witness complying)

Q And is this paper that you've shown me the only notes, paper, or documents, or memoranda that you've used to refresh your memory before testifying here?

A Yes.

Q And did you obtain that from --

MR. CHISHOLM: Strike it.

A Yes.

MR. CHISHOLM: I was going to say Agent Sheehan, but I said "strike it," Your Honor.

THE COURT: You anticipated the question, did you?

THE WITNESS: Yes, I did, Your Honor.

THE COURT: All right, Mr. Rico.

Q By the way, Mr. Rico, do you have a copy of that affidavit that you filed in the Federal District Court in August of 1969?

MR. ISRAEL: I object.

THE COURT: Sustained.

MR. CHISHOLM: Exception.

(EXCEPTION OF MR. CHISHOLM NOTED)

Q And, well, Mr. Rico, will you obtain a copy of that affidavit or look it over before next -- the next few days?

MR. ISRAEL: Object.

THE COURT: Sustained.

MR. CHISHOLM: I have no further questions.

CROSS-EXAMINATION BY MR. CIRESI

Q Mr. Rico, you testified that the first occasion you talked to John Kelley, or met with John Kelley was at the Charles Street Jail; is that correct?

MR. ISRAEL: I object.

Q (Continued) Isn't that your testimony?

MR. ISRAEL: No, I object, Your Honor.

A No (nodding).

THE COURT: Did he say that was the first time? I know he said that he met him June 5th at

the Charles Street Jail.

Q Well, did you meet Mr. Kelley June 5th at the Charles Street Jail?

A I did.

Q And is that when he was being held for lack of $250,000 bail, or concerning a charge -- criminal charge against him in Massachusetts?

A I don't know -- I'm not aware of the terms that he was being held. He was held at the Charles Street Jail.

Q He was being held at Charles Street Jail and on criminal charge in Massachusetts; is that correct?

A Yes, that is true.

Q And he hadn't furnished bail at that time?

A I had no knowledge at that time of what his condition was.

MR. CIRESI: I see.

Q And, then, subsequent to this meeting on June 5th, Mr. Kelley was then released on personal recognizance; are you aware of that?

A I am aware of that.

Q And did you appear at the Suffolk County Courthouse when the bail was reduced to personal recognizance?

A I did not.

Q And was Mr. Harrington there at the Courthouse?

MR. ISRAEL: Well, now --

MR. CIRESI: Well, if he knows, Your Honor.

THE COURT: All right.

A I have no way of knowing.

Q You have no way of knowing?

A No (Nodding).

Q And, then, your subsequent conversations with Mr. Kelley was after he was released; is that from the jurisdiction of Massachusetts; is that correct?

A No, that's not correct.

Q Well, he wasn't being held by the Massachusetts Authorities any longer when these subsequent conversations with you were taking place? He was free from the Massachusetts Authorities; wasn't he?

A That is not correct.

Q That isn't correct?

A No.

Q Well, is he being held in any jail by Massachusett Authorities? By that I mean, the State of Massachusetts at this time?

MR. ISRAEL: I object.

THE COURT: If the witness knows, he can tell us, Mr. Israel.

MR. ISRAEL: All right.

A No, he is not.

MR.CIRESI: He is not. I have no further questions.

MR. CHISHOLM: May I re-open?

THE COURT: Go ahead.

CROSS-EXAMINATION BY MR. CHISHOLM CONTINUED

Q Mr. Rico, when you referred in your direct testimony to "proper authorities," who do you say the proper authorities are?

A At the time I said it, I had no way of knowing who the proper authorities were going to be.

Q Well, who do you consider proper authorities?

MR. ISRAEL: Object, now or then?

THE COURT: This is of the time --

MR. CHISHOLM: Well, both questions, Mr. Israel.

THE COURT: This is directed to the time when he said he would bring it to the attention of the proper authorities?

MR. CHISHOLM: Yes, Your Honor.

THE COURT: All right, as of then.

A I have no way of knowing who the proper authorities were going to be.

Q Did Mr. Kelley ask you who the proper authorities were?

A I had no knowledge of what he was going to talk about.

Q Did Mr. Kelley ask you who the proper authorities were?

A No, he did not.

Q Did you tell him who the proper authorities were?

A I did not.

Q Since that time have you determined who the proper authorities are?

A Not in all instances.

Q Well, did you determine what you considered some of the proper authorities were?

A Yes.

Q Who do you consider the proper authorities?

MR. ISRAEL: Object.

THE COURT: I think it's all right.

MR. ISRAEL: I will withdraw the objection.

Q Whatperson?

A I consider the proper authorities to be the district attorney of the areas or the prosecuting authorities in the areas who cover the violations of the law.

Q By person can you identify any person?

A You are asking my opinion?

Q I am not asking your opinion. Who do you now consider to be the proper authorities?

A In this instance here?

Q Mr. Rico, did you tell Mr. Kelley you would bring any

3 2

cooperation he gave to the attention of the proper authorities?

A I did.

Q All right then. Now, you say he gave you some, what you consider, cooperation?

A Yes.

Q Now, what proper authorities by person, by identify, do you say you would bring his cooperation to the attention of?

A To the Department of Justice.

Q By person. Can you identify the person?

A Walter Barnes, held of the Strike Force in New England; Garret Byrne, district attorney, Suffolk County.

Q Is that it? Is that the end of the answer?

A Yes.

Q Did you know Mr. Kelley prior to your meeting at Charles Street Jail on June 5, 1969?

A Yes.

Q As a matter of fact, you met him there June 4, 1969?

A As a matter of fact, no.

Q Did you meet him June 6, 1969 at Charles Street Jail?

A No.

Q Did you not see him two successive days at Charles Street Jail, June 4, 5 or 6?

A I did not see him on two successive days at Charles Street Jail.

WITNESS BACKGROUND INFORMATION 05/06/83

JOHN J KELLY FINANCIAL REPORT'S DATE ENTERED PROGRAM: 0570 # IN FAMILY: 2

EXPENSES

	SUBSISTENCE	HOUSING	MEDICAL	TRAVEL	DOCUMENTS	RELOCATION	TRIAL	MOVING	MISC	FY TOTALS
FY 71	COMPUTER RECORDS FOR FISCAL YEARS PRIOR TO FY 75 ARE SUMMARIZED ONLY. TOTAL VALUE APPEARS UNDER 'FY TOTAL'									7222.45
FY 72	COMPUTER RECORDS FOR FISCAL YEARS PRIOR TO FY 75 ARE SUMMARIZED ONLY. TOTAL VALUE APPEARS UNDER 'FY TOTAL'									16964.44
FY 73	COMPUTER RECORDS FOR FISCAL YEARS PRIOR TO FY 75 ARE SUMMARIZED ONLY. TOTAL VALUE APPEARS UNDER 'FY TOTAL'									8176.50
FY 74	COMPUTER RECORDS FOR FISCAL YEARS PRIOR TO FY 75 ARE SUMMARIZED ONLY. TOTAL VALUE APPEARS UNDER 'FY TOTAL'									10531.45
FY 75	8612.50	2890.00	266.25	27.50	.00	.00	.00	.00	.00	12396.25
FY 76	11250.00	3496.00	1315.50	.00	300.00	12.00	.00	46.60	.00	16420.10
FY 77	3000.00	2760.00	.00	.00	.00	.00	.00	.00	.00	11760.00
FY 78	8480.00	2280.00	.00	.00	.00	.00	.00	41.20	.00	11801.20
FY 79	9000.00	2760.00	2053.40	.00	335.00	.00	.00	.00	.00	14148.40
FY 80	2984.00	1026.00	.00	.00	4.00	.00	86.70	.00	.00	4110.70
FY 81	.00	.00	.00	.00	.00	.00	.00	1180.56	.00	1180.56
FY 82	24.47	11.53	.00	.00	.00	.00	.00	.00	.00	36.00
FY 83	.00	.00	.00	*.**	.00	.00	.00	.00	.00	.00
TOTAL	49350.97	16233.53	4335.15	27.50	639.00	12.00	86.70	1268.36	.00	114948.05
FUNDS AUTHORIZED BUT NOT YET DISBURSED	.00	.00	.00	.00	.00	.00	.00	.00	.00	
TOTAL FUNDS	49350.97	16233.53	4335.15	27.50	639.00	12.00	86.70	1268.36	.00	

*.** - TRAVEL FOR CURRENT FISCAL YEAR NOT INCLUDED

TOTAL FUNDS EXPENDED FOR WITNESS AND DEPENDENTS

EXPENSES

SUBSISTENCE	HOUSING	MEDICAL	TRAVEL	DOCUMENTS	RELOCATION	TRIAL	MOVING	MISC	TOTAL
49350.97	16233.53	4335.15	27.50	639.00	12.00	86.70	1268.36	.00	114948.05

I HEREBY CERTIFY THAT THE ABOVE REPRESENTS ALL FUNDS DISBURSED TO SUBJECT WITNESS UNDER THE PROVISIONS OF THE WITNESS PROTECTION PROGRAM BY THE U. S. MARSHALS SERVICE.

CHIEF, WITNESS SECURITY DIVISION
U. S. MARSHALS SERVICE

5/10/83
DATE

SUPERIOR COURT
FILED
MAY 10 1983
Joseph O. Calista
CLERK

EXHIBIT
32

1 STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
2 PROVIDENCE, SC. SUPERIOR COURT
3
4
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6
7
8 STATE OF RHODE ISLAND :
9 VS. : NOS. 69-767, 768, 769
10 LUIGI MANOCCHIO :
11
12
13
14
15
16 STATEMENT OF
17 DAVID H. LEACH
18 ON MAY 24, 1983
19
20
21
22
23 APPEARANCES
24 DAVID H. LEACH, ASSISTANT ATTORNEY GENERAL
25

PENGAD-Bayonne, N.J.
EXHIBIT
33

1 MAY 24, 1983

2 D A V I D H. L E A C H was duly sworn by a notary
3 public.

4 MR. LEACH: My name is David H. Leach. I'm an
5 Assistant Attorney General for the State of Rhode Island.
6 This statement is a summary of certain events that took
7 place on Saturday, May 21, 1983 involving a witness by
8 the name of John J. "Red" Kelley, sometimes known as
9 Jack also.

10 On Saturday, May 21, 1983, I interviewed John
11 Kelley, along with Detective Urbano Prignano, Jr.
12 Detective Prignano and I traveled out of state to meet
13 with Mr. Kelley. We first saw him at about 12:20
14 Saturday afternoon. He indicated that he would like to
15 speak to me alone. I, in fact, spoke to him for a
16 period of time in the absence of Detective Prignano.

17 At that time, Mr. Kelley indicated several things
18 to me, both directly and in the form of a hypothetical
19 statement. He indicated over the course of a conver-
20 sation, in which a number of things were discussed, some
21 of which having nothing to do with the case presently
22 before the Court, State versus Luigi Manocchio, that
23 although he indicated on a number of prior occasions the
24 only promises, rewards or inducements made to him was
25 that his cooperation would be brought to the attention

of the appropriate authorities, in fact, agents of the F.B.I., whom he did not name to me, told him that he would be taken care of for life, and that he was bitter that that in fact was not done.

He subsequently indicated to me in the course of my asking him some questions about matters for which he was impeached on prior occasions, that with respect to the guns used in this crime, that he had a person he described as his armorer. In the course of the conversation, it became apparent that that person was a man named Appleton, who he indicated had committed suicide and has been dead for about a year. He indicated that, and it was not clear to me whether he was referring specifically to the carbine or the pump action shotgun, that Appleton had prepared under his direction some 25 similar weapons, and that he knew how it was done, and though he did not personally perform the operation, it was done for him. He indicated that some of these weapons were used in other offenses.

During the course of this long and somewhat rambling conversation, without my asking him any specific questions, he gave to me what he later termed a hypothetical. He said: Suppose there was a meeting; and suppose, for somebody's purposes, it was better to have a meeting at one place instead of another place;

1 and suppose that the place where that meeting was to be
2 was a nightclub called the Monte Carlo or Montecalvo,
3 I'm not sure exactly which name he used; and he went on
4 to say, suppose somebody didn't do their homework and
5 didn't know that the Monte Carlo had had a fire; and
6 suppose somebody, because they wanted to have a meeting
7 in one place and not another, said that the meeting was
8 in front of this place, Monte Carlo; he went on to say,
9 suppose that a person, who was going to talk about this
10 meeting, were to take a ride with somebody who was not
11 involved and come to Providence and look at this Monte
12 Carlo nightclub at a time when there was nothing wrong
13 with this Monte Carlo because somebody, who wanted the
14 meeting there, had not done his homework. He indicated
15 this was a hypothetical situation. I asked him if, in
16 fact, all the parties were in fact the same; and he
17 indicated that they were. He did not indicate in his
18 hypothetical by name who would think it's a better idea
19 to have a meeting at a place hypothetically called the
20 Monte Carlo as opposed to where the meeting might really
21 have taken place.
22 He did allude to Federal agents or the F.B.I.
23 agents. I did not ask him by name which agents he was
24 referring to.
25 He indicated that at no time, up until recently,

1 was never aware that there had been a fire at the
2 Gaslight Lounge. He did indicate that the persons he
3 has said were involved with the killing of Rudolph Marfeo
4 and Anthony Melei were, in fact, the same persons that he
5 has testified about. At no time did he ever actually
6 indicate to me that the meeting did not take place at
7 the Gaslight, that he has previously testified to as
8 having occurred on April 7, 1968.
9 He described a fact pattern in the form of a hypo-
10 thetical.
11 At some point during the course of our discussion,
12 Detective Prignano rejoined us, and he went on to talk
13 about the events of 1968 and his relationship to the
14 different parties involved. He told me that he had
15 recently spoken to Attorney Roger Zuckerman who had
16 represented him several years ago, and that Zuckerman
17 had spoken to Attorney Martin Leppo who represents Louis
18 Manocchio, that Leppo had relayed, through Zuckerman,
19 information in areas upon which Kelley could be impeached.
20 After about four and a half hours, Detective Prignano
21 and I left and returned to Providence. We made further
22 arrangements to have Detective Prignano interview
23 Mr. Kelley on Monday, May 23, 1983. My purpose was to
24 have Detective Prignano independently assess what
25 Mr. Kelley had to say.

1 Detective Prignano did, in fact, interview John J.
2 Kelley on Monday, May 23rd. His observations are the
3 subject of an independent statement.
4 I did not reveal the substance of my conversation
5 with John Kelley to Detective Prignano on Saturday or at
6 any time up to the time I received a phone call from him
7 at around seven p.m., Monday, May 23rd. At that time I
8 asked him about his meeting with Kelley, and it became
9 apparent that Kelley told him as much, if not more, as he
10 had told me; and he had told us both essentially the same
11 things.
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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PROVIDENCE, SC.

I do hereby certify that I am expressly approved as a person qualified and authorized to take depositions, hearings, statements, and so forth pursuant to rules of court, especially but without restrictions thereto, that the witness was first sworn by me, that the transcript contains a true recording of proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 25th day of May, 1983.

SUSAN FREDETTE
REPORTER

My commission expires June, 1986.

United States. [Excerpts]

S. Hrg. 101-194 Pt. 2A

REPORT OF THE SENATE IMPEACHMENT TRIAL COMMITTEE ON THE ARTICLES AGAINST JUDGE ALCEE L. HASTINGS

HEARINGS

BEFORE THE

SENATE IMPEACHMENT TRIAL COMMITTEE

UNITED STATES SENATE

ONE HUNDRED FIRST SESSION

FIRST SESSION

ON

THE ARTICLES OF IMPEACHMENT AGAINST JUDGE ALCEE L. HASTINGS, A JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, FOR HIGH CRIMES AND MISDEMEANORS

MISCELLANEOUS MATERIAL RELATED TO THE EVIDENTIARY HEARINGS

Part 2A of 3 Parts

EXHIBIT

34

PENGAD-Bayonne, N.J.

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1989

20-040

For sale by the Superintendent of Documents, Congressional Sales Office

July 25, 1989

Mr. ANDERSON. Respondent calls H. Paul Rico.

Judge HASTINGS. While Mr. Rico is coming in, Mr. Chairman, what Senator Lieberman requested, I was able to find. Could I give it to the clerk and have him supply it to Senator Lieberman and other Senators who may be interested?

The CHAIRMAN. Did we want to offer this as an exhibit to the record, is that an appropriate thing——

Judge HASTINGS. I don't think he asked for it as an exhibit and I wasn't offering it. I was only supplying it for information for Senator Lieberman.

The CHAIRMAN. Okay. We will just accept it.

Mr. ANDERSON. Mr. Chairman, it also is in the book which most of you are referring to.

The CHAIRMAN. Mr. Rico, do you understand you are still under oath before this committee?

Mr. RICO. Yes.

The CHAIRMAN. Please be seated.

TESTIMONY OF H. PAUL RICO (continued)

DIRECT EXAMINATION (continued)

Mr. ANDERSON. Mr. Rico, to refresh the committee's recollection, were you employed as an FBI agent for most of your career?

Mr. RICO. Yes.

Mr. ANDERSON. And when did you retire, sir?

Mr. RICO. The end of April 1975.

Mr. ANDERSON. And what was your duty station at that time?

Mr. RICO. Miami.

Mr. ANDERSON. How long had you been in Miami?

Mr. RICO. Five years.

Mr. ANDERSON. And during your association there, had you developed both a friendship and a working relationship with Anthony Amoroso?

Mr. RICO. Yes.

Mr. ANDERSON. Did you know an agent Jerry Forrester?

Mr. RICO. Yes.

Mr. ANDERSON. And an agent Tom Dowd?

Mr. RICO. Yes.

Mr. ANDERSON. And I take it you knew a number of agents.

Mr. RICO. Yes.

Mr. ANDERSON. About how many agents were in Miami at that time in the FBI?

Mr. RICO. Probably assigned to the office, around 100, but not all in headquarters.

Mr. ANDERSON. When you retired, where did you go to work?

Mr. RICO. Miami Jai Alai.

Mr. ANDERSON. And in what capacity were you hired at Miami Jai Alai?

Mr. RICO. Director of Security.

Mr. ANDERSON. And what is your present position at Miami Jai Alai?

Mr. RICO. I'm the general manager.

Mr. ANDERSON. And when did you become general manager?

Mr. RICO. Either early 1976 or late 1975.

Mr. ANDERSON. Now, does Miami Jai Alai employ other former FBI agents?

Mr. RICO. Yes.

Mr. ANDERSON. About how many?

Mr. RICO. We have two other former agents.

Mr. ANDERSON. And do you have other former FBI employees?

Mr. RICO. Yes.

Mr. ANDERSON. There has been some testimony that Mrs. Dowd is one of those, is that correct?

Mr. RICO. Yes.

Mr. ANDERSON. Are there other additional——

Mr. RICO. There's one more, yes.

Mr. ANDERSON. Now, am I correct, Mr. Rico, that there is a fairly active retired FBI Agents Association in Miami?

Mr. RICO. Yes, I would say that it is fairly active.

Mr. ANDERSON. About how often does that get together?

Mr. RICO. I think they try to meet approximately once a month. In the summertime, they may miss a month.

Mr. ANDERSON. And do they frequently invite an active member, the agent in charge or someone who is actively in the FBI to speak to them?

Mr. RICO. Yes.

Mr. ANDERSON. Is that a fairly social group?

Mr. RICO. Yes.

Mr. ANDERSON. Now, Mr. Rico, did you, to the best of your recollection, on or about sometime in July 1985 suggest to Glenn Whittle that he might call Agent Tom Dowd to inquire about whether the FBI was investigating Mayor Clark or Peter Ferguson?

Mr. RICO. Absolutely not.

Mr. ANDERSON. So, you never made that suggestion to Glenn Whittle?

Mr. RICO. No.

Mr. ANDERSON. Did you at that time, sir, were you aware that there was any grounds why Peter Ferguson or Mayor Clark might have concern that they were under investigation?

Mr. RICO. No.

Mr. ANDERSON. Did you know Mayor Clark at that time?

Mr. RICO. Yes.

Mr. ANDERSON. And how had you met him, to the best of your recollection? Do you play golf?

Mr. RICO. Yes, I probably met him through golf tournaments, right.

Mr. ANDERSON. And how did you come to meet Pete Ferguson, if you had?

Mr. RICO. I think at that time he was active in the golf tournaments also.

Mr. ANDERSON. But it is your recollection that you never made any suggestion to Glenn Whittle or anyone else that they make a call on the Mayor or Peter Ferguson's behalf?

Mr. RICO. Absolutely.

Mr. ANDERSON. Did there come a time when someone contacted you to inquire into, to ask you the same question I just asked you?

Mr. RICO. Yes.

Mr. ANDERSON. Do you recall when that was?

Mr. RICO. No, I have no distinct memory of the timing.

Mr. ANDERSON. OK. Do you recall how the contact came about, which may help us fix it in time?

Mr. RICO. I received a telephone call.

Mr. ANDERSON. And from whom was that telephone call?

Mr. RICO. I believe Chris Mazzella called me.

Mr. ANDERSON. Mr. Chairman, in order to try and refresh the witness' recollection, might I show him a memorandum after first showing counsel?

The CHAIRMAN. You may.

Mr. ANDERSON. After your recollection that Agent Mazzella called you, do you recall what happened next with respect to this matter?

Mr. RICO. I believe that Agent Mazzella called me again and asked me to speak to somebody that was down in Miami conducting an investigation of this matter.

Mr. ANDERSON. And about how much time had elapsed between Agent Mazzella's first call and the time he called you and asked you to speak to them?

Mr. RICO. I really have no distinct memory, I have no memory of that.

Mr. ANDERSON. Were those two pretty close together?

Mr. RICO. Yes, I would say——

Mr. ANDERSON. It wasn't one year and then the next year, we are talking of within about your best estimate of this time, how long, a week, two weeks?

Mr. RICO. I have no—I couldn't swear to any particular time. It could be a week, it could be 10 days, something like that maybe.

Mr. ANDERSON. But those two events were in reasonably close proximity, is that correct?

Mr. RICO. I think so.

Mr. ANDERSON. And did you then talk to someone, as Agent Mazzella had suggested?

Mr. RICO. Yes.

Mr. ANDERSON. Again, I wonder if I might now show him——

The CHAIRMAN. Is this to be introduced as an exhibit? What is this?

Mr. ANDERSON. I am really trying to keep the record not being cluttered. It is materials that you all have in your book, but it is simply a report of an investigative interview and, if it refreshes the witness' memory, I won't bother to put——

Mr. BARON. The only point I would make, Mr. Chairman, the witness hasn't said that he doesn't remember it. He just hasn't been asked whether he was interviewed by somebody else. Now, if he doesn't have a recollection, sure, he can refresh it, but I'm not sure it is a problem at this point.

Mr. ANDERSON. What he has said is he does have a recollection of being interviewed, but he doesn't know when. I am trying to fix it in time.

The CHAIRMAN. You may show him the document.

Mr. ANDERSON. Mr. Rico, let me show you a memorandum and ask you to read it and see if it refreshes your recollection.

Mr. RICO. No. This doesn't do my independent recollection, anything to it, no.

Form DJ-150
(Ed. 4-26-65)

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

73A 1023

EFH:ded #77

TO : James J. Featherstone, Deputy Chief
Organized Crime & Racketeering Section

DATE: November 29, 1971

EFH

FROM : Edward F. Harrington, Attorney in Charge
Boston Field Office, Organized Crime
& Racketeering Section

SUBJECT: Testimony of Government Agents and Attorney in the Case of State of California v. Joseph Baron

I will testify as to the names of the underworld figures against whom Joseph Baron testified on behalf of the United States Government and on behalf of the Commonwealth of Massachusetts, namely, Raymond Patriarca, Henry Tameleo and Ronald Cassesso in the federal case; and Henry Tameleo, Peter Limone, Louis Grieco, John Silvati, Roy French and Ronald Cassesso in the state prosecution.

I will also testify that during the period that Baron was awaiting to testify in the trial of these cases he was maintained in protective custody by the federal government at Thatcher's Island, off the Massachusetts Coast, and at an estate in Gloucester, Massachusetts; and that subsequent to his testimony he was relocated by the federal government to Fort Knox, Kentucky, in protective custody, and then permanently relocated to the Santa Rosa, California area under the name of Joseph Bentley. I will also testify that the government, in order to secure Baron's personal safety, changed Baron's name to Bentley and aided him in securing a position as a student in a cooking school in the Santa Rosa, California area. I will also be asked to testify that during the time that Baron was in Santa Rosa he requested, on several occasions, to carry a gun for his own protection which request was denied by me on the ground that I had no authority to permit him to carry a weapon.

File
6 TM 2/23/76

123-66

Special Agents Rico and Condon of the Federal Bureau of Investigation will testify that they both advised the witness Baron during the period that he was in protective custody in Massachusetts awaiting to testify for the federal and state governments that they had received information from underworld sources that the LCN in the Boston-Providence area ~~was attempting~~ to locate Baron's whereabouts so that they could kill him prior to his testifying. Special Agent Rico will testify that on or about February 3, 1970 he personally advised Joseph Baron in Massachusetts that the LCN in this area was aware that Baron was in the area and Baron was told by Rico that two individuals were here to do a "hit" on an unknown individual, who could be Baron, and that Baron, therefore, should immediately leave the

DEPARTMENT OF JUSTICE
DEC 1 1971
T.A.O.
CRIMINAL DIVISION
Organized Crime and Racketeering Section

RECEIVED
DEC - 1971
CRIMINAL DIVISION

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35
PERSCAD Baronne N.J.

Massachusetts area and return to California.

Special Agent Condon will testify that in January, 1970 two well known "hit men" from the Boston area, Harry Johnson and Allan Fidler, traveled to the San Francisco area, and according to informants of the Boston Office of the Federal Bureau of Investigation were supposed to be making the trip to harm someone in the San Francisco area. Investigation determined that these individuals traveled extensively in the Northern California area. Local police stopped these individuals and ascertained that they had assumed false identities and they were ordered to leave San Francisco and they returned to the Boston area. A search by the police department, prior to their detention, disclosed that these individuals had two hand weapons that were stolen and a supply of ammunition. Johnson and Fidler were detained in an area in close proximity to the then whereabouts of Joseph Baron. Baron was advised by Special Agent Condon as to these facts and was urged to be careful as these individuals might be traveling to kill Baron.

Special Agents Condon and Rico will testify as to State of California witness Geraway's reputation in the Massachusetts community for truth and veracity. Geraway, who is presently serving a life sentence for murder at Walpole Correctional Institution, is considered by law enforcement authorities as a congenital liar.

It is requested that the authority to testify for Rico, Condon and me cover all the areas of testimony related to above in the event that one of the witnesses' testimony is delved into on the cross-examination of the other.

FD-930 (Rev. 5-22-64)

FBI

Date: 1/23/74

Transmit the following in _____ (Type in plaintext or code)

Via AIRTEL _____ (Priority)

TO: DIRECTOR, FBI (92-9828)

FROM: SAC, BOSTON (92-1132)

SUBJECT: JOSEPH BARON, aka
AR

Enclosed for the information of the Bureau is a copy of a letter received by SA DENNIS M. CONDON from a female acquaintance of BARON in San Francisco, California. BARON is confined in Montana for the California authorities. Montana voted for his parole in May, 1973, but California has not rendered a decision to date.

A copy of this letter has been made available to Attorney GERALD MC DOWELL, Boston Strike Force, U. S. Dept. of Justice; Attorney EDWARD F. HARRINGTON, former head of the Strike Force; Attorney General RICHARD ISRAEL, Rhode Island; and Col. WALTER STONE, Superintendent, Rhode Island State Police, to comply with BARON's request re ISRAEL and STONE.

Mr. MC DOWELL and Mr. HARRINGTON had previously advised that BARON's credibility as a witness had been seriously diminished by events that have transpirted 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.

Attorney HARRINGTON advised he has no plans to contact BARON. Intentions of Rhode Island authorities not known at this time but Bureau will be kept advised.

ENCLOSURE

REC-61

EX-112

92-9828-41

(2) - Bureau (Encl. 1)
1 - Boston
DMC:gm
(3)

ENCLOSURE ATTACHED

12 JAN 25 1974

Approved: _____ Sent _____ M Per _____
Special Agent in Charge

54 JAN 30 1974

U. S. GOVERNMENT PRINTING OFFICE: 1971—413-135

EXHIBIT
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BS 92-1132

Boston sees no useful purpose in interview of BARON 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 BARON to obtain Government support in bid for parole.

Strike Force will not consider any future prosecutions based on BARON testimony.

17-3686-86

Jan 7 1974
Wed

To Baby,

This is very important! You must write Joe H. Dinny, back in Boston. Then you must write the Attorney General Israel marked confidential & personal, & also Colonel Stone Superintendent of the State Police. State Police Hdqts Rhode Island. In each letter that you type to A.G. Israel State House Rhode Island & to Colonel Stone do not sign your name, but tell them these letters can be verified by Joe H. & FBI Agent Denny Condon.

Tell them I would like to see the 4 of them together before California takes any action on my case.

I wish to discuss with them about Romeo Martin concerning Raymond Patriarca, Jerry Angiulo, Henry Tameleo, Ronnie Cosasso, & Chico Amico, & Bud Stewart. It concerns a police report & the Blue Bunny!

That I will wait until Joe H. & Dinny contact you & if there is no response then I will have a letter sent to the Providence Journal & Record American

BEST COPY

5/23/68

AIRTEL

TO : DIRECTOR, FBI [redacted] F

FROM: SAC, BOSTON

CRIMINAL INTELLIGENCE PROGRAM
BOSTON DIVISION

The following Agents have been subpoenaed to testify in Suffolk County Superior Court, Boston, Mass., in the gangland murder trial of defendants HENRY TAMELEO, RONALD CASSESSO, PETER LIMONE, LOUIS GRIECO, JOSEPH SALVATI, and ROY FRENCH, beginning 5/27/68. The first week, however, will probably be taken up with the selection of jury and other evidence.

SA WILLIAM T. BOLAND, JR.
SA DENNIS M. CONDON
SA GEORGE E. HANLON
SA H. PAUL RICO

SA BOLAND may testify to interview with GRIECO's wife. SA GEORGE E. HANLON re being contacted by witness ROBERT GLAVIN from MCI, Norfolk, Mass. SA's CONDON and/or RICO re witness BARON first mentioning DEEGAN murder to them, referral of matter to District Attorney's office, no promises made, etc. SA's CONDON and/or RICO may also testify re contacts with witness GLAVIN, referral of him to District Attorney's office, no promises made, etc.

3-Bureau
1-Boston

DMC:pob
(4)

SAC

F [redacted] 3156

EXHIBIT
37

SAC, Boston (92-1132) 12-23-70

Director, FBI (92-9828)

JOSEPH BARON, aka
AR

By return mail both Boston and San Francisco advise the Bureau concerning any prosecution pending against the subject. Also include details as to the stage to which the prosecutive steps have progressed.

2 - San Francisco (92-2061)

MAILED 24
DEC 23 1970
COMM-FBI

EX-112

REC-10 92-9828-25

19 DEC 28 1970

Tolson
Sullivan
Mohr
Bishop
Brennan, C.D.
Callahan
Casper
Conrad
Felt
Gale
Rosen
Tavel
Walters
Soyars
Tele. Room
Holmes
Gandy

CLG:mjf
(6)

60 DEC 31 1970

MAIL ROOM ☐ TELETYPE UNIT ☐

EXHIBIT
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OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-106

UNITED STATES GOVERNMENT

Memorandum

TO : Mr. DeLoach

DATE: November 15, 1968

FROM : J. H. Gale

SUBJECT: DEPARTMENT OF JUSTICE TASK FORCE CONCEPT ON ORGANIZED CRIME

CRIMINAL INTELLIGENCE PROGRAM - GENERAL

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

SYNOPSIS: This memorandum is written to set forth the FBI's views with reference to the Department of Justice "Task Force" (also called "Strike Force" concept on organized crime. This involves formation of groups consisting of Department attorneys and investigators from different Federal agencies concentrating combined prosecutive and investigative functions in selected areas.

The basic objectionable aspects of the Task Force concept consist of the following: (1) Combining of investigative and prosecutive functions to the detraction of desirable impartiality; (2) loss of economy and efficiency by superimposing a new group in areas where regular prosecutive and investigative agencies exist; (3) absence of specific responsibility because of diverse organizations and assignments of personnel; (4) added peril to personnel in dangerous situations encountered; (5) difficulty in maintaining security of confidential informants. Another principal objection 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.

Proponents of Task Force operation stress ability to concentrate on an objective without diversion caused by multiplicity of investigative matters. Regularly constituted investigative agencies, however, can concentrate and specialize its personnel, and United States Attorneys' offices can be strengthened by changes and additions of competent attorneys where needed. Current accomplishments of existing Department of Justice Task Forces are dwarfed by accomplishments of the FBI in areas where prosecutions are handled by a regular staff of United States Attorneys and initiated by the FBI.

ACTION: For information, as an outline of the FBI views regarding the Task Force, or Strike Force, concept.

REC-47 62-9-11522

1 - Mr. DeLoach
1 - Mr. Bishop
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Green
CLG:dr/jny
(6)

DETAILS - PAGE 2

EXHIBIT
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Memorandum to Mr. DeLoach
Re: Department of Justice
Task Force Concept on
Organized Crime

DETAILS

Department of Justice Task Force

The Task Force idea began with a visit to Bureau officials on October 27, 1966, by representatives of the Department's Criminal Division. They announced that they were suggesting a group be formed in the Department of Justice consisting of attorneys and representatives from the Treasury Department, Labor Department, Bureau of Narcotics, the Internal Revenue Service, and the FBI who could sit down and review in the Department of Justice all available information gathered by the various agencies concerning the activities and criminal personalities involved in organized crime in the Buffalo, New York, area. Investigations would then be conducted by the various personnel in the Buffalo area. They pointed out that the FBI reduces its investigations to reports, which is not the case with some of the other agencies, but that these other agencies have a great wealth of information which has never been made available because it had not been reported.

The Director said that he would never agree to this and that the Department should take steps to correct the procedures of the other agencies and not muddy the procedures of the FBI. The recommendation that we not participate in the "Task Force" was approved by the Director, and the Department was notified of the Bureau's decision on November 7, 1966. It was stated and reiterated to the Department that the FBI would continue to vigorously conduct investigations in organized crime cases and continue to submit to the Department our detailed reports of the results of these investigations. They were also told that the FBI desired to have reported to it any alleged violations of law within its jurisdiction which might be discovered by the "Task Force," and such alleged violations would be promptly, completely, and vigorously investigated. On later contacts with the Special Agent in Charge in Buffalo, members of the "Task Force" were similarly advised of the Bureau's desires in this regard. Liaison has been maintained with the "Task Force" and the United States Attorney's office continuously by the Buffalo FBI Office.

Memorandum to Mr. DeLoach
Re: Department of Justice
Task Force Concept on
Organized Crime

On their contact with Bureau officials, Department representatives said that the Buffalo, New York, area had been selected for the pilot operations of the Task Force idea. They indicated that Buffalo had a very active La Cosa Nostra family which had been determined by the Department based on examination of regularly submitted FBI intelligence reports on organized crime by its investigations over a period of several years. It was formed and began operations in the Buffalo area in the beginning of 1967. Additional Task Forces have been formed and are presently in existence. They are at Detroit, Philadelphia, and the Eastern District of New York (Brooklyn). The Buffalo Task Force was disbanding its personnel and operation during October, 1968. Assigned to the Department of Justice "Task Force" in the Buffalo area were the following:

Five Department attorneys, headquartered at Washington, D. C.

An Alcohol and Tobacco Tax Division investigator headquartered at Washington, D. C.

Two Internal Revenue Service agents, one headquartered at Los Angeles, California, and the other at Pittsburgh, Pennsylvania.

One Immigration and Naturalization Service investigator headquartered at Washington, D. C.

One U. S. Customs Service investigator headquartered at Washington, D. C.

One Federal Bureau of Narcotics investigator headquartered at Baltimore, Maryland.

Claimed Accomplishments of "Task Force"
in Buffalo area.

In a speech by the Attorney General and in a press article inspired by the Department, it was claimed that the "Task Force" produced indictments of 31 persons in the Buffalo area including suspected members of La Cosa Nostra.

Memorandum to Mr. DeLoach
Re: Department of Justice
Task Force Concept on
Organized Crime

We do not have specific knowledge of the indictments mentioned. However, undoubtedly the statements include indictments charging Anti-Racketeering - Conspiracy under the provisions of the Hobbs Act and another one charging conspiracy to rob a bank in Buffalo. None of the criminal acts forming the basis for these indictments were ever actually perpetrated. The indictments in the Hobbs Act - Conspiracy concerned two local robberies which were allegedly planned for Los Angeles, California. Included in the indictment was a count charging conspiracy to violate the Interstate Transportation of Stolen Property statute. This Task Force case involved Fred G. Randaccio, Pasquale A. Natarelli, and three other associates.

Randaccio and Natarelli were important figures in the organized crime picture in Buffalo--both being members of the Steve Magaddino family of La Cosa Nostra in that area and Randaccio holding the high-ranking position of underboss to Magaddino. In United States District Court in Buffalo, all defendants were convicted on November 21, 1967. Randaccio, Natarelli, and defendant Stephen A. Cino were each sentenced to 20 years in prison. The other two defendants, Charles Caci and Louis Sorgi, each received sentences of 10 years. These convictions have been affirmed by the United States Court of Appeals, Second Circuit, and petition for certiorari has been filed with the United States Supreme Court.

In the indictment charging conspiracy to rob a bank in Buffalo, four individuals were charged, but only one, Salvatore Pieri, could be considered as an organized crime figure in the area. Pieri is an important La Cosa Nostra member in Buffalo. At the conclusion of a trial of the four in United States District Court in Buffalo, Pieri was acquitted, and the jury disagreed on the other three who were convicted in a subsequent trial.

Memorandum to Mr. DeLoach
Re: Department of Justice
Task Force Concept on
Organized Crime

As a basis for comparison, examples of prosecutive achievement against organized crime are those involved in FBI investigations in Boston and the Southern District of New York in New York City. In Boston in a case investigated by our Boston office and prosecuted by the U. S. Attorney, Raymond L. S. Patriarca, "boss" of the New England family of La Cosa Nostra and one of the most important organized crime figures in the United States, together with two of his high-ranking associates, Henry Tameleo and Ronald Cassesso, they were convicted in U. S. District Court on June 20, 1967, on charges of Interstate Transportation in Aid of Racketeering - Gambling, and each was sentenced to five years imprisonment and fined $10,000.

Also, as 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 Grieco were all sentenced to death while two confederates were given life sentences.

Also based on FBI investigation, Raymond Patriarca has been indicted by the State of Rhode Island for the 1965 conspiracy to murder Willie Marfeo. This charge is based on substance to the same set of facts involved in the ITAR - Gambling prosecution of Patriarca, Tameleo, and Cassessa.

The key factor in the foregoing prosecutive achievements in the New England area was the development as a cooperative witness of Joseph Baron, commonly known as Barboza, who was an important crime figure in his own right and performed as a hired killer for La Cosa Nostra leaders. Conceivably, a "Task Force" could have had the initial contact with Baron and developed some of the same prosecutive achievements. However, in such an event, it would have been the additional unnecessary expenditure of personnel and money in having this operation handled by a group superimposed on the regular prosecutive and investigative establishments in the area.

Similarly, in the Southern District of New York, the FBI developed an important witness against organized crime figures in the person of Herbert Itkin. This was a significant factor in the ensuing prosecution handled by the U. S. Attorney, Southern District of New York, which resulted in the conviction of important La Cosa Nostra figures Antonio Corallo, James L. Marcus, former Commissioner of Water, Gas, and Electricity for the City of New York, and three other defendants. These convictions which occurred on June 19, 1968, involved violations of the Interstate Transportation in Aid of Racketeering - Bribery statute. Additional prosecutions are expected as a result of information furnished by Itkin. Conceivably also, a "Task Force" could have handled this or a similar case, but it would have been a superimposed superflous group considering that the regular investigative and prosecutive establishments were in existence ready, willing, and able to perform their functions.

BASIC OBJECTIONAL ASPECTS OF "TASK FORCE" CONCEPT

Combining of Investigative and Prosecutive Functions

Over the years, the FBI has adhered to the policy of a separation of the investigative and prosecutive functions pertaining to alleged violations of the laws of the United States, which are the responsibility of the FBI to investigate. This policy and practice of separating the two functions provides an investigative, fact-finding agency of trained career personnel. Because of the career status of the investigative personnel, the person charged with developing the true facts is entirely disinterested since he has nothing to gain personally through a conviction of a defendant. On the other hand, prosecutors in some instances are political appointees who have further political ambitions and who are often subject to community pressures.

Memorandum to Mr. DeLoach
Re: Department of Justice
Task Force Concept on
Organized Crime

As an added protection, even though the investigator has reason to be disinterested, he is not in a position to decide whether or not a defendant is to be prosecuted; and there exists the additional safeguard of placing the decision to prosecute in another person who will make his decision based on a completed investigation.

Loss of Economy and Efficiency

By having investigative functions solely in the province of a regularly established investigative agency with a permanent office in the area, we have the utmost economy of effort and resulting economy of money expenditures. The office in the area has personnel with geographical familiarity, necessary equipment, established sources of information, channels of communication, confidential informants, and all other facilities available for economical operation.

In addition, each field office is part of a nationwide organization with field offices covering all areas. The investigative personnel have a common training, reporting system, and jurisdiction which enables it to request investigation in other parts of the country which can be handled immediately and most economically. By this coordination of a nationwide organization of field offices, there are no unnecessary travel costs and incidental costs, such as per diem, to the investigator.

An example of the Department of Justice "Task Force" at Buffalo, New York, and the personnel assigned to it shows expense to the Government which could be avoided by having the investigation conducted by investigative agencies regularly assigned in that area, and prosecution handled by the personnel of the United States Attorney's office there. The initial personnel assigned to the Buffalo "Task Force" included five Department of Justice attorneys from Washington, D. C., four investigators from various Federal investigative agencies from Washington, D. C. one Federal investigator from Baltimore, Maryland, one Federal investigator from Pittsburgh, Pennsylvania, and one Federal investigator from

Los Angeles, California. The travel and per diem expense incurred by these 12 members of the "Task Force" could have been avoided by having the regularly established investigative personnel in the area conduct those investigations of alleged violations coming within their respective jurisdictions, and the necessary legal problem and prosecutive efforts could have been handled by the office of the United States Attorney. In the event any supervisory advice was needed by the United States Attorney or by any of the investigative agencies involved at the headquarters level, this could have been obtained by written correspondence or by telephone, where necessary.

Absence of Specific Responsibility

The FBI has always held the position that jurisdiction should be jealously guarded. This attitude occasionally brings forth critical comments from the uniformed. However, it is believed this attitude is necessary in order that those agencies charged by law with specific areas of responsibility should not seek to avoid them and should always be held strictly accountable for those shortcomings in discharging its responsibilities. On the other hand, the public and the Congress should be in the position to determine whether an agency is efficiently discharging its responsibilities. There is also an added protection to the citizen in having jurisdiction specifically fixed so that there will be no "crusading fishing expeditions."

Memorandum to Mr. DeLoach
Re: Department of Justice
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Added Peril to Personnel
in Dangerous Situations

In "Task Force" type operations, with investigators from different agencies who have been given different types of training and subjected to different administrative disciplines, there always exists the problem of cohesive, unified efforts involving dangerous situations, such as raids and arrests. There is obviously less danger to participating personnel when they all belong to the same organization. Although nothing untoward happened in the arrests in June, 1967, of five defendants in a case investigated by the Buffalo "Task Force," it is noted that participating were representatives from the Treasury Department investigative agencies, local and state police, and members of the United States Marshal's forces. Some of the five defendants arrested had extensive criminal backgrounds. We were invited to participate in those arrests and declined, one of the reasons being the number of different law enforcement agencies participating.

Possible Exposure of Informants

One of the most necessary tools of a law enforcement agency is the use of confidential informants. The identity of a good confidential informant must always be protected because of danger to his safety, even his life, if members of the underworld learned of his cooperation with law enforcement. In addition to being a valuable adjunct to law enforcement, the confidential informant's cooperation is usually developed only by long, careful, and persistent contact. The traveling "Task Force" is not usually equipped to develop such informants. Investigators would obviously endanger their informants by making contact and reporting in a group made up of men from several different agencies. It would be difficult to conceal the informant's identity in the absence of established protective administrative practices in reporting and physical facilities designed for adequate security.

Memorandum to Mr. DeLoach
Re: Department of Justice
Task Force Concept on
Organized Crime

SUMMARY

In conclusion, and as a result of our analysis of the Department's Task Force concept, it is firmly recommended that we continue our present policy that we not place our personnel at the disposal of any of the Department's Task Forces. We will, however, continue to provide them with copies of our investigative reports pertaining to organized crime matters and continue to maintain daily liaison with the Task Forces in order that we will be able to protect the interest of the FBI. Our reasons for recommending against participation in the Task Force concept are briefly restated as follows:

1. The Task Force concept combines the investigative and prosecutive functions eliminating the added protection of impartiality by having an investigative function separated from the prosecutive function.

2. The Task Force concept being a "superstructure" imposed on the regularly established investigative and prosecutive (U. S. Attorneys) agencies causes a loss of economy and efficiency in law enforcement operations.

3. The Task Force concept creating a group comprised of personnel from several different agencies establishes a situation in which specific responsibility cannot be assigned properly as to jurisdiction of violations of laws.

4. Detaching FBI personnel from their regular assignments to place them with a Task Force would lessen the FBI's ability to discharge its responsibilities in the broad areas of jurisdiction.

5. In the investigation of violations of law, there will exist many dangerous situations involving raids, arrests and other contacts with persons of criminal background. Having such situations handled by attorneys and officers of varying disciplines and training obviously adds to the dangers when compared with handling of the same situations by investigators of one organization.

Memorandum to Mr. DeLoach
Re: Department of Justice
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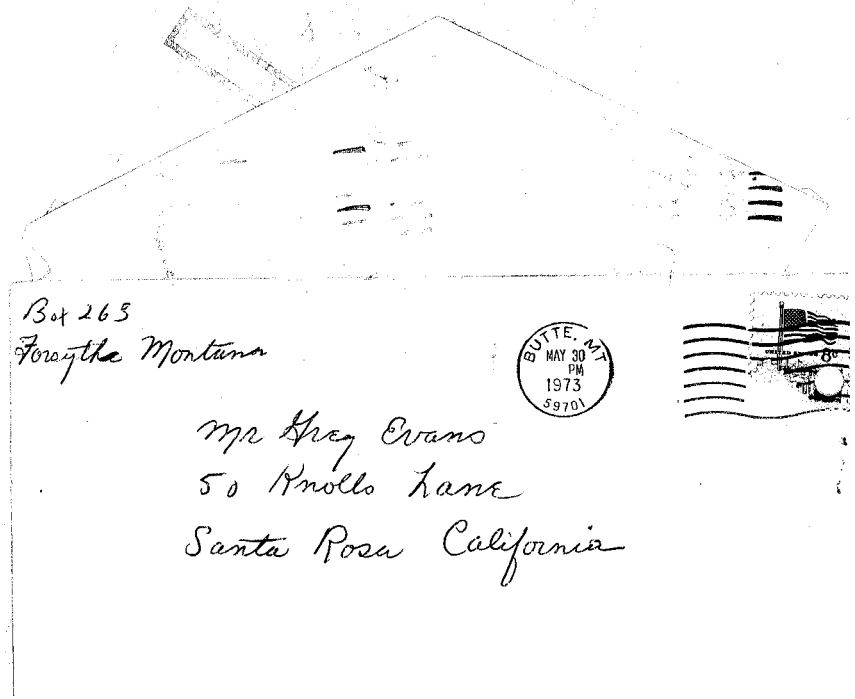
6. The FBI has clearly indicated to the Department of Justice that we will handle any investigation which the Department of Justice desires us to conduct which falls within our investigative jurisdiction. Our only reservation is that the supervision of these investigations will remain exclusively with the FBI and that we will direct the activities and the assignment of our personnel so that maximum utilization of available personnel can be achieved at all times. This is necessitated by our continuing and mounting investigative responsibilities which demand the most careful deployment of our personnel so that maximum, efficient utilization of our people can be had at all times.

7. One of the principal objections to a Task Force superimposed on the existing prosecutive machinery in the form of United States Attorneys' offices and the existing offices of the various Federal investigative agencies is the fact that the FBI's accomplishments would be submerged in the claiming of credit by the Task Force beyond its actual contribution.

The FBI's program embodies the separation of the investigative and prosecutive aspects of the drive against organized crime. Historically, we have found it to be true that greater efficiency results and responsibilities are clearly established when investigators investigate and prosecutors prosecute. Under this system, supervisory direction and assignment of personnel are left where they properly belong--in the hands of professionals charged with the responsibility of conducting extremely sensitive investigations in a most complex field of activity.



PENGAO-Bayonne,N.J

EXHIBIT

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July 31 1973 Tues

Dear Grey,

How can I ever thank you + Marty for what you two + Ted H. did for me today words can never even begin to express what I feel + what I also feel I owe you three, so I'll just say I am your friend for life in all I stand for + believe in, I'll always be there no matter what + when ever you both need me, nobody living do I feel a debt to as I feel towards you two!

Wasn't able to see you three today but I very well understand.

I am inserting the Parole Boards decision in this letter. Calif. is rather slow in reply so I guess I'll be here two to three months more.

Grey, I plan to come to Santa Rosa for a visit + I will make my presence known immediately to the police in regards to legality. Why I bring this up is because I truly, truly feel no ill towards the

two Dee + Pauletta, it was my fault not theirs in regards to the case breaking wide open. So when I go into Santa Rosa I dont want nobody getting paranoid. How could I lie to you + Marty at this point when I say I promise you both no trouble in Santa Rosa + I dont wish nobody any harm there. I am coming to Santa Rosa for a visit to see you Marty + others. Tell me is this wrong, especially when I bear no ill to no one there?

The parole board said this is the fastest hearing in the ~~State~~ History of Montana, here you made parole, I didnt even say one word! Except thank you + I floated out in a dream that I never thought would come, truthfully! You, Marty + Ted H made this all come true. Nobody did I ever owe so much to!

I called Maggie + told her + Bob Blumenthal, + she will I know tell you.

I look forward to the future & hope we can enjoy dinner, drinks & conversation together, my house will always be open to you & Marty & once I do get settled where I plan in the future I hope you both with your families will eventual spend some time there & enjoy what I have to offer there. I'll even poach a few sea gulls for Marty to shoot! ☺ Time well prove that my words aren't just the moment & the happiness I feel for the new start on life you both gave me!

I hope you'll find the time to write me when its convenient.

Be sure to show Marty this letter because this letter is certainly meant for him too!

It finally is a better day my friends Have my best to Dianne, & the people

at the office.

Always
Joe

Joseph Bentley

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA FPMR (41 CFR) 101-11.

UNITED STATES GOVERNMENT

Memorandum

TO: Director, FBI

DATE: June 20, 1967

FROM: SAC, Boston

SUBJECT: SA H. PAUL RICO
EOD: 2-26-51

SA DENNIS M. CONDON
EOD: 1-29-51

RECOMMENDATIONS FOR QUALITY SALARY INCREASE

SA H. PAUL RICO has been assigned exclusively to the development of Top Echelon Criminal Informants in the Boston Office since September 16, 1963. SA DENNIS M. CONDON has been assigned to the Top Hoodlum Program since 1962.

SA RICO was successful in developing [redacted] Based on the development of [redacted] SA RICO was able to determine the basic reasons for each gangland slaying, the identities of the majority of individuals involved, the latter information, where significant, disseminated to pertinent law enforcement agencies. Only as a result of this informant was the Boston Office able to separate the true reasons for the slayings as distinguished from the camouflage put forth by the [redacted] and/or the LCN.

During this period, SA RICO and SA CONDON were making continuing efforts to develop as an informant an active LCN member. When intensified efforts in this area were not immediately productive, SA RICO was able to have [redacted] and through this contact, able to follow the philosophy of the LCN, particularly concerning the infamous Boston gangland slayings. [redacted] and through these contacts the Boston Office had continuing high quality information concerning LCN activities. [redacted] was based on the guidance and counsel said informant received from SAS RICO and CONDON.

67-433766-150
Searched ..... Numbered .....
5 JUL 7 1967 2-7

REC-145

(4) - Bureau
2 - Boston
JLH:CAK JUL 12 1967
(6) 73

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

EXHIBIT
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B

[redacted] The handling of this source, obviously, was an extremely delicate and sensitive problem requiring not only continuous skillful direction, but almost 24-hour contact on a daily basis with [redacted]

B

Realizing the potential that [redacted] 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 was developed by these agents and via imaginative direction and professional ingenuity utilized said source in connections with interviews of JOSEPH BARON, 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.

B, D

SAS RICO and CONDON contacted BARON in an effort to convince him he should testify against the LCN. BARON initially declined to testify but through utilization of BS 955 C-TE, the agents were able to convey to BARON that his present incarceration and potential for continued 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 BARON from BS 955 C-TE, said individual said he would testify against the LCN members.

The indictments against PATRIARCA, TAMELEO and CASSESSO are the first major blow to the LCN in New England. PATRIARCA, as LCN boss and possible Commission member, and his top lieutenant, HENRY TAMELEO, were felt to be beyond prosecution by top state and local police officials based on what for years resulted in frustration in securing witnesses who would testify. The Providence, Rhode Island Police and Rhode Island State Police have, for over twenty years, concentrated a large number of men in efforts to secure even a minor prosecution, unsuccessfully.

SAS CONDON and RICO were assigned to develop a prosecutable quality case against top LCN members in New England. They have done so via highest devotion to duty, requiring personal sacrifices, in time, on a continuing basis. Their time would have been wasted were it not for the skillful, unprecedented ability to develop the highest type criminal intelligence data, coupled with securing as a witness a professional killer who, in the past, would never furnish data other than his name to any law enforcement agency. Their performance for over twelve months

has been of the highest caliber; their drive and desire to fulfill a vital objective of the Bureau have been rewarded with the prosecution of top LCN members.

In view of the above, noting we have broken what at times has seemed to be an insurmountable barrier, I am recommending Quality Salary Increases be awarded to SAS RICO and CONDON.

UNITED STATES GOVERNMENT

Memorandum

TO SAC [redacted] DATE: 3/15/65

FROM SA H. PAULRICO B,F

☒ CI ☐ SI ☐ PCI ☐ PSI

SUBJECT: [redacted]

Dates of Contact

3/13/65

Title and File # on which contacted

EDWARD F. DEEGAN

[redacted] F,M B

Purpose and results of contact

☐ NEGATIVE

☐ POSITIVE

X

Informant advised that "JIMMY" FLEMMI contacted him and told him that the previous evening DEEGAN was lured to a finance company in Chelsea and that the door of the finance company had been left open by an employee of the company and that when they got to the door ROY FRENCH, who was setting DEEGAN up, shot DEEGAN, and JOSEPH ROMEO MARTIN and RONNIE CASESSA came out of the door and one of them fired into DEEGAN's body. While DEEGAN was approaching the doorway, he (FLEMMI) and JOE BARBOZA walked over towards a car driven by TONY "STATS" and they were going to kill "STATS" but "STATS" saw them coming and drove off before any shots were fired.

FLEMMI told informant that RONNIE CASESSA and ROMEO MARTIN wanted to prove to RAYMOND PATRIARCA they were capable individuals , and that is why they wanted to "hit" DEEGAN. FLEMMI indicated that they did an "awful sloppy job."

☐ Informant certified that he has furnished all information obtained by him since last contact.

Rating

Coverage 92'6 F

Personal Data

[redacted] F,B

[redacted] (DEEGAN)

[redacted]

HPRtpc'b

(5)

[redacted] 26029

EXHIBIT 42

FBI — F

Rippucci CAR

[redacted] F.B

This information has been disseminated by SA DONALD V. SHANNON to Capt. ROBERT RENFREW (NA) of the Chelsea, Mass. PD.

Q The car that you walked in - what kind of a car was that?

A Romeo's car was a '64 maroon convertible with a black roof.

Q What kind of a car was it, do you know?

A '98.

Q A '98 Oldsmobile?

A Yes.

Q Now, after you saw these two men - Romeo and Lewis - what did you next do with regards to the five of you? What happened?

A Joe the Horse stayed in the car and Ronnie got out and I got out.

Q All right.

A Ronnie stayed there and I walked with Lewis and Romeo to the alley. We walked singly. I stayed behind them.

Q You walked to the alley?

A No. We walked to Fourth and Pearl Street.

Q You walked to Fourth and Pearl Street?

A Yes.

Q Was there any conversation as you walked with Lewis Grieco and Romeo Martin at this time?

A Yes.

PENGAD-Bayonne, N.J.
EXHIBIT
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Q What was the conversation?

A He said he stopped in front of the alley.

Q Right.

A And that he thought the old lady had seen him also.

Q Any other conversation?

A But he said he thought it would be all right. So I said, "Well, be careful. Good luck."

Q And then what happened?

A And I was at the corner. I waited for them while they got in the alley.

Q And you saw the two of them go into the alley?

A Yes.

Q Now, sir, prior to them getting into the alley, was there any conversation as to where these two men were supposed to go once they got in the alley and what they were supposed to do?

A They were supposed to --

Q Talk into the microphone.

A The door was going to be open, left unlocked. One of them was going to stay outside in the alley, if there was room, if there was a spot they could hide in in the alley -- one was going to stay outside -- and one of them was going to stay inside, because the express purpose of being inside was to shoot him

inside with the door closed so that the shots would be somewhat muffled.

Q Was there any predestined plan as to who would be outside and who would be inside?

A No.

Q All right. Now, sir, when you saw them go into the alleyway -- and you are sure you saw them walk into the alleyway?

A Yes.

Q -- were the lights on or off in the alleyway at that time?

A They were off.

Q What did you do after you saw them go into the alley?

A I headed back to Romeo's car.

Q When you got back to the car, what did you do?

A I said, "Let's bend the plates."

Q Who did you say that to?

A Ronnie.

Q And what did you do after you said, "Let's bend the plates"?

A Ronnie bent over and he curled the back plate. He curled it from the front on the bottom right, curled it this way.

Q Using this piece of paper, will you show the jury what

you saw him do with the plate?

THE COURT. You may stand, if you like.

A Like this.

Q So in other words, after he curled the plate, he left a certain portion of the plate exposed, is that correct?

A Yes.

MR. ZALKIND. And may the record indicate that the witness took the left portion of the paper that I gave him and turned it and folded it over that portion of the paper?

Q Now, after he folded this plate, could you observe any number still showing from the folded plate?

A Yes.

Q What numbers did you see showing?

A 410.

Q 410?

A I think it's 410.

Q You think?

A Yes.

Q All right.

A Because, actually -- well, all right. 410 or 420; I don't know what it was.

Q But you remember the first number was a 4? Is that what you are saying?

MR. CHISHOLM. Wait a minute. I object.

MR. SALLIRO. I object.

MR. ZALKIND. Withdraw the question.

Q Do you have any positive memory as to what the first number was?

MR. CHISHOLM. I object, Judge.

A A 4, yes; I know it's a 4. I know the 4.

Q Do you have any positive memory as to what the other numbers were?

A I did at one time but not now; it's so long.

Q Now, after you saw Ronnie do that, what did you do?

A I went around to the front because --

Q Not because. What did you do?

A I took and I just bent the plate completely, and no numbers were showing.

Q Show us what you did to your plate, or the front plate, if you will.

A I can't remember now if I just went like this or if I went like this.

Q But after you folded it, were there any numbers that could be seen?

A No.

Q Now, after this, what did you next do?

A We got in the car.

Q All right. And after you got in the car, what did you do?

A I drove to my first right.

Q And after you took your first right, what did you do?

A I took my first right again that I was able to take.

Q And then what did you do?

A I went up Chestnut Street, I think, up to Fourth Street.

Q And when you got to Fourth Street, what did you do?

A I took another right.

Q And after you took another right on Fourth Street, what did you next do?

A I parked on the left after the parking lot on the left-hand side. I parked on the side of a yellow building about three or four car lengths from the c ner. The bumper of the car was next to a meter and the back of the bumper of the car that was in front of me was almost opposite a pole. And I parked back far enough so that I could pull right out, with my wheels turned on the right so I could pull out.

Q What was the building immediately to your left as you parked there?

A It was like an orange-yellowish brick, if I remember right.

Q All right. Now, I ask you to look at this photograph and I ask you if this is a fair representation of the

THE COURT: Cassesso wasn't present, was he?

MR. CHISHOLM: Yes.

THE COURT: Cassesso was present?

MR. ZALKIND: Cassesso was present.

THE COURT: All right. Your motion is overruled.

MR. CHISHOLM: Exception.

Exception No. 376A

Q Go ahead.

A Everybody was talking at once.

Q All right. What did French say, if anything?

A He said --

MR. McLAUGHLIN: I pray your Honor's judgment. He said that everyone was talking at once. How could he describe what --

THE COURT: All he can testify to is to what he heard.

MR. McLAUGHLIN: I move for a voir dire, your Honor.

MR. ZALKIND: I pray your Honor's judgment.

THE COURT: Proceed.

MR. McLAUGHLIN: Exception.

THE COURT: Yes.

Exception No. 377

THE WITNESS: He said when he was going into the alley, as he was --

Q Speak into the microphone, please.

THE WITNESS: He said as he was going into the alley Deegan said to him about half way inside the alley, he said, "What are you hesitating for?" and it made him that much more nervous. He said that he thought Deegan now was starting to get suspicious of him. When besides being afraid of the shots--he said he took his gun out and shot Deegan in the back of the head.

Q Did you have any other conversation -- specifically, with Roy French? Did you have any other conversation with Roy French?

A Yes.

Q What did you say and what did he say?

A He said that upon leaving the alley that he was shocked to see the Greek still out there. He bent over and went like this to get out of there.

Q Stand up and show us what you're doing?

A He went like this. (Witness demonstrating.)

Q All right.

A And that he went away from Stathopoulos, and he said that Stathopoulos, and he said that Stathopoulos -- he said they didn't have guns. I said "Did Stathopoulos have a gun in the car?" He said "No. They didn't have guns."

Q Now, when you saw him in the back room at that time did

you make any observations with regard to his clothing?

A Yes.

Q What observations did you make?

A He had blood on his sleeve and shoes.

MR. McLAUGHLIN: I pray your Honor's judgment. How could he make that conclusion?

THE COURT: He may describe what he saw. That may go out.

Q What did you see?

A I saw stains on his suit coat and --

Q What color were the stains?

A They appeared to be blood.

MR. McLAUGHLIN: I pray your Honor's judgment.

Q What color were they?

A It was a reddish color, and he had told me that --

Q Wait. Now, when you saw this item on his sleeve, did you notice anything else on his person at all?

A Yes.

Q What did you see?

A His shoes.

Q What did you see on his shoes? Would you describe what you saw? Don't characterize it.

A His red shoes -- I mean his right shoe had blood spots

on it.

Q Now, after you saw these -- well, again, he had spots on his shoes?

A Yes.

Q After you saw these spots what did you say, if anything?

A I said, "You've got stains --" I said, "Your clothes are stained." He said, "It went through my jacket." He said, "When I was up close --"

Q Went through his what?

A Topcoat. He had a topcoat on. He said, "When I shot Teddy," he said, "the blood went all over my arm."

Q Anything else?

A He said that he had broke up a fight earlier in the night. He broke up a fight earlier in the night, and he would say that the guy had a bloody nose and bled all over him, and he said he'd have witnesses to testify to that.

Q Did you have any conversation at that time -

MR. ZALKIND: Well, this may go on longer than I thought, your Honor. Perhaps this will be longer that I thought.

MR. CHISHOLM: I thought we were going until

4:30.

MR. ZALKIND: All right. I will go. I thought the jury might be getting a little tired. I will go until 4:30.

THE COURT: All right.

Q Did you have a conversation at this time with Romeo Martin in the presence of Roy French, Ronald Cassesso, and Joseph Salvati?

A Yes.

Q Tell us everything you said and everything Romeo Martin said.

MR. CHISHOLM: I object.

THE COURT: Overruled.

MR. CHISHOLM: Exception.

Exception No. 378

MR. CHISHOLM: I move for a voir dire.

THE COURT: Motion denied.

MR. CHISHOLM: Exception.

Exception No. 379

THE WITNESS: Romeo said that upon leaving he had put one into Deegan's head.

Q Now, was there any conversation by any of the people in the room at that time with regard to Lewis Grieco?

A Yes.

Q What was the conversation?

MR. CHISHOLM: I object.

MR. O'DONNELL: I object.

THE COURT: Objection overruled.

Q Who said anything?

A Romeo.

Q What did Romeo say?

MR. CHISHOLM: Object and except.

Exception No. 380

THE WITNESS: Romeo said, "I was in the doorway, inside the doorway." Romeo was in the alley --

Q Romeo?

A I mean Lewis was in the alley. He said, "I was inside the doorway when I heard a shot. I opened the door, and Deegan was just going to his knees, and Lewis was already there."

MR. O'DONNELL: Your Honor, I --

MR. ZALKIND: I pray your Honor's judgment. Is there an objection?

THE COURT: Wait a minute, now. Be seated. I will hear your objection.

MR. O'DONNELL: Is this the man that's speaking? A dead man --

THE COURT: Will you be seated? Will you ask the question that you were asking? Now, get the answer and I will hear the objection.

MR. ZALKIND: The first question was - Was there any conversation by any of these men in the room with you at this time concerning Lewis Grieco? I believe the witness said yes, and I asked him for the conversation as it concerned Lewis Grieco, and he was answering me as to what Romeo Martin said, your Honor.

THE COURT: Now, Mr. O'Donnell?

MR. O'DONNELL: Was Mr. Grieco making the statement?

MR. ZALKIND: Of course not, your Honor. Mr. Grieco wasn't in the room.

MR. O'DONNELL: Romeo is dead, so anything comes in.

MR. ZALKIND: Now, your Honor --

THE COURT: Proceed. You may ask the question. The objection is overruled.

MR. CHISHOLM: I object and move for a voir dire.

THE COURT: Your rights are saved.

MR. CHISHOLM: Exception.

Q As you understand it, sir, the statement was made by Romeo Martin in the presence of you, Ronald Cassesso, Roy French and Joseph Amico? Is that correct?

A And Joe The Horse.

Q And Joe The Horse. In other words, there were three defendants there - Roy French, Ronald Cassesso and Joseph Salvati. Is that correct?

MR. CHISHOLM: I object to his summarizing the evidence again, Judge.

THE COURT: Proceed.

Q Now, what did Romeo Martin say?

A He said he was inside the doorway and that Lewis was outside in the alley. He had found a spot inside the alley to hide near the doorway, and he said that he heard a shot, and he opened the door fast, and Deegan was in front of the doorway -- almost in front of the doorway, and was just slumping to his knees. Lewis was already over him, and Lewis was firing into his chest, and that Romeo fired. He said -- and as they left, he said, "I put one into Deegan's head."

MR. ZALKIND: I would stop at this point,

your Honor.

THE COURT: All right. Tomorrow morning at 9:30.

[Adjournment.]

THIRTY-SECOND DAY

Tuesday,
July 9, 1968

[The Court came in, the jurors were polled and the defendants and counsel were present.]

MR. ZALKIND: Your Honor, may I approach the bench with Counsellor Stanziani at this time?

CONFERENCE AT THE BENCH:

MR. ZALKIND: Your Honor, I quote for the record on Page 4071:

"Before we have a recess, the Commonwealth calls for all the letters that Mr. Stanziani used to be marked for identification, your Honor.

"MR. STANZIANI: Your Honor, I will do that after the recess."

I asked for these letters after the recess. Mr. Stanziani did not give me the letters at that time and I do not have these letters marked for identification.

MR. STANZIANI: May I be heard when you are all through with your dramatics? Are you through?

First of all, your Honor, I questioned from these letters. It is my choice if I wish to

Cross-Examination

Q (By Mr. O'Donnell) Mr. Baron, did you ever see Lewis Grieco fire a bullet into the body of Edward Ted Deegan on March 12, 1965?

A No, sir.

Q Did you ever see any of the defendants fire a bullet into the body of Edward Ted Deegan on March 12, 1965?

A No, sir.

Q Now, how old are you, Mr. Witness?

A I will be 36 in September, sir.

Q And being 36 in September, is it fair to say that about half your adult life has been spent in prison?

A Yes, sir.

Q Now, insofar as that is concerned, -- you're familiar with Chelsea, aren't you?

A Yes, sir.

Q As a matter of fact, you are familiar with Hawthorne Street, aren't you?

A Yes, sir.

Q And when you talked about your wife now, is the wife you are with now the one you are living with on Everett --

MR. ZALKIND: Pray your Honor's judgment.

Q So with a wig like this on somebody in a car near a bank, you feel that would completely deceive the police department and they would get fooled by it?

A I think the only thing that could do that you have there is taking a shower or something or going in a pool, with that wig you have there.

Q And the one you described, of course -- I haven't been able to find one -- had hair around it like a crown and some hair going over the top?

A You can find one.

Q Now, of course, Mr. Baron, you never saw a .45 in Lewis Griece's hand, did you?

A No, I didn't, sir.

Q And insofar as a .45 is concerned, you heard about a .45, is that right?

A Yes, sir.

Q Now, I show you this toy. You said you couldn't see what was passed in the little kit, in some sort of a kit, that you couldn't see it was a .45. Would that be substantially a chalk of a .45?

MR. ZALKIND: I pray your Honor's judgment. The evidence -- may I be heard?

THE COURT: I will hear you.

MR. ZALKIND: The evidence, as the Commonwealth

maintained in its opening statement, was that it was not a .45 automatic but that it was a .45 revolver. That which Mr. O'Donnell has is a replica of an automatic, not a revolver.

Secondly, this witness has testified he has never seen the gun. This is just another display trick by Mr. O'Donnell.

I ask the testimony be stricken and this line of inquiry stopped.

MR. O'DONNELL: Cross-examination.

THE COURT: But you are showing something he said he never saw.

MR. O'DONNELL: I am asking about the .45 now and a .45 did come into the evidence.

THE COURT: That is an automatic.

MR. O'DONNELL: Yes.

MR. ZALKIND: Would your Honor rule on my motion?

THE COURT: Your objection is well taken.

MR. ZALKIND: But Mr. O'Donnell continues to ask the question.

MR. O'DONNELL: I am cross-examining.

THE COURT: He is cross-examining. And he said this kind of a gun had nothing to do with the killing.

Q Now, insofar as you are saying that this type of a gun never had anything to do with the murder -- is that your testimony?

MR. ZALKIND: I pray your Honor's judgment. That has not been the testimony, your Honor.

Q Well, I ask you this. Is that a toy chalk of a .45? Would you call that an automatic?

A An automatic?

Q Yes.

A Yes, it looks like an automatic, yes.

Q And having in mind a .45, you didn't know from your testimony whether it was an automatic or a revolver?

A No, I didn't.

Q So when they said .45, sir, it could well have been an automatic or a revolver?

A You are definitely right, yes, sir.

Q Now, it is so, isn't it, as of March 12, 1965, you did have some of your personal possession with you, Mr. Baron, guns and rifles?

A Yes, sir.

Q And without stating the reason -- strike that.

MR. ZALKIND: Excuse me, your Honor. May all these little items be marked for identification?

MR. O'DONNELL: Gladly.

THE COURT: They may be marked for identification.

I have a .38 and a .45 and an M-1 and a Character Mustache and another mustache.

MR. BALLIRO: May we take the afternoon recess?

THE COURT: Is this a good place for it?

MR. O'DONNELL: Yes, your Honor.

THE COURT: All right. Those may be marked for identification and then we will take a five-minute recess.

[Toy .38 pistol marked Exhibit D for Identification. Toy .45 automatic marked Exhibit E for Identification. Toy M-1 Grande rifle marked Exhibit F for Identification. Character mustache marked Exhibit G for Identification. Charlie Chaplin mustache marked Exhibit H for Identification.

[Recess taken.]

FD-209 (Rev. 2-1-63)
OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27

UNITED STATES GOVERNMENT

Memorandum

TO : SAC BOSTON [redacted]

DATE: 4/6/65

☐ CI ☐ SI

FROM : SA [redacted]

☒ PCI ☐ PSI

SUBJECT: [redacted]

Dates of Contact: 3/23/65

Titles and File #s on which contacted	
[redacted]	91-1689
CRIMINAL INTELLIGENCE	94-536
CONTROL FILE FOR TOP HOODLUMS	[redacted]
[redacted]	88-3042
RAYMOND L. S. PATRIARCA, AR	92-118
COSA NOSTRA	92-605

Purpose and results of contact

☐ NEGATIVE
☒ POSITIVE

On 3/23/65, PCI advised that JOE BARBOSA who is from East Boston and an ex-fighter, was very friendly with ROMEO MARTIN, RONNIE CASSESSI and [redacted] PCI stated that BARBOSA was supposed "to have hit" BRANCIONE from Revere and EATON. He stated that BARBOSA reportedly killed EATON with a Magnum gun. PCI stated that BARBOSA was in prison with BENJAMIN who was murdered after he left prison and beheaded.

He stated that BARBOSA is a Portuguese kid who would otherwise be accepted into the Cosa Nostra except for his nationality. He stated that BARBOSA claims that he had shot TEDDY DEEGAN with a .45 caliber gun.

PCI related that BARBOSA indicated that ROY FRENCH was with DEEGAN and another individual when DEEGAN was shot by BARBOSA and two other individuals, one of whom informant believed was ROMEO MARTIN.

☐ Informant certified that he has furnished all information obtained by him since last contact.	Rating: Very good	Coverage: Criminal

Personal Data

[redacted]

SEARCHED ____ INDEXED ____
SERIALIZED ____ FILED ____
APR 1965
FBI — BOSTON

1 - [redacted]
1 - 91-1689
1 - 94-536
1 - [redacted]

1 - 88-3042
1 - 92-118
1 - 92-605

RFBiras

EXHIBIT 44

000768

[redacted] F

Informant stated that he had heard BARBOSA indicate that one of the guys with DEEGAN whom they had planned to kill along with DEEGAN ran off when the law showed up and fled.

PCI stated that rumors have it that ROY FRENCH actually set up DEEGAN to be killed.

PCI stated that he had heard that JOE BARBOSA was extremely friendly with JIMMY FLEMMA from Dudley Street. He stated that BARBOSA had tried to reach JIMMY FLEMMA a short time ago and wanted to know if FLEMMA had gone to Providence to see RAYMOND (PATRIARCA).

PCI subsequently determined from a source that JIMMY FLEMMA had gone to Providence, R.I. earlier on the day that BARBOSA had tried to contact FLEMMA.

PCI stated that JIMMY FLEMMA had gone to Providence just before TEDDY DEEGAN was slain in Chelsea.

M.B

Joseph Bailey
P.O. Box 13365 M

Aug 22 1972

Dear Ted & Sinny,

You know I was never one to beat around the bush & if I've developed a great sense of paranoia its because I was taught by the best, both sides!

Roy Bedell suddenly gets paranoid about Heraway, my brother after talking to Bedell gets paranoid about Heraway, my Atty & Investigator suddenly get paranoid. The story is coming from somewhere in Boston. Is it Suffolk County or where?

People make Heraway out to be some monstrous genius & not capable of living up to his confessions.

But where the heart of all this lies is in the Deegan case, & Raymond's case. Don't upset the success of the past even if it means letting Joe out in prison & letting his family fend for themselves.

Well I don't know if you read the confession of Heraway, I suspect you have by now. My sole interest is the conspiracy admitted by him, between Chisholm, Simone, & Caasso, instrumented by Jerry, & the invisible hand of Bailey. I would think a conspiracy that was nurtured in Mass. & finalized in Calif. would be considered a Federal charge. Into our admission of $300,000.00 & being told when

EXHIBIT
45
PENGAD Bayonne N.J.

2

to say etc, etc.

But the fear of others concern is the Martin case, & Stewarts police report to Jury on the Deegan matter & if Kearway is leading us into a trap? Well I am not concerned at this point about Romeo or any other matter. I am concerned over Kearway's admission of the things he said about my case which show perjury & conspiracy.

I sit here with people of different branches of law enforcement now knowing that the Mafia hatched a plot in my case in revenge for the help I gave various law branches which enabled them to achieve a a success unparalled in any other time in the history of criminology in New England. So much so that I should be sacrificed in order not to upset the apple cart. No Sir!

If I knew that come April when I see the parole Board I'd make a parole, I'd forget the whole thing. But I have no assurances, none whatever! I am the one who rots in prison, & my wife & kids suffer & fend for themselves. Again its give give give Joe, but no here, here Joe! Even in my trial in Santa Rosa I was duped! But that cool!

Everybody was so sure I was making a

3

deal with the office in the Woods with Davis, & with Bailey, that they in anger & spite, threw me upstairs over Death Row, & near Hearway. But nobody thought & took into consideration that I had a reporter in disguise to listen to the whole thing. If I was where he wouldn't have been there. But everybody else in all this super sleuthing think they got it figured to a tee & send me out of State to Walpole, I had no right going to Walpole, just as a snowball doesn't belong in hell!

Well I am in a different position now. Regardless of all the bull ___ people had put in newspapers. lies & dramatics for effect which makes Baron a cuckoo today & not capable of beating a legit self defense. I am going to try again to beat it, with or without Marteen Miller, I am able to obtain a private Atty if need be. I am interested in this case, not any other. I dont care how much the Boston mouths try to dissuade people to help me; I'll do it ___ way. I am not rotting in no prison going before a parole board year after year turned down.

Are you two going to help me on this matter or not?

4

Do you actually believe Hexaway, the Bear & Ronnie are friends? The Bear & Ronnie would whack him out in a minute, & I think Hexaway knows this, & I know for a fact the Bear hates Ronnie, all it is, is a vicious evil trio gaming each other.

Read those confessions, look how he as committed himself. The traps can be avoided by not going near the trap. But in my case he said enough to open it.

Tell me would you act in prison? Would you say on I'll wait for a parole 2 3 4 5, 6, 7 years from now. If I knew I'd make a parole in April I'd leave it die, but I don't know that!!

I would appreciate a reply from you on this letter it would be to both our advantage.

Why can't you come & see me on this matter since a Federal conspiracy is involved.

I await your answer anxiously!

Joe B.

Ps. Tell me this! Where I come from & been, does it stand most if not that I should just up & shoot a dopper in front of his wife & 18 year old girl who I knew was a snitch.

BSF-00542

office, + he can "put Dinny" on the line for you too. Once Israel hears you want to talk to Stone on the phone his boss Israel will get him for you. I want the 4 together to see me Dinny, Ted H., Israel + Stone. This is vitally important if you got the other letters I explained what to say to Carson + from him to do after all he wouldn't want to obstruct justice in a capital case!:)

215

Jan 14 1947
Monday

To My Future Wife

Tears came again for the first time since I told you about the last bad one. oh Baby, I sure needed those letters + money too. If I am here two weeks from now send another $50.00 tell you why when I see you. First last see what the Board says + then make it or not. We'll start divorce proceedings + we will get married. Right On! Honey by now you got those letters concerning Israel Stone. I want you to call from Carsons office, + he can put Dinny on the line for you too. Once Israel hears you want to talk to Stone on the phone his boss Israel will get him for you. I want the 4 together to see me Dinny, Jed H., Israel + Stone. This is vitally important if you got the other letters I explained what to say to Carson + from him to do after all he wouldn't want to obstruct justice in a capital case!:)

PENGAD Bayonne N.J.
EXHIBIT
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Do you know these yellow dear lodge envelopes I had 50 of them & paid $5.00 for it, they are not good here in Missoula, so the few yellow came back & the secretary send them back, so when they come back the lady is been instructed to put stamps on them I was able to acquire out of the kindness of other inmates. There are two guys that know me but it is cool Honey no sweat at all. Besides this County Jail is air tight! Amen Mr Weatherman is in charge of me & no s - - - he is a real gentleman! Honey, that letter Carl wrote to McKeon relating damages claimed & monetary value did awholelot, but you keep it because last resort Carl can use it with Alphie in Santa Clara. That letter shouldnt be taken too lightly. Hey — the Greek you said NO, so Ill go for it. I can go for NO with my ole lady but dont become a tyrant ya all! :)
I've written 90 pages now, not

3

two slubby I got enough for 60 more
pages + thats it, till I get more
paper. But under the circumstances
I think here is 150 pages is
enough till I get the 300. That
I think will have to pull his allegal
famous string to continue on with
the Book when I get to the 300. Also
saying we must be legally protected
here you Pin initiate the restoration
of our civil rights. Now tell me
I am wrong, + no, you tyrant!
But it only ought to take only couple
of months the most with open
Finnish punk of Hank + your
letters! ☺ But I keep at you busy,
busy, method to madness, confucius
say + "men can't chase + catch woman
who is busy + running!" HAH + Top that
one! If you still don't understand
the Israel, Stone, Jed H, Dinny
matter concerning Romeo Martin
or didnt get the letter, tell me
I'll write right away because this
is <u>important</u> remember Israel +

stress it to Carson + for him to stress it to Jed'H + Dinny not to let Israel or Stone know. But don't let them in anyway stop you from delivering that massage to Israel the D.H. of Rhode Island. Let the ole man deal, he knows their games dislikes + honors after 7 years I should. Don't forget soon as I get to the Zoo or when the check comes from Dear Lodge to the Zoo I'll mail you a $400.00 check to put with Carls + Astons fund. They'll probably come a time when it will be all solely in your name if I go to Bat with Marty again. How you dig! Gopher. That damn name John D. didn't pick it + I thought of the same thing you did! But Yah I sure am happy Baby because you are happy so much. We'll make it, till death do us part my ole Lady!

5

yes Baby we did it where Sausalito is concerned, now we got Santa Clara to contend with. Dont take all those legal matters lightly, especially blackie + the cover blown, also we still havent heard from Santa Clara still yet, I hope not until we got Israel all souped up! Glad to hear Dinny wrote you, yes he has the most class but has superbloat in hem too! Dont you dare picket the School Department your uncle Jim who says the Great Father has been convinced? All they do is send me to the Zoo for a year or two hopefully. Lt Stevens said he take me back to the River anytime + there should be bloody there now, I know! Beautiful thought! Poppa never did nothing never even saw him last I heard he was dressed in drag in Butte! :) You betcha we got a very strong love! And I got the most far out ole lady in the whole world, all I ever wanted my life!

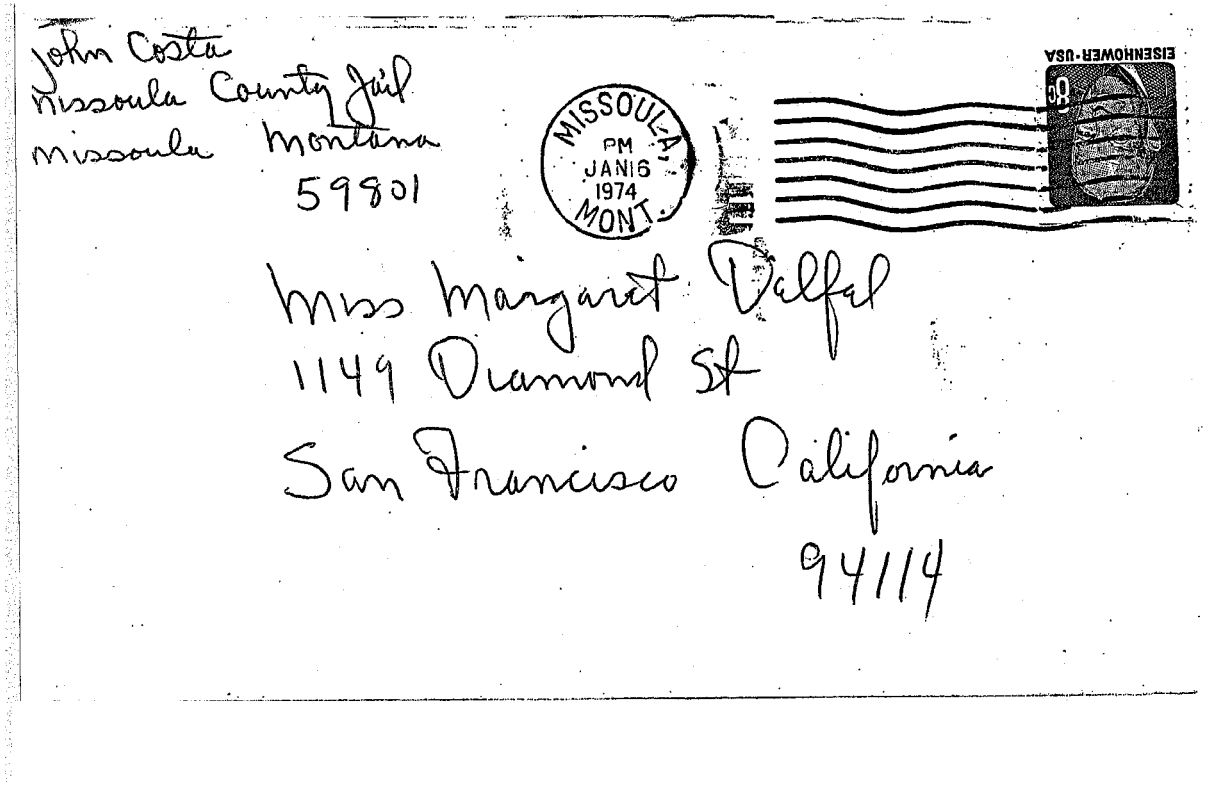
save the $100.00 for me instead of the candle + all light matches + cigarettes with it! ☺ Yes I am in the county jail on a scale with 8 other peaceful guys. Need the bread to eat a little better but you know me, I wasn't even satisfied with Pattersons bush! HAH Wait till you type up a 100 hand written pages, we are in no worry. Civil Rights first. So glad to hear you disturbed the — so well. Wait till you go in the Romes + Israel bag! HOH So don't go back to Bobs, just suggested you should see me with my brush, + my bangs + ears twistly covered, aint to shabby hides my ugliness better! The old lady sure became a tyrant since she became a independent secretary! "sigh" Well ya all if ya all wanta do NAACP do it Honey Chile! ☺ Yeck You got lots of kisses + hugs coming even if

ya all is black + passing for white. I thought the cave felt kinky on the outside? HAHA You didn't upset the ole man with your letter, you told me right + after all you are Jewish! So I'm + can know there is Maggi B. yeah that damn Joe B found this Maggi B. + she is worse than him! :) So anyone who answers your letters regrets it in the end, well I never did Your always write to me the way you feel up or down our love is founded + firm on truth! See Babe you are a trip learning how to rip + rebuild a Corvette engine! sigh Its so ridiculous that my little flower is rebuilding corvettes! sigh Baby you are absolutely the most intriguing woman I'd ever met, your always blowing my mind, I find now the secret to our love is we are both cuckoo! :)

Beautiful hugs + kisses my life.
I've got writers cramps bad! yack
Rakas hintu!

Eternally
John
↑
Yack

John Costa


John Costa
Missoula County Jail
Missoula Montana
59801
MISSOULA
PM
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EISENHOWER-USA
6c
Miss Margaret Dalfal
1149 Diamond St
San Francisco California
94114

EFH:ded

January 19, 1973

Mr. Joseph Bentley
MPS No. B38509
Montana State Prison
Deer Lodge, Montana 59722

Dear Joe:

I will be glad to help Margaret in her preparation of your book to the degree possible.

Please find enclosed a portion of the government's brief filed in the Patriarca case in the United States Court of Appeals for the First Circuit which states in summary fashion the facts testified to at trial. This document should provide an overall view of the testimony introduced at trial. After Margaret examines this document, we will provide certain portions of the transcript of the testimony which might be necessary to fill out the narrative provided here.

I will ask John Doyle with regard to the 150 photographs you require and suggest that you also communicate with John directly. Here follows some information which might be valuable to you in the preparation of your book:

10/31/61	Bernard McLaughlin	Charlestown
7/7/62	George Joynt	Medford
3/15/64	William J. Sheridan	Roxbury
5/4/64	Francis R. Benjamin	South Boston
5/12/64	Russell C. Nicholson	Wilmington
7/23/64	Paul J. Collicci	Quincy
7/23/64	Vincent A. Bisesi	Quincy
8/20/64	Wilfred J. Delaney	Boston Harbor
8/30/64	Harold R. Hannon	Boston Harbor
9/3/64	Leo J. Lowry	Pembroke
9/4/64	Ronald P. Dermody	Watertown
9/26/64	Carlton Eaton	Malden
10/10/64	Robert S. Charlbois	Roxbury
10/17/64	Anthony Sacramone	Everett

11/10/64	Mrs. Margaret Sylvester	Boston
11/13/64	William J. Treannie	South End
11/24/64	Edward P. Huber	Hingham
12/16/64	George O'Brien	South Boston
12/28/64	George E. Ash	South End
1/10/65	John F. Murray	Dorchester
1/15/64	Robert J. Rasmussen	Wilmington
1/23/65	Henry F. Reddington	Weymouth
1/26/65	Joseph Francione	Revere
3/2/65	John Barbieri	Rehoboth
3/12/65	Edward Deegan	Chelsea
4/12/65	Peter A. Cassetta	Maynard
5/20/65	William Fergnani	Tyngsboro
7/9/65	Joseph Romeo Martin	Revere
7/10/65	Edward I. Crowell	Burlington
8/21/65	Wady David	South End
10/20/65	Edward J. McLaughlin	West Roxbury
10/29/65	James J. McLean	Somerville
11/15/65	Robert T. Palladino	North End
11/15/65	Raymond DiStasio	Revere
11/15/65	John R. O'Neil	Revere
4/25/66	David Sidlauskas	Quincy
4/26/66	Anthony Veranis	Milton
5/66	Cornelius Hughes	Revere
6/16/66	Rocco DiSeglio	Topsfield
9/23/66	Stephen Hughes	Middleton
9/23/66	Samuel O. Lindenbaum	Middleton
9/28/66	John W. Jackson	Back Bay
11/15/66	Arthur C. Bratsos	South Boston
11/15/66	Thomas DePrisco	South Boston
12/7/66	Joseph Amico	Revere
1/15/67	William L. O'Brien	Stoughton
3/19/67	John Locke	Revere
6/26/67	Richard Camuarata	Charlton
12/24/67	William Bennett	Dorchester
2/2/67	Andrew Von Etter	Medford
12/31/67	J. Richard Grasso	Brookline
4/18/67	Joseph Lanzi	Medford

Missing: Edward Bennett
Walter Bennett
Thomas Timmons
Anthony Sasso
Rubin Needel

I filled out the questionnaire a few months ago and returned it to the prison. If it is not in the prison's records, please send me another one and I will fill it out again and promptly return it.

I will make a call to Coyle to determine the feasibility of your being returned to the State of California.

Have Margaret call me after she has an opportunity to review the Patriarca brief.

Sincerely,

Ted Harrington

Enclosures

DIRECTOR, FBI [redacted] 3/28/67

SAC, BOSTON [redacted]

INTERVIEW PROGRAM
CRIMINAL INTELLIGENCE MATTERS

Rebosairtel to Bureau, 3/10/67, and Bostel to Bureau, 3/21/67.

The following interview with JOSEPH BARRON, aka Joseph Barboza, was a follow up to interview conducted on 3/8/67, as set forth in rebosairtel.

[redacted]

INTERVIEW OF JOSEPH BARRON

JOSEPH BARRON, aka JOSEPH BARBOZA, was interviewed at the Federal Building, Boston, Mass., on 3/21/67, by SA's H. PAUL RICO and DENNIS M. CONDON [redacted] It also should be noted that he conferred with his Counsel, JOHN FITZGERALD, at approximately 12:15 p.m., at which time he received some advice from his counsel and then returned to continue his interview with the Agents.

BARRON said that he would talk to the Agents in confidence and that he would not testify to any information that he was furnishing at this time.

2-Bureau
4-Boston [redacted]

HPR:DMC:po'b
(6)

SEARCHED
SERIALIZED
INDEXED
FILED

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000788

[redacted]

[redacted] P

BARRON stated that since he last talked to the Agents (He was interviewed on 3/8/67 at the Massachusetts Correctional Institution, Walpole, Mass.), he had come to the conclusion that the Agents and him have a common enemy in the "Italian organization." He said he realizes that this "organization" is going to try to kill him regardless of when he is released from jail, and he believes that this "organization" can reach out into local law enforcement agencies and obtain practically any information in their possession, and he would like to help the FBI in their efforts to obtain evidence against the "Italian organization."

M

BARRON said that he hopes that GARRETT BYRNE, District Attorney of Suffolk County, Boston, will appreciate his (BARRON's) assistance in obtaining this testimony and give him (BARRON) a break on the two cases that he has presently pending in Suffolk County.

M

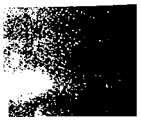
BARRON advised that he had also discussed the last interview with the Agents with JAMES VINCENT FLEMMI and that he had told FLEMMI that he was considering having FABIANO cooperate with the FBI, and that FLEMMI indicated that he thought that that was an excellent idea.

 [redacted]

[redacted] F

It was pointed out to BARRON that he could be making a very serious mistake in talking to any other inmate concerning his interview with Agents of the FBI.

M



BARRON advised that in connection with the murder of EDWARD DEEGAN, DEEGAN had been causing some problems for a lot of people and had been "out of order" at the Ebb Tide night club in Revere, Mass., on a number of occasions. DEEGAN was also looking for some kind of an excuse to kill BOBBY DOHATI who was friendly with RICO SACRAMONE. DEEGAN was killed in Chelsea, Mass., around March of 1965. He said ANTHONY STATHAPOULOS was with DEEGAN and remained in an automobile. One of the individuals in the group that killed DEEGAN went towards STATHAPOULOS carrying a 375 magnum and wearing a bullet-proof vest, but STATHAPOULOS was able to take off and get out of the area.

[redacted]

Pages 5 through 6 of serial 8 are being deleted in their entirety for code: F, M.

[redacted] F

In further discussions of gangland murders, he made the comment that EDWARD DEEGAN had killed ANTHONY SACRAMONE of Everett, Mass., and that this was a senseless murder that DEEGAN had perpetrated just to make himself look like a big man.

[redacted]

M. 7

000794

[redacted] F

M

BARRON was asked if he did not feel that since the "Italian organization" was doing everything in their power to hurt him, didn't he feel that he could help justice be done by testifying. BARRON stated, "If I ever testified, you people would have to find me an island and make a fortress out of it."

BARRON said that he would be willing to furnish information to the Agents, but under no circumstances could he bring himself to testify. [redacted]

On 3/23/67 [redacted] "MIKEY" FLEMMI and JOHNNY MATORANO have been up to visit VINCENT JIMMY FLEMMI in Walpole on 3/22/67, and that FLEMMI told them how JOE BARBOZA had been interviewed by the FBI at the U. S. Attorney's office and that he, BARRON, was going to get [redacted] to testify against the individuals involved in the murders of [redacted] JIMMY would probably tell other individuals about this plan and that if RAYMOND PATRIARCA hears of this, he will believe that they are part of the conspiracy to hurt members of his organization. [redacted]

B

[redacted]

[redacted] F

This office is aware of the distinct possibility that BARRON, in order to save himself from a long prison sentence, may try to intimidate FABIANO into testifying to something that he may not be a witness to. It is planned to interview FABIANO and ascertain from him what his testimony can be in connection with the murders at the Nite Lite and if FABIANO cannot testify as BARRON indicates, BARRON will be again contacted and be given the opportunity for himself to testify in his dealings with known LCN members.

1 Volume 1
2 Pages 1 to 128
3
4 EXECUTIVE SESSION
5 COMMITTEE ON GOVERNMENT REFORM
6 U.S. HOUSE OF REPRESENTATIVES
7 WASHINGTON, D.C.
8
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11 DEPOSITION OF: DENNIS M. CONDON
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14
15 February 21, 2002
16
17 Boston, Massachusetts
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20 The deposition in the above matter was held
21 at the offices of Meyer, Connolly, Sloman &
22 MacDonald LLP, 12 Post Office Square, Boston,
23 Massachusetts 02109, commencing at 2:00 p.m.
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1 Present:
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4 For THE COMMITTEE ON GOVERNMENT REFORM,
5 U.S. HOUSE OF REPRESENTATIVES:
6
7 JAMES C. WILSON, ESQ.
8 JIM SCHUMANN, ESQ.
9 Committee on Government Reform
10 2157 Rayburn House Office Building
11 Washington, D.C. 20515
12
13 MICHAEL J. YEAGER, ESQ.
14 Committee on Government Reform
15 511 Ford House Office Building
16 Washington, D.C. 20515
17
18 CONGRESSMAN WILLIAM D. DELAHUNT
19 Tenth District, Massachusetts
20
21 CONGRESSMAN STEVEN C. LaTOURETTE
22 Nineteenth District, Ohio
23
24 (Continued)
25

1 Present (continued):
2
3 For DENNIS M. CONDON:
4
5 HENRY F. SCHUELKE, III, ESQ.
6 Janis, Schuelke & Wechsler
7 1728 Massachusetts Avenue, N.W.
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10 JOHN M. CONNOLLY, ESQ.
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1 Thursday, February 21, 2002
2 P R O C E E D I N G S (2:00 p.m.)
3 MR. WILSON: Mr. Condon, thank you for
4 being here today.
5 We'll make this as informal as possible.
6 If you don't understand one of the questions, please
7 ask and we'll make it as comprehensible as possible.
8 If there's something you don't think
9 that we understand, please point out whatever it is
10 you think that we have gotten wrong; and I will ask
11 the same for the attorneys here with you.
12 If there's something that's unclear,
13 just stop us, and we'll make it as clear as possible
14 and try and get as much accuracy as we can.
15 We don't have a formal process in terms
16 of questions going back and forth between the
17 members of Congress or myself. We'll just start
18 asking questions.
19 We'll try and move as expeditiously as
20 possible. If people want to jump in and ask a
21 follow-up question, or go in a different direction,
22 that's perfectly acceptable.
23 Any time you want a break or you want to
24 confer with your attorneys, please tell us; we'll
25 accommodate you, obviously.

1 (The witness was sworn.)
2 MR. WILSON: Thank you.
3 - - - - -
4 DENNIS M. CONDON, Sworn
5 MR. WILSON: At times we'll refer to
6 some documents. You have a book in front of you.
7 You can take as much time as necessary to review
8 documents whenever we do refer to them.
9 The first question I have is, has the
10 Department of Justice interviewed you in the last
11 three years?
12 MR. CONDON: Yes.
13 MR. WILSON: When did that occur?
14 MR. CONDON: I was interviewed in July
15 of 1997, as one of probably about 30 FBI agents.
16 (Interruption; discussion off the
17 record)
18 MR. CONDON: I was interviewed, with
19 some Boston FBI agents and an inspection team from
20 Washington.
21 I was interviewed in approximately April
22 of 1998 by the Strike Force. That was just relative
23 to an affidavit concerning Judge Wolf.
24 I was interviewed again in April '98
25 relative to some 209s that they had some questions

1 about.
2 I was interviewed four days before Judge
3 Wolf had some rotations, mob hearings, he had in
4 Boston. That would be April or May of 1998.
5 And I made an appearance before the
6 grand jury in Worcester, John Durham's, D-u-r-h-a-m,
7 grand jury in Worcester, in December of '99 or 2000;
8 I'm not sure of the year.
9 I made a follow-up grand-jury appearance
10 before John Durham's group in Worcester in August of
11 either '99 or 2000; I'm not sure.
12 In January, I was interviewed here by
13 Attorney John Durham's group; and today I'm with you
14 people.
15 MR. WILSON: Thank you very much.
16 I'd just like to take a look, if we
17 could, at Exhibit 41 in the book. This is an
18 exhibit provided to the Committee by the Justice
19 Department.
20 MR. SCHUELKE: Bear with me a second
21 here.
22 MR. WILSON: Sure. I was going to
23 provide some explanatory background, if that's all
24 right.
25 MR. CONDON: Exhibit 41?

1 MR. WILSON: Forty-one, yes. This is a
2 document provided to the Committee by the Justice
3 Department. It's from the SAC in Boston to the
4 director of the FBI.
5 It discusses a number of things, but I'm
6 most interested at the bottom of Page 2 --
7 MR. CONDON: Page 2?
8 MR. WILSON: Page 2 of this document.
9 There's a lengthy redacted portion.
10 Then, at the very bottom of the page, there's a
11 sentence that begins "Accordingly"; and the full
12 sentence is, "Accordingly, BS 955 C-TE was developed
13 by those agents, and by imaginative direction and
14 professional ingenuity utilized said source in
15 connection with interviews with Joseph Baron, a
16 professional assassin responsible for numerous
17 homicides and acknowledged by all professional law-
18 enforcement representatives in this area to be the
19 most dangerous individual known."
20 MR. CONDON: If you bear with me until I
21 read that, because you went so quickly.
22 MR. WILSON: Absolutely. (Pause)
23 MR. CONDON: Yes.
24 MR. WILSON: And if you could read over
25 onto the next page, there's one more paragraph; if

1 you could read as far as the redaction. (Pause)
2 MR. CONDON: How far do you want me to
3 read?
4 MR. WILSON: Oh, just to the redaction
5 on Page 3.
6 MR. CONDON: Okay; all right.
7 MR. WILSON: I won't ask a lot of
8 questions about this; but the central question is,
9 who or what was BS 955 C-TE?
10 MR. CONDON: I don't know.
11 MR. WILSON: Is that because you don't
12 recall?
13 MR. CONDON: It's because I don't know.
14 MR. WILSON: You don't know.
15 When you were discussing with
16 Mr. Barboza the events that he ultimately testified
17 to, did you use a particular informant, either human
18 or electronic, to help to obtain his testimony?
19 MR. CONDON: No, I didn't.
20 MR. WILSON: Were any tapes played for
21 him?
22 MR. SCHUELKE: For whom?
23 MR. WILSON: For Mr. Barboza.
24 MR. CONDON: I don't recall any tapes
25 being played.

1 MR. WILSON: Having read this section
2 from the document, are you able to provide any
3 indication or speculation as to what this might be
4 referring to?
5 MR. CONDON: No, no.
6 MR. WILSON: I'm going to ask you just a
7 few questions along this line, and we'll then move
8 to another area.
9 If you would look at Exhibit 42, please,
10 and if you could read the first page of that.
11 (Pause)
12 MR. CONDON: I've read it.
13 MR. WILSON: This is a document from
14 1965, and it purports to indicate some factual
15 details of the Deegan killing.
16 Do you know whether the informant
17 referred to in this document is electronic
18 surveillance or a human source?
19 MR. CONDON: I do not.
20 MR. WILSON: Do you recall, when these
21 documents were being prepared, whether there was a
22 protocol that was used to refer to an electronic-
23 surveillance informant? It would help us to
24 understand whether --
25 MR. CONDON: Repeat the question,

1 please, counsel.
2 MR. WILSON: Yes.
3 Do you recall whether there was a
4 protocol that was used to refer to electronic
5 surveillance when memoranda like this were being
6 prepared?
7 MR. SCHUELKE: When you say protocol, do
8 you mean was there some kind of a code, designation?
9 MR. WILSON: A system, or a code, or
10 something that would enable you, when you reviewed
11 the memorandum --
12 MR. CONDON: I don't recall anything to
13 discern a live informant from electronic coverage.
14 MR. WILSON: When information was being
15 developed in 1965 around the time of the Deegan
16 murder, we are aware, because we've obtained
17 documents from the Justice Department that showed
18 there was electronic surveillance that discussed
19 Mr. Deegan and elements of the ultimate murder.
20 Do you remember any other informant
21 sources that did talk about matters involving the
22 Deegan murder?
23 MR. CONDON: I do not.
24 MR. WILSON: That's because you don't
25 recall?

1 MR. CONDON: I don't recall; correct.
2 MR. WILSON: Now, at the Deegan trial,
3 Mr. Barboza ultimately testified that he did not
4 shoot Deegan, nor did he see who shot Deegan.
5 There is an FBI memorandum that
6 contradicts this. It's Exhibit 44; and if you could
7 turn to that and please look at that.
8 There's a lengthy section of other
9 material. If you'll just work with that, it's after
10 those pages.
11 MR. CONDON: Forward, or back?
12 MR. WILSON: Backwards, to the back of
13 the book. The other way.
14 MR. CONDON: Okay; I have it.
15 MR. WILSON: If you could, please review
16 this memo. (Pause)
17 MR. CONDON: I've read it.
18 MR. WILSON: This memo states in most
19 pertinent part that that Barboza told an informant
20 that he, quote, "had shot Deegan with a 45 caliber
21 gun," unquote.
22 Were you aware in 1967, when Mr. Barboza
23 testified, that there was a conflict between his
24 testimony and information that had been obtained
25 from the particular informant mentioned in the 1965

1 memorandum?
2 MR. CONDON: I first have to answer that
3 question -- and if it's not suitable, you can come
4 back to me -- that I don't recall ever seeing this
5 209.
6 Now, your question is what?
7 MR. WILSON: From our perspective, it
8 appears that there's a conflict between Barboza's
9 testimony in the Deegan trial in 1968 and this
10 memorandum, which indicates that Barboza said that
11 he shot Deegan with a 45 caliber gun.
12 And at the trial, Barboza testified he
13 did not shoot Deegan, nor did he see anybody shoot
14 Deegan; and so what we're getting at here is, were
15 you aware, when Barboza testified, that there was a
16 conflict between the information obtained in 1965
17 and what Barboza ultimately testified to in 1968?
18 MR. CONDON: No, I was not; and I was
19 not present when he testified. My recollection is
20 that there was sequestration up there, but I'm not
21 positive. I was not in the courtroom when he
22 testified.
23 MR. WILSON: Just thinking about the
24 entire universe of information obtained in 1965
25 about Barboza and Deegan, were you aware of any

1 conflicts between information that the FBI had and
2 Barboza's ultimate testimony?
3 MR. CONDON: No.
4 MR. WILSON: Did you attend any days
5 during the Deegan trial? I know you testified, but
6 did you attend any other days?
7 MR. CONDON: My only presence in the
8 courtroom was the day I testified.
9 MR. WILSON: Were you following the
10 Deegan trial in the newspapers?
11 MR. CONDON: Oh, I'm sure I probably
12 did. I'm sure I did, yes.
13 MR. WILSON: Was there any way of
14 providing you with a summary of what was happening
15 during the Deegan trial?
16 MR. SCHUELKE: Was there any way of
17 providing?
18 MR. WILSON: Was there any way that it
19 did happen? Were you informed as to --
20 MR. SCHUELKE: Why don't you try that
21 again.
22 MR. WILSON: Were you informed as to
23 what was happening during the Deegan trial?
24 MR. CONDON: I don't recall being
25 updated or anything on the trial.

1 MR. WILSON: Now, Exhibit 44 talks
2 about, appears to be "somebody," but it could be
3 "something," that's identified in this PCI. What
4 does PCI stand for?
5 MR. CONDON: PCI in my day stood for
6 potential criminal informant; one who was not a
7 criminal informant according to the standards, but
8 had the potential to be one.
9 MR. WILSON: And in the context of this
10 memorandum, how was PCI distinguished from any other
11 type of informant, if it is distinguished from any
12 other type of informant?
13 MR. CONDON: Well, based on my
14 knowledge -- I stopped with the FBI 25 years ago --
15 PCI meant potential criminal informant. It's a
16 person who by their standards was on a trial basis
17 to see whether they were believable, whether they
18 could provide sufficient data to make it worthwhile
19 to continue the contacts with them and so forth. In
20 most instances, before a person became an informant,
21 they were a potential criminal informant.
22 So that's what the PCI stood for.
23 And I have a question in my own mind,
24 now. When you ask me something like this, that's
25 really an administrative function of the FBI. I

1 don't know, being out 25 years, that I'm authorized
2 to be telling you what PCI stands for and so forth
3 and so on. However, I'm taking that chance; and
4 that's what it is, potential criminal informant.
5 MR. WILSON: Well, I appreciate that.
6 If you have information that you provide to us and
7 you think it might be sensitive in a particular way,
8 if you would tell us that, we would like to treat it
9 with sensitivity; and we would go back to the FBI
10 and talk to them about the particular information
11 before disclosing it.
12 So we would appreciate if you would err
13 on the side of providing information.
14 How did a potential criminal informant
15 ultimately become an informant? What were the
16 criteria or standards used?
17 MR. CONDON: If a potential criminal
18 informant provided what was deemed to be quality
19 information -- maybe resulting in the solution of a
20 couple of cases, or perhaps the finding of a couple
21 of fugitives -- after a period of time, based on
22 what that person provided, with the approval of
23 headquarters, the person would then be converted
24 from a potential criminal informant to a criminal
25 informant.

1 It was based on testimony quality, and
2 the quantity of the information that was provided.
3 CONGRESSMAN DELAHUNT: Mr. Wilson, if I
4 can, maybe we could speak to the witness about how
5 you, Dennis, developed Joe Barboza. That might give
6 us an example.
7 Why don't you run through with us how
8 you made the first contact, and how he became a --
9 MR. CONDON: Well, back then, in
10 approximately 1966 or '67, in the Boston area, from
11 about 1962 to '66 we had approximately 50 or 60
12 unsolved gangland/organized-crime murders. There
13 was a big push to try to develop some information on
14 that organized crime.
15 Mr. Barboza was confined in, my memory
16 is, Walpole State Prison.
17 And about that time, three of his
18 associates -- Chico Amico, Arthur Bratsos, and
19 Thomas De Prisco, according to sources -- were
20 collecting money to try to get him out of jail. The
21 figure I remember being mentioned is $80,000.
22 It was felt that, where his associates
23 were killed by the Mafia, where they absconded with
24 the $80,000 that allegedly had been collected on his
25 behalf, that he might be prone to talking to us, and

1 maybe furnishing some information that would be
2 helpful in the overall organized-crime picture.
3 My best recollection is that Justice
4 Department Attorney Walter Barnes, who was up here
5 from Washington at the time, working with now Judge
6 Harrington and the U.S. Attorney Paul Markham,
7 suggested that the FBI should probably talk to
8 Barboza.
9 With everything that had transpired with
10 him, he could be a likely source of information, I
11 guess, because you'd have to say that he was hanging
12 out there pretty much exposed, by himself.
13 And Barboza was never, to my knowledge
14 or my recollection, never deemed administratively or
15 thought to be an informant. He was handled as a
16 potential witness.
17 CONGRESSMAN DELAHUNT: Who made the
18 first approach to Barboza? Was it you or Paul Rico?
19 MR. CONDON: Both of us.
20 My recollection is that, at the
21 suggestion of Justice Department Attorney Walter
22 Barnes, we went down to talk to Barboza; and my best
23 recollection it was Paul Rico and I.
24 CONGRESSMAN DELAHUNT: How long was your
25 service in the FBI? When did you first become --

1 MR. CONDON: I started in the FBI on
2 January 29, 1951. I retired on May 20, 1977.
3 CONGRESSMAN DELAHUNT: How long was Paul
4 Rico your partner?
5 MR. CONDON: I want to address that,
6 Congressman.
7 With reference to "partner," you didn't
8 work with a partner on an endless basis. Based on a
9 case, a particular investigation, the supervisor
10 would assign people to work together.
11 So when Mr. Rico and I interviewed
12 Barboza at, I believe it was Walpole was the first
13 contact, that was the start of us working as
14 partners on these Barboza, Patriarca, Tameleo,
15 Deegan, DiSeglio, Marino, LePore cases.
16 So I'm trying to explain what the
17 partnership was.
18 CONGRESSMAN DELAHUNT: I understand.
19 It's unlike local or state law; particularly local
20 law.
21 Do you remember when that first visit to
22 Barboza was? Do you have a recollection as to the
23 date?
24 MR. CONDON: No; but I think I saw an
25 exhibit out of the Committee in Washington that had

1 the date on it, I'd be guessing 1967, it's in the
2 records, but --
3 MR. WILSON: I believe it was March 8 of
4 1967, so early 1967.
5 CONGRESSMAN DELAHUNT: That would have
6 been March. And do you remember the interview with
7 Barboza?
8 MR. CONDON: Well, I remember it
9 faintly; but if you have it and you want to put it
10 in front of me, it might help me.
11 CONGRESSMAN DELAHUNT: I don't think we
12 have it.
13 MR. WILSON: We have notes of it.
14 CONGRESSMAN DELAHUNT: Do you?
15 MR. WILSON: Yes, we do.
16 MR. CONDON: If you ask the question,
17 I'll answer it as best I can.
18 CONGRESSMAN DELAHUNT: So when you first
19 approached him, I take it this interview was
20 conducted, what; did they bring him to the hospital?
21 MR. CONDON: No; my recollection is the
22 first time we spoke to him, it was just an ordinary
23 visit of law-enforcement people, because at that
24 time there was no indication to the population in
25 the prison that he was going to be a cooperating

1 witness or anything.
2 It was just a cold interview, as you
3 would have sent some of your investigators from the
4 DA's office down to the prison. It was in a room
5 provided at Walpole.
6 CONGRESSMAN DELAHUNT: As best you can,
7 can you recollect the conversation that you would
8 have had with Barboza?
9 MR. CONDON: We're talking about a
10 conversation that happened back in 1967, and I
11 wouldn't want to venture into the interview with
12 speculation. If I had it in front of me, I'd be
13 glad to comment and answer any questions.
14 CONGRESSMAN DELAHUNT: As a result of
15 that particular interview, were there subsequent
16 interviews?
17 MR. CONDON: Yes. As a result of that
18 interview, we went back and saw him again. He was
19 interviewed a number of times, and then --
20 CONGRESSMAN DELAHUNT: In Walpole?
21 MR. CONDON: I think maybe just one more
22 time in Walpole; or it may have been at the Federal
23 Building or the U.S. Attorney's office. I'm not
24 sure.
25 Ultimately, at some point, when the

1 Justice Department or the U.S. Attorney's office
2 thought that there might be some merit to this, he
3 was transferred to the Barnstable County Jail, to be
4 taken out of the population at Walpole.
5 CONGRESSMAN DELAHUNT: Counsel?
6 MR. WILSON: There are a number of
7 documents that have given us information. If it's
8 all right with you, I'm going to characterize the
9 information.
10 And if you know something that is
11 contradicting what I say, please stop me and provide
12 the information. I'd just like to set the scene to
13 ask what probably are the most significant questions
14 to us.
15 As you recall, Mr. Deegan was murdered
16 in 1965; and in 1965 the FBI appeared to have some
17 information about the circumstances of Deegan's
18 death. Do you remember that in 1965 the FBI did
19 have information about Deegan's death?
20 MR. CONDON: No.
21 MR. WILSON: Not at all?
22 MR. CONDON: I do not.
23 MR. WILSON: The memoranda that Mr. Rico
24 provided, did he share them with you?
25 MR. CONDON: No.

1 MR. WILSON: Did he keep the information
2 just for himself? How would that work?
3 MR. CONDON: No; I wouldn't say that
4 Mr. Rico kept the information himself.
5 These documents that we're talking
6 about, we referred to them as 209s, actually; that's
7 the report of an informant contact. An agent would
8 either rough-draft or dictate whatever the
9 information was on the 209, and it would be typed
10 up.
11 And if the information in the 209
12 pertained to a particular case, one that was under
13 investigation, or a particular fugitive that was
14 being sought, protocol would be that a copy would go
15 into that substantive file, so that the agent
16 handling the case would have the benefit of what the
17 informant provided.
18 MR. WILSON: Now, it is my
19 understanding, from having looked at lots of
20 documents, that investigating Raymond Patriarca was
21 one of, if not the most, significant task before the
22 Boston FBI office. Is that a fair characterization?
23 MR. CONDON: I think that's a fair
24 assessment, yes.
25 MR. WILSON: In 1965, some of the

1 memoranda that Mr. Rico prepared indicated that
2 Raymond Patriarca might have been involved in a
3 conspiracy to kill Deegan.
4 So it would be our impression - and
5 this is where we would ask you to correct us if
6 we're wrong -- it would be our impression that
7 information like that would be significant enough
8 that a number of people in the office would have
9 known about Patriarca's possible involvement in the
10 Deegan murder.
11 MR. CONDON: The answer to your
12 question, your impression is probably right.
13 MR. WILSON: Let me just complete this,
14 and I'll characterize it as much as possible, and
15 then get to specific questions.
16 In 1964, information was developed that
17 Jimmy Flemmi wanted to become a professional
18 assassin. Do you recall that?
19 MR. CONDON: Yes, I do.
20 MR. WILSON: And what can you tell us
21 about Jimmy Flemmi and his goal to become, I think
22 the quote is, "one of the best hit men in the area"?
23 MR. CONDON: I'll try to be brief, so
24 you can move on to whatever you want to.
25 I met Jimmy Flemmi in approximately, I'm

1 going to say 1960, 1961. At that time he was wanted
2 for an armed robbery in Boston. I'll try to be
3 brief on this one.
4 The Boston Police went to the federal
5 authorities, and got an unlawful flight to avoid
6 prosecution for Flemmi.
7 I happened to be fortunate enough to be
8 told that he had been hiding out in California, that
9 he was back in this area, that he was up on Route 1
10 in a motel in Saugus between the Town Line House and
11 the northernmost hotel on Route 1 between Peabody
12 and Saugus.
13 And I didn't know him at the time; but I
14 happened to be lucky enough, and I arrested him up
15 there, with the help of the agent to whom the case
16 was assigned, and it was prosecuted.
17 That was my initial and first contact
18 with Jimmy Flemmi.
19 I no doubt saw him a number of times
20 where they used to hang out in the Dudley Square
21 area of Roxbury with other recognized hoodlums, and
22 I would see him on occasions in that area; but I
23 really never had any relationship with him.
24 MR. WILSON: Now, one of the memos that
25 you wrote indicated, and I'll quote, "All he wants

1 to do now is kill people, and that is better than
2 hitting banks."
3 What do you remember about Flemmi and
4 his goal to be a hit man, an assassin?
5 MR. CONDON: I only remember what the
6 source told me that was narrating, that that's what
7 his goals were; and in intelligence circles he was
8 recognized as a very, very dangerous, unpredictable
9 murderer.
10 MR. WILSON: Did that information come
11 from the Patriarca case?
12 MR. CONDON: My information that I'm
13 giving to you now came mostly from contact with
14 police sources who knew him well.
15 MR. WILSON: There was a memo that has
16 an informant indicating that Jimmy Flemmi wanted to
17 kill Teddy Deegan. Do you recall any information
18 that would have had Jimmy Flemmi wanting to kill
19 Teddy Deegan?
20 MR. CONDON: No, I do not.
21 MR. WILSON: Another document that we've
22 obtained showed that at the end of 1964, in December
23 of 1964, Flemmi killed another FBI informant whose
24 name was ; apparently stabbed him 50
25 times, and then shot him.

1 Not long after that, it appears that the
2 FBI targeted Jimmy Flemmi to be an informant. Is
3 that correct?
4 MR. CONDON: Well, from what I've read,
5 it appears to me that that is probably correct, yes.
6 MR. WILSON: Did you play a part in
7 trying to develop Jimmy Flemmi as an informant?
8 MR. CONDON: Absolutely not.
9 MR. WILSON: Who did?
10 MR. CONDON: I have to assume from the
11 judicial proceedings that I've been exposed to over
12 the last three or four years, and I can't tell you
13 where it came from, I assume Mr. Rico did; but I
14 can't put my finger on exactly how.
15 MR. WILSON: Do you remember any
16 documents or memoranda from 1965 that discussed
17 efforts to develop Jimmy Flemmi as an informant?
18 MR. CONDON: No.
19 MR. WILSON: In 1965, we know from the
20 Patriarca logs that Jimmy Flemmi and Barboza went to
21 Providence to Patriarca to talk about killing Jimmy
22 Flemmi. Do you have a recollection of that
23 information from --
24 MR. CONDON: I think you might want
25 to rephrase your question. About killing Jimmy

1 Flemmi?
2 MR. WILSON: About killing Teddy Deegan;
3 you're right.
4 MR. CONDON: No, I don't recall; but I
5 think I've read in some of the exhibits what you're
6 referring to. I don't recall it.
7 MR. WILSON: One of the exhibits here
8 that you might have looked at even talks about a dry
9 run having been made, and how Deegan would be set up
10 by a close associate. That was a memorandum
11 prepared at the contemporaneous time to the killing.
12 Do you recall anything about a dry run
13 being made?
14 MR. CONDON: No.
15 MR. WILSON: Any of that information?
16 MR. CONDON: No.
17 MR. WILSON: When Deegan was killed, do
18 you recall whether there were any efforts made by
19 the FBI to develop a case against any of the
20 possible perpetrators of the crime?
21 MR. CONDON: I don't remember any
22 efforts on the part of the FBI at that time to
23 develop the answers to the Deegan murder case at
24 that time.
25 And I'd have to say that I'm sure that

1 Deegan in his own right was a very important person;
2 but he was one of a big number of people that fell
3 by the wayside over those years, '62 to '66,
4 something like 50 to 60 gangland victims.
5 MR. WILSON: A general question would
6 be, as information was developed through the various
7 microphone surveillance efforts, we know of three.
8 One was Patriarca; one was in a place frequented by
9 Gennaro Angiullo; and the third was, I think -- an
10 appropriate name -- Piranha Finance Company.
11 Were efforts ever made to prevent
12 crimes? And let me be clear here --
13 MR. CONDON: Oh, sure.
14 I'm sure that the FBI files over the
15 years would show that in many instances agents,
16 usually after conferring with a supervisor, would
17 furnish information to local and to state police,
18 particularly if it was something that was in their
19 jurisdiction or was not within the federal
20 jurisdiction.
21 And I'm sure that happened many, many
22 times; many times.
23 CONGRESSMAN DELAHUNT: Counsel, if I can
24 interrupt for a moment.
25 If you remember, during this time frame

1 that we're focused on, who was Mr. Rico's supervisor
2 at the Boston office?
3 MR. CONDON: I'm trying to think of the
4 starting year.
5 When Mr. Rico left in 1970, John Kehoe
6 would have been the supervisor; and he may have been
7 the supervisor from 1965 or '66, but I really can't
8 remember --
9 CONGRESSMAN DELAHUNT: The start date?
10 MR. CONDON: -- the start date. I can
11 remember his leaving date.
12 CONGRESSMAN DELAHUNT: Who would have
13 been Kehoe's predecessor as supervisor?
14 MR. CONDON: Congressman, I've been
15 trying to think of that myself, really and truly;
16 and I have trouble coming up with it.
17 The organized-crime squad, probably at
18 its inception I seem to have a memory that Kehoe was
19 in charge at that time, also; but I don't know when
20 that happened. It happened during the Bobby Kennedy
21 time as the AG.
22 CONGRESSMAN DELAHUNT: I think the point
23 that counsel was driving at is, as he runs through
24 these exhibits and you state that you were unaware
25 of the contents of the reports filed by Agent Rico,

1 would they, in the normal routine of administrative
2 practices at the Boston office of the FBI, have gone
3 to his supervisor?
4 MR. CONDON: Yes.
5 CONGRESSMAN DELAHUNT: So then Mr. Kehoe
6 presumably would have knowledge of those routines?
7 MR. CONDON: Presumably, and he would
8 decide as to any further dissemination.
9 CONGRESSMAN DELAHUNT: And who was the
10 special agent in charge at the time?
11 MR. CONDON: At the time?
12 CONGRESSMAN DELAHUNT: At the time; if
13 you had one.
14 MR. CONDON: I think, I'm estimating,
15 around the time of '65, '66, '67, in those years, it
16 was James Handley, who's now deceased.
17 CONGRESSMAN DELAHUNT: And who would
18 have been subsequent to Jim Handley?
19 MR. CONDON: I can't remember.
20 CONGRESSMAN DELAHUNT: And Mr. Kehoe, is
21 Mr. Kehoe still alive?
22 MR. CONDON: Mr. Kehoe is still alive;
23 and he's very ill, and he lives in Milton and in
24 Falmouth.
25 CONGRESSMAN DELAHUNT: Have you had

1 contact with him recently?
2 MR. CONDON: I talk to him from time to
3 time, check on him, see how he's doing; and he does
4 the same with me. I think he's approximately 82, 83
5 years old now.
6 For the benefit of the counsel here,
7 Mr. Kehoe was the Commissioner of the State Police
8 to approximately 1978, after he left the FBI.
9 CONGRESSMAN DELAHUNT: After you left
10 the FBI, did you immediately go to the State Police,
11 or was there an interim period?
12 MR. CONDON: No; it was an interim
13 period.
14 The Governor appointed me to -- this is
15 going to be hard for you incoming people here -- the
16 Board of Appeal on Motor Vehicle Liability Policies
17 and Bonds.
18 It was a three-member board whose duty
19 was to listen to appeals from people who were
20 aggrieved by the Registrar of Motor Vehicles; such
21 as, if he had taken someone's driver's license or
22 cancelled out their automobile registration, they
23 could go before this three-man board and present
24 their case, and the board could overrule the
25 Registrar's action.

1 That was the job I took when I left the
2 FBI.
3 CONGRESSMAN DELAHUNT: So you retired
4 from the FBI and --
5 MR. CONDON: Went to the Board of
6 Appeals.
7 CONGRESSMAN DELAHUNT: In state service;
8 and after you ended your time at the Board of
9 Appeals, what was your next --
10 MR. CONDON: The Governor appointed me
11 Commissioner of Public Safety, and Superintendent of
12 Mass. State Police. It was the same thing.
13 CONGRESSMAN DELAHUNT: It was Governor
14 Dukakis?
15 MR. CONDON: Governor Dukakis. And I
16 was appointed in about August of '78; and I stayed
17 as the Commissioner of Public Safety until about
18 July 1 of 1980.
19 CONGRESSMAN DELAHUNT: And after July 1
20 of 1980?
21 MR. CONDON: I left in '80 for medical
22 reasons; I had cardiac surgery.
23 I was doing consulting and investigative
24 work for Mintz, Levin, Glovsky & Popeo, mainly on
25 one major insurance-fraud case.

1 And then, when Governor Dukakis came
2 back in '82, I was appointed the Undersecretary of
3 Public Safety.
4 CONGRESSMAN DELAHUNT: What was your
5 term of service there?
6 MR. CONDON: I stayed there from January
7 of 1983 to March of 1991. And I left --
8 CONGRESSMAN DELAHUNT: So March of '83
9 to 1991?
10 MR. CONDON: From January of 1983 to
11 March of 1991.
12 I left there and went with the
13 Department of State Bureau of Diplomatic Security,
14 and did background investigations; which, not to be
15 misled, was on a part-time basis.
16 That position only worked out to a
17 couple days a week. I had the pleasure of
18 interviewing you on one of those backgrounds at one
19 time.
20 CONGRESSMAN DELAHUNT: I forget that.
21 MR. SCHUELKE: I have a detailed memo on
22 that.
23 CONGRESSMAN DELAHUNT: I'm sure you do,
24 Mr. Schuelke.
25 You know, if you would like to proceed;

otherwise I would like to take Mr. Condon through the exhibits, and reference them in particular.

I think he's answered the question in an omnibus way, but I think it's important to see whether he has any specific recollection of these memoranda.

MR. WILSON: If we could ask just one question to set this up, though.

CONGRESSMAN DELAHUNT: Go ahead.

MR. WILSON: From our perspective, to make this as unmysterious as possible, there appears to be information obtained in 1965, then again in '67, '68, where Barboza provides information that is in conflict with the earlier information.

One of the most significant questions for us is, given the importance of the Patriarca investigation, was information developed in 1965 that involved Patriarca disseminated throughout the office?

MR. CONDON: Going back, my recollection and my belief would have to be that that type of information was not generally disseminated throughout the office.

MR. WILSON: I'd like to get a sense of who would have it. What we had in 1965 was some

1 information from microphone surveillance in
2 Patriarca's place of business that indicated that
3 Barboza and Flemmi wanted to kill Deegan; and indeed
4 within a couple of days Deegan was killed.
5 From our perspective -- obviously,
6 there's hindsight involved -- it seems that that
7 information would have been of great significance in
8 the office, and certainly some people would have had
9 access to that information.
10 It sounds like, from what you're telling
11 us, you did not have access to that information.
12 MR. CONDON: I did not have access to
13 that particular information, no; that's correct.
14 MR. WILSON: Who would Mr. Rico have --
15 MR. CONDON: In my recollection.
16 MR. WILSON: Fair enough.
17 Who would Mr. Rico have shared that type
18 of information with?
19 MR. CONDON: I don't understand. With
20 whom would he share what information? Mr. Rico, I
21 mean.
22 MR. WILSON: Information about
23 Mr. Patriarca, and Mr. Patriarca's possible
24 involvement in crimes.
25 MR. SCHUELKE: You mean other than his

1 supervisor and possibly --
2 MR. WILSON: Yes.
3 We are aware, for example, that the
4 information was sent to Washington in memoranda
5 directed to the director of the FBI; so it went up
6 the food chain.
7 We're trying to get a sense of, when
8 Mr. Rico was developing the information that we see
9 in the documents we have, who else in the Boston
10 office would have --
11 MR. CONDON: When you say documents,
12 you're not referring to electronic surveillance,
13 now; you're talking about informant information?
14 MR. WILSON: I'm talking about the
15 memoranda that Mr. Rico prepared, some of it from
16 electronic surveillance.
17 MR. CONDON: He would put on the
18 document or dictate for the document what interest
19 he thought it should go in, if there was a specific
20 case or a specific person that the informant talked
21 about; and all of the informant documents would go
22 to the then supervisor, who would review it to make
23 a decision as to, should it receive some further
24 dissemination than the agent who dictated the 209
25 designated.

1 MR. WILSON: Maybe a better way of
2 asking the question: In 1965, who in your office
3 was involved in investigating Raymond Patriarca?
4 MR. CONDON: The best of my
5 recollection, in 1965, the Raymond Patriarca case
6 would have been assigned to one of the resident
7 agents in the Providence office.
8 MR. WILSON: But in Boston, were
9 there --
10 MR. CONDON: To my knowledge and
11 recollection, there would be no Boston agent
12 designated in charge of the Raymond Patriarca, Sr.
13 case. It would be one of the resident agents
14 assigned to it.
15 MR. WILSON: Right. I'm not asking
16 about who was in charge; I'm asking about who was
17 involved. Presumably, and correct us if we're
18 wrong, my impression is there would be a number of
19 special agents who would be involved in the
20 investigation of Patriarca, Sr.
21 MR. CONDON: My recollection is that the
22 agent who was in charge of the Patriarca, Sr. case
23 would be Charles Reppucci, R-e-p-p-u-c-c-i, assigned
24 to the Providence resident agency.
25 MR. WILSON: Now, were you yourself

1 involved in any of the investigation of Patriarca,
2 Sr.?
3 MR. CONDON: Junior?
4 MR. WILSON: Senior.
5 MR. CONDON: I don't recall doing any
6 investigation personally on Raymond Patriarca, Sr.
7 CONGRESSMAN LaTOURETTE: Let me just
8 jump in if I can, because I'm getting a little
9 confused, and I want to be --
10 MR. CONDON: I hope I'm not the source
11 of the confusion.
12 CONGRESSMAN LaTOURETTE: You're not the
13 source of it; I think the source of my confusion is
14 the exhibit.
15 Can you look at Exhibit 12? I know that
16 Mr. Delahunt is going to talk to you about specific
17 exhibits; but when we talk generically where a
18 document goes, I want you to look at Exhibit 12 and
19 ask you some specific questions about that.
20 CONGRESSMAN DELAHUNT: That's the City
21 of Boston Police Department report.
22 MR. CONDON: Pardon?
23 MR. SCHUELKE: It's a Rico memo dated
24 3-16 --
25 CONGRESSMAN LaTOURETTE: The Exhibit 12

1 I have is dated 3-15-65, and it's from Special Agent
2 H. Paul Rico. Are we looking at the same thing?
3 MR. CONDON: I have it. Dated 3-15-65?
4 Yes.
5 CONGRESSMAN LaTOURETTE: And when
6 Mr. Wilson asks you questions about where things go,
7 this purports to be something that Mr. Rico wrote on
8 or about March 15 of '65. Have you ever seen that?
9 MR. CONDON: No, I have not.
10 CONGRESSMAN LaTOURETTE: And when
11 Mr. Wilson asks you questions --
12 MR. CONDON: Excuse me. To the best of
13 my recollection.
14 CONGRESSMAN LaTOURETTE: That's all I'm
15 asking.
16 Mr. Wilson's questions are basically,
17 you may see in here an answer about a dry run; and
18 he said he didn't know anything about a dry run,
19 planning the Deegan murder ahead of time.
20 This form is set up in a way that goes
21 to the special agent in charge; that's what "SAC"
22 stands for at the top, right?
23 MR. CONDON: Yes.
24 CONGRESSMAN LaTOURETTE: And then, are
25 you saying that the special agent in charge is the

1 only one who receives it, and he or she then will
2 determine what distribution it's going to have in
3 the Boston office?
4 MR. CONDON: No. I'm saying that when
5 this type of document is dictated by an agent, or
6 rough-drafted, whatever, the bottom left-hand
7 corner, where it's blacked out, would indicate the
8 dissemination that the agent felt should be made
9 from the contents of the document.
10 When it went in to a supervisor, he
11 would then decide whether he felt that the
12 dissemination was adequate, or there should have
13 been further dissemination than the dictating agent
14 listed on the form.
15 CONGRESSMAN LaTOURETTE: If you could
16 just bear with me, because I'm not as smart as these
17 other fellows, but where this is blacked out, and
18 there's HPR;po'b, are you talking about the blacked-
19 out box in front of those?
20 MR. CONDON: Yes.
21 CONGRESSMAN LaTOURETTE: And is it your
22 observation, based on your experience, that what's
23 blacked out is the distribution that Mr. Rico would
24 have determined?
25 MR. CONDON: It may also indicate

1 distribution that was an afterthought by a
2 supervisor that thought it should go in there.
3 CONGRESSMAN LaTOURETTE: But aside from
4 distribution that either Mr. Rico determined or a
5 supervisor added after it was given to him by
6 Mr. Rico or whoever, is there anyone in your
7 experience -- the square is marked Personal Data;
8 that's why I'm asking the question. It doesn't say
9 distribution.
10 MR. CONDON: I can see it says Personal
11 Data, but it's really the area where the key to the
12 dissemination was.
13 CONGRESSMAN LaTOURETTE: And then -- and
14 then we'll go back to Mr. Delahunt -- but at the
15 very beginning of this interview, Mr. Wilson was
16 talking to you about Exhibit No. 41. I heard what
17 you said, but I want to be very clear about this.
18 Do you remember he talked to you about
19 some letters, BS 955 C-TE?
20 MR. CONDON: Yes, I do.
21 CONGRESSMAN LaTOURETTE: And I think his
22 question was, do you know what informant that was?
23 And you said no, you don't know.
24 Exhibit No. 41 is a letter from the head
25 of the Boston office to J. Edgar Hoover; and the

1 gravamen of the letter is it's recommending that you
2 and Mr. Rico get a raise. It says you guys should
3 get a raise, because you're doing a swell job.
4 And the paragraph that Mr. Wilson drew
5 your attention to indicates that BS 955 C-TE was
6 developed by you and Mr. Rico.
7 MR. CONDON: I don't see that on the
8 document -- oh; wait a minute.
9 CONGRESSMAN LaTOURETTE: 41.
10 MR. CONDON: Wait a minute; I'm looking
11 at 36, serial 41. Let me go --
12 CONGRESSMAN LaTOURETTE: I think it's on
13 the second page of 41, if I remember right.
14 MR. CONDON: All right. Please repeat
15 your question.
16 CONGRESSMAN LaTOURETTE: Sure.
17 Forty-one is something dated June 20,
18 1967, where the head of the Boston office is writing
19 to J. Edgar Hoover; and among other things, he's
20 recommending that you and Mr. Rico get a raise.
21 The paragraph on Page 2 that Mr. Wilson
22 directed you towards at the very beginning of this
23 interview talks about BS 955 C-TE being developed by
24 you and Mr. Rico. Do you see that, where we are?
25 Again, this is where we started.

1 MR. CONDON: I see it, yes.
2 CONGRESSMAN LaTOURETTE: Are you saying
3 that that string of letters and numbers doesn't mean
4 anything to you?
5 MR. CONDON: I'm saying that I don't
6 have the faintest idea who BS 955 C-TE is. I don't
7 have the faintest idea who that is.
8 CONGRESSMAN LaTOURETTE: Let me ask you
9 this: Does BS stand for anything?
10 MR. CONDON: Boston.
11 CONGRESSMAN LaTOURETTE: And C-TE, does
12 that stand for anything, based upon your experience?
13 MR. CONDON: My recollection is it
14 stands for top-echelon criminal informant.
15 CONGRESSMAN LaTOURETTE: And so the key
16 is, if we were to pull this apart, Boston 955 would
17 be the number assigned to the criminal top-echelon
18 informant?
19 MR. CONDON: Correct.
20 CONGRESSMAN LaTOURETTE: So your
21 testimony is you don't remember who 955 is?
22 MR. CONDON: No, I don't.
23 CONGRESSMAN LaTOURETTE: Do you remember
24 the head of the Boston office asking J. Edgar Hoover
25 to give you and Mr. Rico a raise?

1 MR. CONDON: No.
2 CONGRESSMAN DELAHUNT: Did you take the
3 raise?
4 MR. SCHUELKE: What was the question?
5 CONGRESSMAN LaTOURETTE: He asked him if
6 he took the raise.
7 MR. SCHUELKE: And your answer?
8 CONGRESSMAN LaTOURETTE: It says that
9 you and Mr. Rico used imaginative direction and
10 professional ingenuity to get this source, and that
11 this source was used in connection with Mr. Barboza.
12 Now, you have no recollection of that at
13 all? You don't remember being imaginative or being
14 ingenious back in 1997?
15 MR. CONDON: I don't have the faintest
16 idea who BS 955 C-TE is, or was; and I cannot even
17 think of some source that we had in common that we
18 used imaginative direction and professional
19 ingenuity, et cetera, et cetera.
20 CONGRESSMAN LaTOURETTE: So, 30 years
21 later, are we to read this as puffery by the head of
22 the Boston office in an attempt to get you guys a
23 raise?
24 MR. CONDON: I don't want to respond to
25 that.

1 CONGRESSMAN LaTOURETTE: But you don't
2 have any recollection of being either ingenious or
3 using any imaginative direction to develop a person?
4 MR. CONDON: I'd like to think that I've
5 used imaginative --
6 CONGRESSMAN LaTOURETTE: I'm sure over
7 the course of your career you have; but specifically
8 relative to the interviews of Mr. Barboza, do you
9 remember any such thing, personally?
10 MR. CONDON: No.
11 CONGRESSMAN LaTOURETTE: Okay; thank
12 you.
13 MR. WILSON: If I could just ask, how
14 did you get Barboza to talk?
15 MR. CONDON: I don't believe it's a
16 question so much of us getting him to talk.
17 I think that his personal situation at
18 the time, his confinement, I think he had a pending
19 habitual-criminal prosecution pending, his money
20 allegedly had been stolen by the Mafia, his close
21 associates were killed; the people I referred to
22 previously as Arthur Bratsos, Thomas De Prisco,
23 Joseph Amico were all killed in gangland fashion
24 about that time.
25 So what I'm trying to say briefly is, he

1 was in a position where he would be receptive to
2 contact by law-enforcement people, and may be
3 cooperative.
4 CONGRESSMAN LaTOURETTE: Where would the
5 identity of BS 955 C-TE be stored?
6 MR. CONDON: I don't know.
7 CONGRESSMAN LaTOURETTE: Where in the
8 office would any of this information be? Who kept
9 it? The agent handling it?
10 MR. CONDON: No; my recollection is
11 there would be a separate office or room which was
12 under lock and key, and controlled by one particular
13 individual.
14 CONGRESSMAN LaTOURETTE: Would that be
15 the special agent in charge, or someone assigned to
16 that task?
17 MR. CONDON: No, no; it would be someone
18 designated by the special agent in charge.
19 CONGRESSMAN LaTOURETTE: Do you remember
20 in 1965 who that person was in the Boston office?
21 MR. CONDON: I do not.
22 CONGRESSMAN LaTOURETTE: And then the
23 last question, on what Mr. Wilson was asking you at
24 this moment in time: when John Durham's group was
25 here in January of this year, did they go over

1 documents from the Justice Department with you?
2 MR. CONDON: I don't remember; I don't
3 remember.
4 They may have touched on some documents.
5 Not a lot; not a lot of documents. I don't
6 remember, truly.
7 CONGRESSMAN LaTOURETTE: Okay.
8 MR. WILSON: Is it possible for you to
9 ask your counsel and get a sense of how many
10 documents were shown to you?
11 MR. SCHUELKE: It's possible for him to
12 do that.
13 MR. WILSON: Will you please do that?
14 MR. SCHUELKE: We'll take it under
15 advisement.
16 Is this an appropriate time for us to
17 take a brief recess?
18 MR. WILSON: Absolutely.
19 MR. SCHUELKE: Good.
20 (Recess taken)
21 CONGRESSMAN DELAHUNT: Let me just go
22 back to that document again, the one where --
23 MR. CONDON: What number?
24 CONGRESSMAN DELAHUNT: This is 41. This
25 is the salary enhancement document.

1 In an attempt to refresh your memory,
2 Mr. LaTourette pursued this earlier, I just want to
3 point out to you, on Page 3 right at the beginning,
4 the second sentence, which says, "Baron initially
5 declined to testify, but through utilization of BS
6 955 C-TE, the agents were able to convey to Baron
7 that his present incarceration and potential for
8 continued incarceration for the rest of his life was
9 wholly attributable to LCN efforts."
10 Reading that, one would surmise that
11 there was an informant, an intermediary between you
12 and Paul Rico and Barboza; but you have no memory of
13 that?
14 MR. CONDON: No.
15 CONGRESSMAN DELAHUNT: None at all?
16 MR. CONDON: No.
17 CONGRESSMAN DELAHUNT: So this might
18 very well be the puffery that Mr. LaTourette was
19 speaking of? You mean, you never saw this
20 document --
21 MR. CONDON: Well, I wouldn't see this
22 document, anyway, if it was a recommendation from
23 the special agent in charge. I've never seen this
24 in my life. It's captioned Recommendations for
25 Quality Salary Increase --

1 CONGRESSMAN DELAHUNT: Because it's to
2 the director of the FBI from, the initials look like
3 Jim Handley's initials, in the SAC box.
4 In any event, bear with me for a moment,
5 because I have a different book of exhibits; but I
6 just wanted to run through some of these exhibits,
7 because we want to be clear that you have no
8 recollection of them, if that be the case.
9 Now, I have Exhibit 2 in my book, and
10 maybe our staff can help you, Dennis. This was
11 referred to earlier; it's a memorandum from Paul
12 Rico dated 10-19-64.
13 MR. CONDON: Exhibit No. 2?
14 MR. WILSON: It will be different.
15 CONGRESSMAN DELAHUNT: It will be
16 different. Maybe one of the staffers can --
17 MR. SCHUELKE: 10-16-64?
18 CONGRESSMAN DELAHUNT: 10-19-64.
19 MR. SCHUELKE: This was Exhibit 2 from
20 last year's package.
21 MR. WILSON: Yes, it is, which you
22 probably don't have; correct?
23 MR. SCHUELKE: I do.
24 MR. WILSON: Oh; you do.
25 Let me just draw your attention to the

1 second page, where it states, "Flemmi wants to kill
2 Deegan and wanted the informant to go with him on
3 the hit." That's a reference to Jimmy Flemmi.
4 MR. CONDON: This is Page 2?
5 MR. WILSON: Right.
6 MR. CONDON: What paragraph?
7 CONGRESSMAN DELAHUNT: Right before the
8 redacted part. "Flemmi advised that Deegan" --
9 CONGRESSMAN DELAHUNT: Right; that
10 paragraph there.
11 MR. CONDON: Okay.
12 CONGRESSMAN DELAHUNT: You have no
13 memory of this?
14 MR. CONDON: No, no.
15 CONGRESSMAN DELAHUNT: And you never saw
16 this until recently; in other words, as you read
17 through the list of exhibits?
18 MR. CONDON: I probably saw it when I
19 had access to some of the exhibits back in April or
20 May, when the hearings first started; and I don't
21 know whether this was one that was printed in the
22 newspaper. Some of these documents appeared in the
23 newspaper.
24 CONGRESSMAN DELAHUNT: Local newspapers?
25 MR. CONDON: And I could have seen it

1 then.
2 But my two occasions would be when it
3 was an exhibit by the Committee, or if it appeared
4 in the newspaper as a result of the judge's hearings
5 over in Middlesex County.
6 CONGRESSMAN DELAHUNT: And you don't
7 remember any conversation with Paul Rico relative to
8 this information, that Flemmi wanted to kill Deegan?
9 MR. CONDON: Absolutely not.
10 CONGRESSMAN DELAHUNT: Going on to
11 Exhibit 3, Mr. Schuelke, in the old book --
12 MR. SCHUELKE: Yes; thank you.
13 CONGRESSMAN DELAHUNT: -- and that was
14 dated October 20 --
15 MR. CONDON: The old book is here.
16 CONGRESSMAN DELAHUNT: Right -- of 1964,
17 and that's an Airtel; presumably a telegram?
18 MR. CONDON: Airtel. Exhibit 3?
19 CONGRESSMAN DELAHUNT: Right; Exhibit 3.
20 And that is addressed to the director of
21 the FBI from SAC Boston?
22 MR. CONDON: Mm-hmm.
23 CONGRESSMAN DELAHUNT: And just for the
24 record, J. Edgar Hoover was at that time the
25 director of the FBI?

1 MR. CONDON: Yes, he was, Congressman.
2 Thank you.
3 CONGRESSMAN DELAHUNT: Do you remember
4 when Mr. Hoover concluded his career with the FBI?
5 MR. CONDON: I remember that Mr. Hoover
6 died in 1972.
7 CONGRESSMAN DELAHUNT: 1972?
8 MR. CONDON: While on the job.
9 CONGRESSMAN DELAHUNT: While on the job.
10 So he would have been the director --
11 MR. CONDON: Yes.
12 CONGRESSMAN DELAHUNT: -- for purposes
13 of this deposition, up to 1972?
14 MR. CONDON: Correct.
15 CONGRESSMAN DELAHUNT: Going on, there's
16 a blank intervening page, and then there's a third
17 page in that particular exhibit.
18 Going to the last paragraph, where it
19 says, begins with "Jimmy" --
20 MR. SCHUELKE: "Jimmy also inquired"?
21 CONGRESSMAN DELAHUNT: Exactly. "Also
22 inquired about Edward Deegan." Just read through
23 it. (Pause)
24 MR. CONDON: I've read it.
25 CONGRESSMAN DELAHUNT: And the last

1 sentence there, "Therefore, they were of the opinion
2 that Flemmi was out to kill Deegan." You never saw
3 this particular Airtel?
4 MR. CONDON: I don't recall ever seeing
5 this.
6 CONGRESSMAN DELAHUNT: And you were
7 unaware that at or around this time there was
8 information that Flemmi wanted to kill Deegan?
9 MR. CONDON: That's my best memory.
10 CONGRESSMAN DELAHUNT: Going to Exhibit
11 5 in the old book.
12 MR. SCHUELKE: 3-9-65.
13 CONGRESSMAN DELAHUNT: Dated 3-9-65.
14 MR. SCHUELKE: We have it.
15 CONGRESSMAN DELAHUNT: Again, directed
16 to the FBI from SAC Boston. It's entitled Vincent
17 James Flemmi.
18 And just for the record, this is dated
19 March 9, 1965, some three days before the homicide
20 of Edward Deegan in Chelsea; you would agree with
21 that?
22 MR. CONDON: Would I agree with what?
23 CONGRESSMAN DELAHUNT: The fact that the
24 date of the murder of Deegan was March 12.
25 MR. CONDON: Yes. Sorry; yes.

1 CONGRESSMAN DELAHUNT: So this
2 particular --
3 MR. CONDON: Three days before.
4 CONGRESSMAN DELAHUNT: Three days
5 before.
6 The first sentence there is, "Vincent
7 James Flemmi a/k/a Jimmy Flemmi is being designated
8 as a target in the program," "this program"
9 referring to the top-echelon criminal informant
10 program.
11 Again, going to the second full
12 paragraph, "Flemmi also is believed to be involved
13 in the murders of the following individuals," and
14 then there is a redaction. (Pause)
15 It's just a very short statement.
16 MR. SCHUELKE: Is there a question?
17 CONGRESSMAN DELAHUNT: And the question
18 is, you did not participate in the drafting of this
19 memorandum, or were aware of it on or around the
20 date of its --
21 MR. CONDON: That is true; I did not
22 participate in the drafting, and I don't know
23 anything about it.
24 MR. WILSON: If I may, let me just ask a
25 follow-up to this.

1 What was it that you knew at the time
2 that made people think that Jimmy Flemmi might
3 become a top-echelon informant?
4 MR. CONDON: What was it I knew that
5 made me think Jimmy Flemmi may become a top-echelon
6 informant?
7 MR. WILSON: Correct.
8 MR. CONDON: I never knew that he had
9 the potential to be a top-echelon informant.
10 I didn't know anything that would lead
11 me to believe that he would be a good -- I use this
12 term loosely -- candidate for that type of a
13 position.
14 MR. WILSON: So you did not hear from
15 anybody else that they had reason to believe they
16 could --
17 MR. CONDON: No.
18 CONGRESSMAN DELAHUNT: Then going on to
19 Exhibit 6 in the old book.
20 MR. SCHUELKE: Rico, 3-15-65?
21 CONGRESSMAN DELAHUNT: Right; with a
22 date of contact of March 10, 1965. Again, the first
23 paragraph, if you could just read it through, with a
24 focus on the first sentence. It's all one sentence.
25 (Pause)

1 You are not familiar with this
2 particular report?
3 MR. CONDON: No.
4 CONGRESSMAN DELAHUNT: Filed by Paul
5 Rico?
6 MR. CONDON: No.
7 CONGRESSMAN DELAHUNT: Were you working
8 with Paul Rico at this time, March of 1965?
9 MR. CONDON: March 10 of 1965, I do not
10 recall whether I was working with Rico or not; but I
11 was not, to the best of my recollection, designated
12 to work with him on any particular assignment at
13 that time.
14 And in answer to the other part of your
15 question, I don't recall any discussion relative to
16 what's in this 209 with Mr. Rico.
17 CONGRESSMAN DELAHUNT: Going to Exhibit
18 7 in the old book, there's another telegram, dated
19 March 13, Boston to the Director.
20 MR. CONDON: Is this the start of it?
21 MR. SCHUELKE: No. This apparently --
22 CONGRESSMAN DELAHUNT: Advised on March
23 3, '65 --
24 MR. SCHUELKE: At least the legible part
25 at the top starts, "subject, Vincent James Flemmi,

1 a/k/a"?
2 CONGRESSMAN DELAHUNT: Right. And then
3 the first paragraph would begin with a redaction,
4 followed by "Advised on March 3, 1965."
5 MR. SCHUELKE: Yes, we have it.
6 CONGRESSMAN DELAHUNT: If you could just
7 read the first two paragraphs.
8 MR. CONDON: Which paragraph?
9 CONGRESSMAN DELAHUNT: The first two.
10 (Pause)
11 MR. CONDON: I've read it.
12 CONGRESSMAN DELAHUNT: And you have no
13 memory of this?
14 MR. CONDON: No.
15 CONGRESSMAN DELAHUNT: And then going on
16 to the next page, and directing your attention to
17 the first sentence on that page, "According to
18 Patriarca, another reason that Flemmi came to
19 Providence to contact him was to get the,"
20 quote-unquote, "'okay' to kill Teddy Deegan of
21 Boston."
22 MR. CONDON: And your question is?
23 CONGRESSMAN DELAHUNT: You've never --
24 MR. CONDON: I have no recollection of
25 having seen that.

1 CONGRESSMAN DELAHUNT: And you have no
2 memory of any discussion outside of this particular
3 document --
4 MR. CONDON: That's correct.
5 CONGRESSMAN DELAHUNT: -- of that
6 information?
7 MR. CONDON: That's correct.
8 CONGRESSMAN DELAHUNT: Exhibit 8 in the
9 old book -- and this is very redundant, but I just
10 think it's important -- it would have been the same
11 page, Dennis, except the next paragraph.
12 MR. CONDON: Exhibit 8?
13 CONGRESSMAN DELAHUNT: Right. And
14 again, it's the first sentence, in the next
15 paragraph.
16 MR. SCHUELKE: "Advised on 3-9" --
17 CONGRESSMAN DELAHUNT: Right.
18 "Advised on 3-9 that James Flemmi and
19 Joseph Barboza contacted Patriarca and explained
20 that they are having a problem with Teddy Deegan and
21 desired to get the 'okay' to kill him."
22 MR. CONDON: No memory of seeing that.
23 CONGRESSMAN DELAHUNT: No memory at all,
24 no memory of --
25 MR. CONDON: Any discussion.

1 CONGRESSMAN DELAHUNT: -- of any
2 discussion or information, absent this particular
3 Airtel, of the preceding?
4 MR. CONDON: Mm-hmm.
5 CONGRESSMAN DELAHUNT: This is Exhibit
6 10 in the old book. It's a memorandum to the
7 special agent in charge, dated 3-15 from Paul Rico.
8 The date of contact is indicated as March 13 of
9 1965. If you could read that.
10 MR. CONDON: "Informant advised"
11 MR. SCHUELKE: Do you want him to read
12 it aloud?
13 CONGRESSMAN DELAHUNT: You can read it
14 to yourself.
15 MR. CONDON: Oh; okay. (Pause)
16 I've read it.
17 CONGRESSMAN DELAHUNT: Now, the date of
18 contact is March 15, 1965. You would agree that
19 that would be the day after the Deegan murder?
20 MR. CONDON: Yes.
21 CONGRESSMAN DELAHUNT: And as you read
22 through that particular memorandum, there is no
23 reference in that memorandum to either Joseph
24 Salvati, Peter Grieco, Peter Limone or Henry
25 Tameleo; is that accurate?

1 MR. CONDON: That is accurate.
2 CONGRESSMAN DELAHUNT: And you have no
3 memory of this particular memorandum?
4 MR. CONDON: I do not.
5 CONGRESSMAN DELAHUNT: And Paul Rico
6 never informed you in any way of the --
7 MR. CONDON: Not to the best of my
8 recollection; he never did.
9 CONGRESSMAN DELAHUNT: And in the normal
10 course of events, or the administrative practice of
11 the office as it was then constituted back in
12 Boston, this memorandum would have gone to his
13 supervisor?
14 MR. CONDON: Yes.
15 CONGRESSMAN DELAHUNT: Which would have
16 been John Kehoe?
17 MR. CONDON: Yes.
18 CONGRESSMAN DELAHUNT: And then it would
19 have been put on the desk of the special agent in
20 charge at the time?
21 MR. CONDON: Well, it would go to the
22 supervisor, and there's some blackouts on here that
23 indicate what I assume would have been the
24 dissemination. It's blacked out.
25 Maybe it's an assumption on my part;

1 but, since the document on Page 2 says that the
2 information has been disseminated by Special Agent
3 Donald V. Shannon to Captain Robert Renfrew,
4 National Academy graduate, of Chelsea, Mass. PD., it
5 may be that a copy was designated for Shannon, but I
6 don't know that.
7 CONGRESSMAN DELAHUNT: Special Agent
8 Shannon, did you work with him during --
9 MR. CONDON: For a short period of time.
10 He has been deceased for many, many, many years. I
11 can't remember when he left the FBI.
12 I do know that John Kehoe became
13 director of security at Boston Edison Company in
14 1978; and he replaced Mr. Shannon, who had been
15 director of security at Boston Edison Company. So
16 my best guess is that Mr. Shannon probably passed
17 away in about 1977 or '76.
18 CONGRESSMAN DELAHUNT: Thank you.
19 CONGRESSMAN LaTOURETTE: Can I?
20 Did Special Agent Shannon have a special
21 job in the office?
22 MR. CONDON: I don't believe he had a
23 special job.
24 He was a part of the so-called organized
25 crime squad. Mr. Shannon probably had the Chelsea,

1 Massachusetts Police Department assigned to him for
2 liaison purposes. At some time, various agents
3 would have an assignment to maintain contact with
4 the Chelsea Police Department or the Medford Police
5 Department; and I'm speculating that Mr. Shannon
6 probably had the liaison with the Chelsea Police
7 Department, and that's why he would have
8 disseminated the information to the Chelsea Police
9 Department.
10 CONGRESSMAN DELAHUNT: A follow-up on
11 the question by Congressman LaTourette; and I think
12 this is the direction that Mr. Wilson was going when
13 he talked about the responsibility for the Patriarca
14 investigation.
15 When was the organized-crime squad
16 formed, if you have a memory? And who were its
17 members? And who was the supervisor during the time
18 frame from 1963 to 1970?
19 MR. CONDON: The best I can say on that
20 is, the organized-crime squad was probably formed
21 during the tenure of Robert Kennedy as the Attorney
22 General. I'm going to estimate 1962, 1963. It's
23 strictly an estimate.
24 At the time when it was first formed, it
25 was a very small unit, and it probably had five

1 agents on it at the time when it was first formed.
2 One was Ronald Weafer, now deceased,
3 W-e-a-f-e-r, Ronald; now deceased.
4 One was Edmund McNamara, former
5 Commissioner of the Boston Police Department, now
6 deceased.
7 John Kehoe, still living, but in bad,
8 bad physical health.
9 Leonard Frizzoli, Sr., who is still
10 alive and about 85 years of age.
11 Those are the four that come to my mind
12 now.
13 CONGRESSMAN DELAHUNT: And this would
14 have been in the time frame of 1965, 1966, 1967?
15 MR. CONDON: I think I'm leaning more
16 to, the formation would be during the Robert Kennedy
17 term as Attorney General. I keep thinking '62, '63.
18 It could have been later; I'm not sure.
19 CONGRESSMAN DELAHUNT: About the time of
20 the Deegan murder in 1965, to the best of your
21 memory, on the OC squad here in Boston, how many
22 members were there; and who was the supervisor?
23 MR. CONDON: In answer to the second
24 part of the question, my recollection is that
25 Mr. Kehoe was the supervisor until he left about

1970; but -- I realize I'm repeating myself -- I'm not clear when he took over as the supervisor, and I'm not clear, I can't remember the person he replaced as the supervisor.

And maybe he didn't replace anyone. Maybe it was the start of the unit, with him becoming the supervisor right then.

CONGRESSMAN DELAHUNT: You were part of the unit?

MR. CONDON: I was not in the original group. I was transferred into the unit after the formation.

CONGRESSMAN DELAHUNT: Approximately when would that have been?

MR. CONDON: When would that have been? I'm going to guess 1964, 1965.

CONGRESSMAN DELAHUNT: Was Paul Rico a member of that unit?

MR. CONDON: I do remember that he did become a member of that unit, but I don't remember when.

CONGRESSMAN DELAHUNT: Do you remember if he was there when you became a member of the unit, or did you come on board subsequently?

MR. CONDON: To the best of my

1 recollection, I think I went on before he did.
2 CONGRESSMAN DELAHUNT: So we would have
3 Kehoe as the supervisor, yourself and Rico as two of
4 the team members --
5 MR. CONDON: Newcomers; fairly newcomers
6 to that unit.
7 CONGRESSMAN DELAHUNT: And that would
8 have been in '64, '65?
9 MR. CONDON: It could have been as far
10 back as '62. I don't know when Robert Kennedy was
11 the AG.
12 CONGRESSMAN DELAHUNT: Did you have team
13 briefings?
14 MR. CONDON: Did we have team --
15 CONGRESSMAN DELAHUNT: Right.
16 MR. CONDON: On an intermittent basis,
17 the squad supervisor would have a meeting of squad
18 members, yes.
19 CONGRESSMAN DELAHUNT: And what would be
20 discussed during those meetings?
21 MR. CONDON: Usually it would be
22 anything that was of major importance that was going
23 on in the unit, would be discussed.
24 CONGRESSMAN DELAHUNT: During that time
25 frame, was the major emphasis on the Patriarca

1 family here in New England?
2 MR. CONDON: No question about it.
3 MR. WILSON: Were the Patriarca logs
4 circulated to the members?
5 MR. CONDON: I don't recall that any
6 Patriarca logs were circulated.
7 MR. WILSON: Who had access to them --
8 MR. CONDON: Are you talking about
9 general distribution?
10 MR. WILSON: The logs of the recordings
11 of 168 Atwells Avenue in Providence.
12 MR. CONDON: I don't think logs were
13 ever disseminated, logs.
14 MR. WILSON: Were the tapes listened to
15 by members of the organized-crime section?
16 MR. CONDON: To the best of my
17 recollection, there was one individual who would
18 monitor the tapes. In the early stages, they would
19 be monitored in Rhode Island.
20 MR. WILSON: What I'm getting at is, the
21 OC group, did they or did they not get access to the
22 information that was obtained through surveillance
23 microphone in Patriarca's headquarters?
24 MR. CONDON: The information would be
25 monitored, and the person monitoring the information

1 would bring it to the attention of the supervisor,
2 and the supervisor would decide what dissemination
3 was necessary to get the most benefit out of this
4 information.
5 MR. WILSON: If, for example, there was
6 an indication that Patriarca was involved, or was
7 potentially involved, in a murder or a conspiracy to
8 commit murder, would that be the type of information
9 that would be disseminated throughout the OC group?
10 MR. CONDON: I really can't answer that;
11 because Patriarca was the major focus, and anyone in
12 the organized-crime group would be interested in
13 Raymond Patriarca, because he was supposed to be one
14 of the nine commission members that ran the Mafia
15 for the whole United States of America.
16 So I can't answer.
17 MR. WILSON: Let me ask the question in
18 the negative. To us, it would seem extraordinary if
19 that information was not disseminated to the OC
20 group. Is that a fair response from us?
21 MR. CONDON: Repeat, please, exactly
22 what information you're talking about now.
23 MR. WILSON: Well, any potential
24 involvement in a murder or a conspiracy to commit
25 murder. From our perspective now, it would seem

1 that that's precisely the sort of information that
2 would be disseminated amongst the group.
3 MR. CONDON: I can't answer that
4 question with certainty. I don't know.
5 CONGRESSMAN DELAHUNT: Can I just go
6 through, and I think you've seen these exhibits
7 before.
8 Exhibit 11 in the old book; I would
9 identify it as a statement by Lieutenant Thomas
10 Evans in the Chelsea Police Department. Have you
11 had an opportunity in the past to read it?
12 MR. CONDON: I've read it since it came
13 out as an exhibit in the Congressional hearings.
14 CONGRESSMAN DELAHUNT: In this
15 particular report filed by Lieutenant Evans -- and I
16 don't see a date on it, but it's a lengthy report of
17 some three pages -- is there any reference there to
18 either Joseph Salvati, Peter Limone, Henry Tameleo
19 or Louis Grieco?
20 MR. CONDON: I'd have to look at it
21 again.
22 CONGRESSMAN DELAHUNT: Take your time.
23 I'd characterize this as a report on the
24 murder of Edward Deegan. (Pause)
25 MR. CONDON: I've had a chance to scan

1 this. Now, what is the question, again?
2 CONGRESSMAN DELAHUNT: Is there any
3 reference in that report to either Peter Limone,
4 Joseph Salvati, Henry Tameleo or Louis Grieco?
5 MR. CONDON: I don't see any.
6 CONGRESSMAN DELAHUNT: And have you ever
7 seen this report?
8 MR. CONDON: I don't recall ever seeing
9 this report until it became an exhibit before your
10 committee in Washington in April or May, this past
11 April or May.
12 CONGRESSMAN DELAHUNT: Thank you.
13 Going on to the next exhibit, which
14 would be 12, which is a report of information
15 received, a City of Boston Police Department report;
16 it's dated March 14, 1965.
17 MR. CONDON: I first saw this when I had
18 access to the exhibits that were marked accordingly
19 at a Congressional committee.
20 I had never seen this before, and I was
21 quite surprised to see it; because it allegedly is
22 an informant report put together by the Boston
23 Police Department, and the Boston Police Department
24 had officers assigned to the Suffolk County District
25 Attorney's office who were involved in the Deegan

1 murder investigation and the prosecution.
2 And I'm surprised to see this informant
3 report from an unnamed Boston police officer that
4 never, in my opinion, found its way into the
5 investigation of the Suffolk County District
6 Attorney's office, which had Boston police officers
7 doing their investigations.
8 CONGRESSMAN DELAHUNT: And you would
9 agree that in this report, also, there is no mention
10 of Joe Salvati, Peter Limone, Henry Tameleo and
11 Louis Grieco?
12 MR. CONDON: That's my recollection,
13 yes.
14 CONGRESSMAN DELAHUNT: If you could just
15 look at it quickly.
16 MR. CONDON: Yes, I just looked at it.
17 CONGRESSMAN DELAHUNT: Thank you.
18 Just for further identification, this is
19 a City of Boston Police Department report under the
20 Bureau of Inspectional Services, Intelligence
21 Division. Again, that's dated March 14, two days
22 after the March 12 murder of Deegan.
23 MR. CONDON: Correct.
24 CONGRESSMAN DELAHUNT: Do you remember
25 who was the superintendent in charge of the Bureau

1 of Inspectional Services?
2 MR. CONDON: We're going back here.
3 CONGRESSMAN DELAHUNT: I know.
4 MR. CONDON: This is dated March 1965.
5 I really don't remember, but I noticed
6 that it's the Intelligence Division of the Bureau of
7 Inspectional Services. I don't know who that would
8 have been back then. I'm sure their records would
9 show it. I don't remember.
10 CONGRESSMAN DELAHUNT: Thank you.
11 And then going to Exhibit 13, again,
12 this is dated March 15, 1965. This obviously comes
13 from the Mass. State Police, and it's a report from
14 Detective Lieutenant Inspector Richard Cass.
15 Obviously, the subject is the homicide of Ted
16 Deegan.
17 If you can again peruse, scan, this
18 report; and I'll pose the same question, whether
19 there is any reference to Joseph Salvati, Peter
20 Limone, Louis Grieco or Henry Tameleo in this
21 particular report.
22 MR. CONDON: I've read this report
23 before, and I do not see any of the names you've
24 just asked about mentioned in the report.
25 CONGRESSMAN DELAHUNT: Also, just for

1 the record, there's a reference in here. On the
2 last page, the second page --
3 MR. SCHUELKE: I'm sorry? On the --
4 CONGRESSMAN DELAHUNT: Let me read the
5 sentence to you.
6 MR. SCHUELKE: Are we still on --
7 CONGRESSMAN DELAHUNT: This is Exhibit
8 15.
9 MR. SCHUELKE: Which page?
10 CONGRESSMAN DELAHUNT: Page 2 of
11 Exhibit -- 13; I'm sorry.
12 MR. CONDON: Thirteen; okay.
13 MR. SCHUELKE: Yes.
14 CONGRESSMAN DELAHUNT: The last sentence
15 is, "The driver took off at a fast rate of speed and
16 took a screeching turn for the right on Broadway.
17 The captain described the driver as Romeo Martin,
18 and the man in the back seat as stocky with dark
19 hair and a bald spot in the center of his head."
20 MR. CONDON: What about that statement?
21 CONGRESSMAN DELAHUNT: The only question
22 I would have: You obviously have met Vincent
23 Flemmi?
24 MR. CONDON: Pardon?
25 CONGRESSMAN DELAHUNT: You know, you've

1 met, when he was alive, Vincent Flemmi?
2 MR. CONDON: I knew him.
3 CONGRESSMAN DELAHUNT: Did he have a
4 bald spot in the back of his head?
5 MR. CONDON: Yes, he did.
6 CONGRESSMAN DELAHUNT: Moving on to
7 Exhibit 15 in the old book, this is an Airtel again,
8 and it's dated March 19 of 1965, and it's to the
9 Director from the SAC in Boston. It's entitled, The
10 Criminal Intelligence Program, Boston Division.
11 By the way, you had never seen that
12 State Police report prior to --
13 MR. CONDON: No, I had not; I had not.
14 CONGRESSMAN DELAHUNT: Going to the
15 third paragraph, if you could just read it briefly.
16 MR. SCHUELKE: "Informants report"?
17 CONGRESSMAN DELAHUNT: Informants
18 report"; and note that that's a plural. (Pause)
19 MR. CONDON: I've read the paragraph you
20 indicated.
21 CONGRESSMAN DELAHUNT: Again, you had
22 never seen this report during your service with the
23 FBI?
24 MR. CONDON: Not to my best memory, no.
25 CONGRESSMAN DELAHUNT: You're telling us

1 today that to the best of your recollection, you saw
2 this report as a result of the Committee's work in
3 the --
4 MR. CONDON: That's correct.
5 CONGRESSMAN DELAHUNT: And again, there
6 is no reference in this report to the Director of
7 the FBI of --
8 MR. CONDON: Would you repeat that,
9 please?
10 CONGRESSMAN DELAHUNT: There is nothing
11 in this particular report directed to the Director
12 of the FBI from the special agent in charge
13 regarding Joseph Salvati, Peter Limone, Henry
14 Tameleo and Louis Grieco?
15 MR. CONDON: Not that I can see.
16 MR. WILSON: Can I ask a quick question
17 here?
18 When information was transmitted to the
19 Director of the FBI, was there generally a good-
20 faith effort to make sure that that information was
21 accurate?
22 MR. CONDON: Oh, I would think so, yes.
23 Yes, I would think so.
24 MR. WILSON: To ask the question a
25 different way, not all information from informants

1 was forwarded to the Director of the FBI; correct?
2 MR. CONDON: I think you're right.
3 CONGRESSMAN DELAHUNT: Again, on the
4 next page of this particular exhibit -- I promise
5 I'll conclude and let Mr. LaTourette pick up very
6 soon -- on the second page, four paragraphs down,
7 "It should be noted that this information was
8 furnished to the Chelsea PD, and it has been
9 established by the Chelsea Police that Roy French,
10 Barboza, Flemmi, Casessa, and Martin were all
11 together at the Ebb Tide."
12 MR. CONDON: I see it.
13 CONGRESSMAN DELAHUNT: And you had never
14 had knowledge of that?
15 MR. CONDON: I have no memory of having
16 been aware of that.
17 CONGRESSMAN DELAHUNT: Going to Exhibit
18 16 in the old book, this is the special agent in
19 charge in Boston.
20 The name of the special agent is
21 redacted; the date is April 4, '65. It's an
22 informant report, with the date of contact being
23 March 23, eleven days after the murder of
24 Mr. Deegan.
25 If you could just skim that. (Pause)

1 MR. CONDON: I've read it.
2 CONGRESSMAN DELAHUNT: Could you read
3 the next page, too, please?
4 MR. CONDON: The second page?
5 CONGRESSMAN DELAHUNT: Yes.
6 MR. CONDON: I've read it.
7 CONGRESSMAN DELAHUNT: I would note that
8 this is a report from a PCI; would you agree with
9 that?
10 MR. CONDON: I'm trying to find where it
11 says PCI.
12 CONGRESSMAN DELAHUNT: The first part of
13 the letter.
14 MR. CONDON: All right.
15 MR. SCHUELKE: I think his confusion is
16 the report, the document, is not from the PCI. The
17 report indicates that the PCI --
18 CONGRESSMAN DELAHUNT: Advised.
19 MR. SCHUELKE: -- advised.
20 CONGRESSMAN DELAHUNT: Right.
21 So your definition of a PCI is an
22 individual who's being considered for the status of
23 a confidential informant for the Bureau?
24 MR. CONDON: Correct.
25 CONGRESSMAN DELAHUNT: Again, references

1 are made to Barboza, Jimmy Flemmi, and a statement
2 that the informant, and I'll read it, makes. He
3 stated that "Barboza claims that he had shot Teddy
4 Deegan with a 45 caliber gun."
5 There is no reference here to either
6 Joseph Salvati, Louis Grieco, Peter Limone or Henry
7 Tameleo?
8 MR. CONDON: Not that I can see.
9 CONGRESSMAN DELAHUNT: And you never saw
10 this document before, other than as a result of the
11 Committee's work?
12 MR. CONDON: To the best of my
13 recollection.
14 CONGRESSMAN DELAHUNT: Not during your
15 tenure as a special agent in charge?
16 MR. CONDON: No.
17 MR. SCHUELKE: I note that nor is there
18 any indication in this document that Flemmi was a
19 participant.
20 CONGRESSMAN DELAHUNT: The next
21 document, of April 22, 1965 -- that's Exhibit 17 --
22 is from the correlator. Presumably someone that is
23 bringing all of these various documents together and
24 correlating them.
25 On Page 2, at the top of the right-hand

1 corner of the page, it says, Memo to SAC, Boston,
2 dated October 6, 1964.
3 Then on September 28, 1964, then we go
4 into that redaction; and it proceeds, "Stated that
5 while he was operating in the Boston area, he was
6 most closely associated with," blank. "He stated
7 that primary operation is a loan shark business, and
8 that he employed both Jimmy and Steve Flemmi as his
9 enforcers."
10 Are you aware that Steve Flemmi was
11 being targeted as a potential confidential informant
12 at that point in time?
13 MR. CONDON: Stevie Flemmi?
14 CONGRESSMAN DELAHUNT: Stevie Flemmi.
15 MR. CONDON: I think I'd have to say
16 that I had a general impression that there was an
17 effort to try to develop him as an informant, yes.
18 CONGRESSMAN DELAHUNT: Had you made any
19 contact with Stevie Flemmi at that point?
20 MR. CONDON: Repeat the question.
21 CONGRESSMAN DELAHUNT: Had you
22 personally been involved in that effort to develop
23 Steve Flemmi?
24 MR. CONDON: No, no.
25 CONGRESSMAN DELAHUNT: When did you

1 first meet Steve Flemmi?
2 MR. CONDON: I cannot accurately tell
3 you when I first met him; but in the course of my
4 duties with the organized-crime squad, maybe in the
5 earlier days, in '64, '65, whatever, I probably
6 would have seen him at Dudley Street, Roxbury, with
7 a various group of his associates.
8 Of course, our purpose in the area at
9 the time was to see who was together, to try to
10 ascertain what their activities were, where they
11 were spending most of their time.
12 And the short answer to your question
13 is, I probably first saw him in '63, '64, in the
14 Dudley Street area of Roxbury, at a garage where
15 they used to hang out.
16 CONGRESSMAN DELAHUNT: Did he eventually
17 become an informant?
18 MR. CONDON: I can't go from my personal
19 memory; but going from the details that were given
20 at the mob hearings before Judge Wolf, he did
21 eventually become an informant.
22 CONGRESSMAN DELAHUNT: Who was his
23 handler?
24 MR. CONDON: Pardon?
25 CONGRESSMAN DELAHUNT: Who handled

1 Stevie Flemmi?
2 MR. CONDON: The testimony before Judge
3 Wolf was that Mr. Rico did.
4 CONGRESSMAN DELAHUNT: Mr. Rico. But
5 did you ever have conversations with Mr. Rico
6 relative to Steve Flemmi as an informant?
7 MR. CONDON: I don't recall. I really
8 don't recall.
9 CONGRESSMAN DELAHUNT: Steve?
10 CONGRESSMAN LaTOURETTE: All right.
11 Just to back up, and I have a new book;
12 I apologize for that. But Exhibit No. 17 --
13 MR. CONDON: This is in the new book?
14 CONGRESSMAN LaTOURETTE: In the new
15 book -- is a report filed by you and Mr. Rico as a
16 result of the interview that Mr. Barboza had at
17 Walpole prison on or about March 8, 1967.
18 MR. SCHUELKE: I'm sorry; the exhibit
19 number, once again?
20 CONGRESSMAN LaTOURETTE: Seventeen.
21 CONGRESSMAN DELAHUNT: In the new book.
22 CONGRESSMAN LaTOURETTE: In the new
23 book, new 17.
24 MR. SCHUELKE: Thank you.
25 CONGRESSMAN LaTOURETTE: Basically, this

1 establishes a date for us of March 8, 1967. It also
2 goes through on Page 1 the history that you were
3 talking about, of his friends being killed and his
4 money being stolen.
5 At the bottom of the second page,
6 there's a very large redaction; and then there is a
7 paragraph which says, "Baron knows what has happened
8 in practically every murder that has been committed
9 in this area."
10 Do you see where it says that "he would
11 never provide information that would allow James
12 Vincent Flemmi to 'fry'"? Do you see where I'm
13 referring to in that document?
14 MR. CONDON: Yes, I do.
15 CONGRESSMAN DELAHUNT: And is that your
16 recollection of your conversation with Mr. Barboza
17 on March 8?
18 MR. CONDON: I don't have any
19 recollection of the conversation; but reading what I
20 have in front of me, I think it's an accurate
21 portrayal of what he said.
22 CONGRESSMAN DELAHUNT: Do you recall
23 whether you or Mr. Rico prepared this document, this
24 report?
25 MR. CONDON: I would say that this

1 document was prepared by both of us,
2 contemporaneously.
3 CONGRESSMAN LaTOURETTE: Can you tell me
4 how that works? Would you both speak to a
5 stenographer?
6 MR. CONDON: Yes. We would both sit
7 together and speak to her.
8 In those days, it would be to speak to a
9 stenographer. I don't know what it is now.
10 CONGRESSMAN LaTOURETTE: And then at the
11 conclusion, would a finished copy be shown to each
12 of you to sign off on for corrections?
13 MR. CONDON: Usually, I think, in a
14 document that would go to the Justice Department or
15 whatever, or the prosecutor, or the U.S. Attorney --
16 I'm surprised that there are not any initials of
17 either or both on there, but there aren't any on
18 there.
19 MR. SCHUELKE: Initials, like what do
20 you mean?
21 MR. CONDON: Either my initials or
22 Rico's initials.
23 MR. SCHUELKE: Look at the top of Page
24 2.
25 MR. CONDON: Top of what?

1 MR. SCHUELKE: The very top of Page 2;
2 Bates No. 787.
3 MR. CONDON: Up here?
4 MR. SCHUELKE: Mm-hmm.
5 MR. CONDON: Oh; I'm talking about
6 handwritten initials.
7 MR. SCHUELKE: Oh; I see.
8 MR. CONDON: And I don't see any on
9 there.
10 CONGRESSMAN LaTOURETTE: I've got you.
11 MR. CONDON: I don't mean typed
12 initials.
13 MR. SCHUELKE: I see.
14 CONGRESSMAN LaTOURETTE: I've got you.
15 The question I have is this. The plain
16 meaning of that to me is that Mr. Barboza is
17 indicating that he will provide information on
18 murders, but the one thing he won't do is provide
19 you with information that will put James Vincent
20 Flemmi in a situation where he could face a capital-
21 murder charge. Am I being --
22 MR. CONDON: I would have to say that
23 that looks like a true statement, yes.
24 CONGRESSMAN LaTOURETTE: And does that
25 fairly comport with your memory?

1 MR. CONDON: My memory after all these
2 years, reading the report, I would say yes.
3 CONGRESSMAN LaTOURETTE: Can you recall
4 in your years of contact with Mr. Barboza his ever
5 providing information to you that put Mr. Flemmi in
6 a situation where he could have been charged with
7 capital murder?
8 MR. CONDON: I cannot recall any such
9 instance.
10 CONGRESSMAN LaTOURETTE: The reason that
11 this document is important to me is because you
12 interviewed Mr. Barboza with Mr. Rico present.
13 Congressman Delahunt has been going over
14 with you documents that were generated in 1965, many
15 of them by Mr. Rico. I think you've indicated you
16 haven't seen most or all of them, if I remember
17 right.
18 MR. CONDON: Correct.
19 CONGRESSMAN LaTOURETTE: But a fair
20 reading of those documents created contemporaneously
21 with the murder of Teddy Deegan is that Mr. Rico was
22 in possession of at least confidential-informant
23 information indicating that Mr. Barboza, Mr. Flemmi
24 and three or four others were present at and
25 committed the murder of Teddy Deegan.

1 Is that not a fair reading of the
2 documents that you have reviewed today?
3 MR. CONDON: I'd have to say that seems
4 to be a fair reading on your part.
5 CONGRESSMAN LaTOURETTE: After this
6 interview and subsequent interviews with
7 Mr. Barboza, you're aware that he's going to give
8 testimony in the Deegan murder trials.
9 MR. CONDON: Well, I don't think that's
10 the case. I don't think that at this point --
11 CONGRESSMAN LaTOURETTE: No, no; at some
12 point. I'm sorry; maybe I stated it inartfully.
13 MR. CONDON: Eventually.
14 CONGRESSMAN LaTOURETTE: Eventually,
15 you're aware he's going to give testimony in the
16 Deegan trials against the individuals indicted.
17 And you're aware that in the testimony
18 that he intends to give, he doesn't mention Jimmy
19 Flemmi?
20 MR. CONDON: You'll have to repeat that.
21 CONGRESSMAN LaTOURETTE: Sure.
22 You're aware sometime leading up to the
23 trial, or maybe during the trial, that he's not
24 going to say that Jimmy Flemmi -- James Vincent
25 Flemmi -- participated in the murder of Ted Deegan?

1 MR. CONDON: I don't know how to answer
2 that question the way it's posed to me.
3 CONGRESSMAN LaTOURETTE: Well, did you
4 ever have a conversation with Mr. Barboza where he
5 indicated to you that Jimmy Flemmi had participated
6 in the murder of Teddy Deegan?
7 MR. CONDON: No.
8 CONGRESSMAN LaTOURETTE: Did you prepare
9 him for his testimony in the Deegan trials?
10 MR. CONDON: No.
11 CONGRESSMAN LaTOURETTE: Was that
12 handled by the local District Attorney's office?
13 MR. CONDON: Correct.
14 CONGRESSMAN LaTOURETTE: Were you aware
15 of any of what he had proposed that he was going to
16 testify to?
17 MR. CONDON: I have no recollection of
18 being informed of what he was going to testify to.
19 He was made available to the Suffolk County District
20 Attorney investigators and prosecutors.
21 CONGRESSMAN LaTOURETTE: You were aware
22 that Jimmy Flemmi was not under indictment for the
23 murder of Teddy Deegan?
24 MR. CONDON: Yes.
25 CONGRESSMAN LaTOURETTE: And he wasn't

1 part of these trials that we're talking about?
2 MR. CONDON: Yes.
3 CONGRESSMAN LaTOURETTE: And so, maybe
4 I'm just being too obtuse, but it seems pretty plain
5 that if Mr. Barboza was going to give testimony that
6 Flemmi was a murderer, he would be indicted with
7 these other guys; that's pretty common sense, isn't
8 it?
9 MR. CONDON: That's correct.
10 CONGRESSMAN LaTOURETTE: The question I
11 have is, as you leave the prison on March 8, 1967,
12 and you have subsequent chats with Mr. Barboza, he's
13 made this statement to you and Mr. Rico, that he's
14 not going to give information that would put
15 Mr. Flemmi in capital-murder jeopardy.
16 Mr. Rico is in possession of a lot of
17 information, whether it's true or not, but a lot of
18 information dating back to 1965 that Mr. Flemmi,
19 Mr. Barboza and other folks murdered Teddy Deegan;
20 none of them being Joe Salvati and some of the
21 others that were eventually indicted.
22 My question is, did you and Mr. Rico
23 ever sit down and have a conversation where he did
24 one of those, you know, "I should have had a V-8,"
25 or a light bulb goes off?

1 MR. CONDON: No.
2 CONGRESSMAN LaTOURETTE: Did he say,
3 "Dennis, this doesn't square with what I've known
4 for two years"?
5 MR. CONDON: Absolutely not.
6 CONGRESSMAN LaTOURETTE: Is there any
7 doubt in your mind, as you have gone through the
8 documents with us today, that Mr. Rico had
9 information that was at conflict with what the
10 theory of the prosecution was in the Deegan case?
11 MR. CONDON: Give me that question
12 again, please.
13 CONGRESSMAN LaTOURETTE: Sure.
14 Is there any doubt in your mind as an
15 experienced law-enforcement officer that Mr. Rico
16 was in possession of information that was at
17 conflict with what Mr. Barboza was going to testify
18 happened to Teddy Deegan?
19 MR. CONDON: If I go around the block on
20 answering this, you can just bring me back to it.
21 CONGRESSMAN LaTOURETTE: Sure.
22 MR. CONDON: The information that you're
23 talking about that Mr. Rico got from an informant,
24 as I can see it in this 209, was disseminated to the
25 Chelsea Police Department. That was the information

1 as given to him by an informant.
2 So I don't see what the problem is here.
3 CONGRESSMAN LaTOURETTE: Let me say
4 this. You're right; if that's true, if all of this
5 informant information that Mr. Delahunt went through
6 with you went from Mr. Rico to the Shannon fellow to
7 Chelsea, you're right.
8 And then my question would be, I mean,
9 is there any doubt in your mind that Mr. Rico and
10 the Chelsea Police Department had the information
11 that indicated that what Barboza testified to in the
12 Deegan murder trials was different from the
13 information that they developed in 1965?
14 MR. CONDON: I must be losing it,
15 because I don't follow your question.
16 CONGRESSMAN LaTOURETTE: You're not
17 losing it; it's because I'm asking it in a bad way.
18 Rico -- and I think what you were
19 telling me before is Chelsea, because Shannon was
20 supposed to hand the stuff over to Chelsea -- had
21 how many; four reports?
22 CONGRESSMAN DELAHUNT: I think five.
23 CONGRESSMAN LaTOURETTE: Five reports
24 authored by Mr. Rico that talked about how Teddy
25 Deegan was murdered, and that comes from 1965.

1 None of those five reports mention
2 Mr. Salvati, as Mr. Delahunt has talked to you
3 about; they all, except for the one identified by
4 your counsel, indicate that Mr. Barboza and James
5 Vincent Flemmi were actually present and were
6 participating in the murder of Teddy Deegan.
7 That isn't what Mr. Barboza was going to
8 testify to in the Deegan trial, is it?
9 MR. CONDON: Mr. Barboza was going to
10 testify in the Deegan trial as to the information
11 that he furnished to us about the murder.
12 The information in the informant
13 reports, to my way of thinking, is not 100 percent
14 gospel.
15 CONGRESSMAN LaTOURETTE: I've got you.
16 MR. CONDON: In past years, attorneys
17 always looked askance at any information that came
18 from an informant; but defense attorneys, when it
19 appears to serve a purpose, are willing to accept it
20 as 100 percent gospel truth.
21 CONGRESSMAN LaTOURETTE: I used to be
22 both a prosecutor and defense lawyer.
23 MR. CONDON: So you know both sides.
24 CONGRESSMAN LaTOURETTE: I've been on
25 both sides of this equation.

1 My only question was that the
2 confidential-informant information developed by
3 Mr. Rico in 1965, true or not true, was different
4 than what Mr. Barboza said happened to Teddy Deegan
5 when he testifies later.
6 MR. CONDON: I'd have to agree to that,
7 yes.
8 CONGRESSMAN DELAHUNT: Excuse me; could
9 I ask a question?
10 CONGRESSMAN LaTOURETTE: Sure.
11 CONGRESSMAN DELAHUNT: Those that would
12 have had access to the information and documents
13 that we just went through would have been Paul Rico;
14 the supervisor, who to the best of your recollection
15 would have been Jack Kehoe; the special agent in
16 charge; and the Director of the FBI --
17 MR. CONDON: In answer to that --
18 CONGRESSMAN DELAHUNT: Let me finish,
19 because this is a longer question.
20 -- the Chelsea Police Department, and I
21 think it's Captain Renfrew; the Boston Police, a
22 report that surfaced there in the Intelligence
23 Division; and a report done by Lieutenant Cass of
24 the Massachusetts State Police.
25 This information would have been

1 available from all of those sources. That's a fair
2 statement?
3 MR. SCHUELKE: Would have been available
4 from all those sources?
5 CONGRESSMAN DELAHUNT: No; that they
6 were reports from --
7 MR. SCHUELKE: All those people were
8 privy to this information?
9 CONGRESSMAN DELAHUNT: Thank you,
10 counsel.
11 MR. SCHUELKE: Is that correct?
12 MR. CONDON: It appears to be so from
13 reading the
14 CONGRESSMAN DELAHUNT: From what you can
15 gather from these documents?
16 MR. CONDON: From the exhibits, yes.
17 CONGRESSMAN DELAHUNT: I'm sorry.
18 CONGRESSMAN LaTOURETTE: Don't be sorry.
19 As I understood your sort of advisal on
20 confidential or informant information, some of it's
21 junk, some of it's great; but obviously, it's used
22 and you check it out.
23 The information that Mr. Rico developed
24 in 1965 had a group of individuals at the Ebb Tide
25 lounge who leave and come back 45 minutes later, at

1 the time that Mr. Deegan meets his maker; and the
2 information describes who's involved as the same
3 people at the Ebb Tide, and it's Mr. Barboza and
4 James Vincent Flemmi, among others.
5 Mr. Barboza, when he testifies in the
6 Deegan murder trial, he has new people, and he not
7 only has new people; he has Joseph Salvati wearing a
8 disguise, a disguise that makes him look like James
9 Vincent Flemmi, who Mr. Barboza has indicated to you
10 he will never finger for murder.
11 So again, it doesn't matter to me which
12 hat is put on here; it seems that the information
13 developed in 1965 better passes the smell test than
14 the evidence presented in 1967. Do you disagree
15 with that?
16 MR. CONDON: I'm not going to agree with
17 you completely.
18 I look a little differently at someone
19 who's willing to get up on a witness stand and raise
20 their right hand and testify to what's the gospel
21 truth; and when you put it alongside of an informant
22 report, I think at least I would be inclined to put
23 a little more confidence in that type of --
24 CONGRESSMAN LaTOURETTE: I got that, and
25 I don't have a problem with that. I want to commend

1 you, because your cohort decided to take the Fifth
2 Amendment the last time we saw him, so I
3 appreciate --
4 MR. CONDON: Pardon?
5 CONGRESSMAN LaTOURETTE: Mr. Rico took
6 the Fifth Amendment the last time we saw him in
7 Washington, so I very much appreciate your making
8 yourself available to talk to us today.
9 MR. CONDON: I appreciate the fact that
10 the Chairman would accede to my doctor's wishes and
11 allow me to be interviewed up here, and I appreciate
12 your coming up here to do that.
13 CONGRESSMAN LaTOURETTE: Thank you.
14 I understand that Mr. Barboza raised his
15 right hand and swore to God that he was going to
16 tell the truth; but going into his testimony, he set
17 some ground rules, and the ground rules were that he
18 was never going to give up Jimmy Flemmi. That flew
19 in the face of all of the evidence that the Bureau
20 had developed back in 1965; and that to me at least
21 -- being not as experienced as you -- that I think
22 raises some questions about the quality of
23 Mr. Barboza's testimony.
24 MR. SCHUELKE: That's a statement.
25 CONGRESSMAN LaTOURETTE: It is.

1 Well, how do you feel about it? There;
2 that's a question.
3 MR. CONDON: It would be too lengthy an
4 explanation to go into my feeling on the thing and
5 your feeling on the thing.
6 CONGRESSMAN LaTOURETTE: Thanks.
7 MR. SCHUELKE: Could I suggest that we
8 take a break for a couple minutes?
9 MR. WILSON: Sure.
10 MR. SCHUELKE: Thanks.
11 (Recess taken)
12 MR. WILSON: Just to finish off with the
13 document that we were referring to, Exhibit 17, that
14 talks about Jimmy Flemmi and Barboza not providing
15 information that would allow Flemmi to fry, do you
16 recall whether any follow-up questions were asked
17 after that statement was made?
18 MR. CONDON: I don't recall any
19 follow-up questions.
20 I want to reiterate, this document is
21 from 1967. This is 35 years later. I am doing the
22 best I possibly can, and I just hope that when I
23 give you that answer it's taken for what it's worth.
24 I don't recall any follow-up questions.
25 MR. WILSON: Fair enough; we appreciate

1 that.
2 Do you recall whether anybody -- either
3 yourself, Special Agent Rico, anyone else -- did ask
4 Jimmy Flemmi about whether or not he was involved in
5 the Deegan murder?
6 MR. CONDON: I do not recall.
7 MR. WILSON: Was Mr. Flemmi put before a
8 federal grand jury?
9 MR. CONDON: I don't know; I don't know.
10 I think that's something that would have to come
11 from the U.S. Attorney's office. I don't recall.
12 MR. WILSON: Not to be mysterious, it's
13 our understanding that Jimmy Flemmi was put before a
14 federal grand jury; and we were told by one person
15 that he was put before a federal grand jury to
16 provide him cover.
17 Now, we don't know what that means, and
18 we're trying to find out what that means.
19 MR. CONDON: That does not sound
20 familiar or likely to me.
21 MR. WILSON: My understanding is the
22 implication was that there might have been awareness
23 on the streets that Jimmy Flemmi might have had some
24 involvement in the Deegan murder, and to put him
25 before the grand jury would allow him to say

1 nothing, or take the Fifth, or in some way --
2 MR. CONDON: Are you talking a federal
3 grand jury?
4 MR. WILSON: A federal grand jury.
5 That's speculation, but that's --
6 MR. CONDON: I don't understand how that
7 could be a federal grand jury, if it's the Deegan
8 murder case.
9 MR. WILSON: And I can't provide you
10 more information on it.
11 MR. CONDON: All right.
12 MR. WILSON: Judge Harrington told us
13 that he was put before a federal grand jury.
14 When Barboza was interviewed, were
15 federal officials always with him?
16 MR. SCHUELKE: You mean in addition to
17 himself and Mr. Rico?
18 MR. WILSON: And Mr. Doyle; any of the
19 various individuals from Suffolk DA's office.
20 Was there always a federal official with
21 Barboza?
22 MR. CONDON: Well, I can't answer that
23 without looking at the interview reports themselves.
24 I don't know the answer to that. We're talking in
25 terms specifically of the City Superintendent, John

1 Doyle, of the Boston Police, and former Detective
2 Sergeant Frank Walsh.
3 I'd have to look at the actual interview
4 report to gauge whether a federal official was there
5 all the time. It should show on the report.
6 MR. WILSON: From our perspective, it
7 does seem to me that either yourself or Special
8 Agent Rico was with Mr. Barboza when he was
9 interviewed.
10 I'm just asking for your recollection as
11 to whether you recall a time when --
12 MR. CONDON: I don't have enough of a
13 recollection to make a positive statement to your
14 answer, really.
15 MR. WILSON: Do you recall whether the
16 FBI Director gave you a personal commendation for
17 your work in the Deegan case?
18 MR. CONDON: When you say personal
19 commendation, are you talking correspondence-wise?
20 MR. WILSON: Yes.
21 MR. CONDON: I think amongst my papers
22 there's a letter from the Director for allegedly
23 good work on the Deegan case. I'd have to review
24 it. I don't know whether it said specifically the
25 Deegan case, but I think it said something about

1 gangland killing --
2 MR. WILSON: I should cut you off,
3 because I do have a document; and unfortunately, I
4 just have one copy of it. I just had somebody fax
5 it to me. If you could take a look at it; it's a
6 document addressed to you from the Director of the
7 FBI.
8 MR. SCHUELKE: Dated August 5, 1968.
9 MR. WILSON: Correct; and it refers to
10 Roy French in the document.
11 MR. CONDON: Yes, I recall receiving
12 this; sure.
13 MR. WILSON: Were there any other
14 commendations or official references by superiors
15 for your work in the Deegan case?
16 MR. CONDON: I believe that that's the
17 only one.
18 MR. WILSON: There's a book that's been
19 published, I believe just in the last couple of
20 weeks, called WITSEC, W-I-T-S-E-C; it's a book about
21 the Witness Protection Program. The authors are
22 Pete Earley and Gerald Shur; Gerald Shur is a former
23 Justice Department official.
24 And he says in the book that Barboza,
25 quote, "was such an important mob witness that J.

1 Edgar Hoover personally called his agents each day
2 when they were interrogating the hit man to hear
3 what he was telling them." Is that correct or
4 incorrect?
5 MR. CONDON: That's absurd; that's
6 absurd.
7 MR. WILSON: What is your recollection
8 of information provided to the Director about your
9 interviews with Barboza?
10 MR. CONDON: All I can tell you is, in
11 my history with the FBI, almost every communication
12 that went to headquarters, under instructions, was
13 directed to the Director of the FBI; which is not to
14 mean that the Director of the FBI ever saw that
15 material. There's a layer under there with system
16 directors, section chiefs, supervisors.
17 So I don't know what the Director saw;
18 but I'm sure that he never saw every communication
19 that came down there addressed to the Director. If
20 it pertained to organized crime, it probably would
21 go to the organized-crime section chief, then to the
22 assistant director that handles the organized-crime
23 section. That's the best I can describe it.
24 CONGRESSMAN DELAHUNT: Can I interrupt?
25 MR. WILSON: Yes.

1 CONGRESSMAN DELAHUNT: After your first
2 meeting with Barboza down at MCI Walpole, how long
3 did the negotiations go forth until there was an
4 agreement?
5 MR. CONDON: Until what?
6 CONGRESSMAN DELAHUNT: Until there was
7 an agreement of cooperation.
8 MR. CONDON: I can't even estimate that.
9 Any agreement would come from the Justice Department
10 representatives as potential prosecutors, and not
11 from the investigators of the FBI.
12 CONGRESSMAN DELAHUNT: But the FBI would
13 have input into it?
14 MR. CONDON: Oh, definitely, they would
15 have input; but the final decision on that would not
16 be the FBI.
17 CONGRESSMAN DELAHUNT: So you're saying
18 that the agreement would be done by Justice
19 Department representatives, as opposed to the Bureau
20 in and of itself?
21 MR. CONDON: Absolutely.
22 CONGRESSMAN DELAHUNT: What inducements
23 were proffered to Barboza to secure his cooperation?
24 MR. CONDON: Well, that's a very
25 difficult question to answer.

1 CONGRESSMAN DELAHUNT: The best of your
2 memory.
3 MR. CONDON: Well, as I said, he was
4 under threat of being prosecuted under the habitual-
5 criminal statute in Suffolk County, which was a big,
6 big consideration. I don't know that there was any
7 inference or promise from the District Attorney; I'm
8 just citing the possibility that maybe there would
9 be some consideration given in connection with -- I
10 don't know. I can't tell you.
11 I know that as agents, we wouldn't have
12 been a party to making any promises. That would
13 have to come from the prosecutors.
14 CONGRESSMAN DELAHUNT: Did you ever have
15 any conversation with John Doyle regarding Barboza
16 and what it would take to turn him?
17 MR. CONDON: No. Not that I can recall.
18 CONGRESSMAN DELAHUNT: Not that you can
19 recall?
20 MR. CONDON: No.
21 CONGRESSMAN DELAHUNT: To your
22 knowledge, was there ever anything that was
23 memorialized in writing to define the agreement
24 between the government and Barboza?
25 MR. CONDON: I don't know.

1 I would say that there were two cases
2 that were handled in Suffolk County court by the
3 DA's office; there was one case handled in federal
4 court; and I do not know what conversations or
5 arrangements took place between the federal people
6 and the District Attorney's office.
7 CONGRESSMAN DELAHUNT: Well, did Barboza
8 ever put to you what --
9 MR. CONDON: No.
10 CONGRESSMAN DELAHUNT: He never asked
11 you --
12 MR. CONDON: No, no, not that I can
13 recall. I don't think so.
14 CONGRESSMAN DELAHUNT: Not that you
15 recall?
16 MR. CONDON: No, I don't think so.
17 CONGRESSMAN DELAHUNT: And he never
18 would have asked Paul Rico in your presence?
19 MR. CONDON: If the question was, what
20 are you going to do for me? I don't recall that
21 ever happening.
22 CONGRESSMAN DELAHUNT: Because in the
23 normal course of events, the investigators are the
24 first to open up the possibilities of some sort of
25 arrangement.

1 MR. CONDON: But I think at this day and
2 time, we'll allow that he's smart enough to know
3 that investigators aren't the people that are going
4 to call the shot on what's going to happen with the
5 witness; the prosecutor's boss is, in the DA's
6 office.
7 CONGRESSMAN DELAHUNT: But I think we
8 all know of instances where the Bureau goes to
9 prosecutors' offices and makes a request.
10 MR. CONDON: Sure.
11 CONGRESSMAN DELAHUNT: That's happened
12 in my own experience, and I'm sure it's happened in
13 yours. You have no memory of that happening in this
14 case?
15 MR. CONDON: I don't remember any quid
16 pro quo by me with Mr. Barboza.
17 CONGRESSMAN DELAHUNT: And Barboza,
18 while he was a federal witness, my understanding is
19 that he actually testified in three cases; that one
20 was a federal case where a conviction was secured...
21 Excuse me.
22 (Cell-phone interruption; discussion off
23 the record)
24 MR. CONDON: Not to interrupt you, I
25 think where you're coming from is that the first

1 prosecution was relative to the murder of
2 prizefighter Rocco DiSiglio, and that case was in
3 Suffolk Superior Court by the Suffolk DA's office;
4 and the subjects who were prosecuted -- Gennaro
5 Angiullo, Marino, LePore and Benjamin Zinna -- were
6 acquitted in that case.
7 CONGRESSMAN DELAHUNT: Was that a
8 directed verdict?
9 MR. CONDON: I'm not sure.
10 Then the next case was Interstate
11 Transportation in Aid of Racketeering in the federal
12 court here; and the subjects in that case were
13 Raymond Patriarca, Henry Tameleo, and Ronald
14 Cassesso.
15 Baron testified in that case, and they
16 were convicted; I think the sentence was about five
17 years, or something like that. I'm estimating.
18 Then the next case after that was the
19 Deegan case, which was back in Suffolk Superior
20 Court, with the DA's office, I believe.
21 Now, if you have a question, I'll be
22 glad to tell you --
23 CONGRESSMAN DELAHUNT: No; I just
24 wanted -- and I know --
25 MR. CONDON: I wanted to give you the

1 sequence.
2 CONGRESSMAN DELAHUNT: I appreciate
3 that; and I also understand that, in retrospect,
4 it's easy to second-guess.
5 MR. CONDON: Pardon?
6 CONGRESSMAN DELAHUNT: In retrospect,
7 it's easy to go back and second-guess the judgments
8 of the past; but the reality was that Barboza, in
9 terms of benefit to the Commonwealth, to the
10 government, was of limited value.
11 MR. SCHUELKE: Two out of three.
12 CONGRESSMAN DELAHUNT: If you factor
13 into that assessment the statement by the most
14 recent former Director of the FBI, Mr. Freeh, when
15 he made a public statement in effect exonerating and
16 apologizing to Joseph Salvati, the value of
17 Barboza's testimony, in the overall scheme, was very
18 limited.
19 MR. CONDON: Well, I'm not here to try
20 to justify something along that line.
21 CONGRESSMAN DELAHUNT: And I understand
22 that.
23 MR. CONDON: I recall that the U.S.
24 District Court judge, Edward F. Harrington, from
25 limited readings that I had of his testimony or his

1 opening statement down there, he credits the Barboza
2 thing with bringing in a string of organized-crime
3 witnesses thereafter.
4 I know he specifically mentioned, I
5 think, John "Red" Kelley, Vincent Theresa. He may
6 have mentioned others, but those are the two that
7 come to my mind.
8 But my point is that he looked at it as
9 valuable from the tangential things that happened.
10 CONGRESSMAN DELAHUNT: When you and the
11 former U.S. Attorney, Judge Harrington, went to
12 testify on Barboza's behalf out in the trial in
13 California, do you have a recollection of what your
14 testimony was on that occasion?
15 MR. CONDON: I'm glad you asked that
16 question.
17 I was subpoenaed to the West Coast to
18 testify by the defense in the Baron murder case. I
19 did not volunteer to go to the West Coast. It was
20 not my decision to go out there; I was subpoenaed.
21 I responded to the subpoena. The
22 Attorney General of the United States was aware of
23 the fact that we were subpoenaed and went out there.
24 I testified for probably ten minutes.
25 If you had asked me this question before

1 I had a chance to review my testimony, I couldn't
2 tell you much about it; but I've read my testimony
3 recently, and it's brief, it's probably ten to
4 fifteen minutes.
5 There's nothing in there relative to the
6 characterization, as some of the papers have
7 indicated, that I went on to say what a good person
8 he was. That's incensing to me.
9 My testimony was in response to a few
10 questions as to what had transpired in
11 Massachusetts, maybe what the cases were that he
12 testified in, and what was his status back here; and
13 I'm amazed today when I read how brief it is.
14 And I'm going to add something, and my
15 lawyers will probably give me hell for adding it.
16 All of this talk out of California, don't tell me
17 that the FBI's presence out there, or the United
18 States, Ted Harrington's presence out there got a
19 five-year term. In 1970 or '71, California was the
20 most liberal state in the country on homicide
21 convictions.
22 And I was as surprised as anyone else
23 was with that sentence out there, and it was nothing
24 that came about under pressure from the federal
25 government or the FBI.

1 CONGRESSMAN LaTOURETTE: Can I just,
2 with your permission?
3 CONGRESSMAN DELAHUNT: Go ahead.
4 CONGRESSMAN LaTOURETTE: This one
5 bothered me, not how you got there or anything else.
6 But when we had Judge Harrington in
7 front of the Committee, not only did you all go out
8 and testify, not one but three -- and I understand
9 what you've said about how you got there; you were
10 subpoenaed.
11 If you would be kind enough to look
12 at Exhibit 35 in the new book; it's a memorandum
13 from Judge Harrington to Mr. Featherstone. Here's
14 what's bothering me, and then maybe you can tell me
15 what your recollection is about that.
16 In this memo, on the second page --
17 MR. SCHUELKE: Have you got it?
18 CONGRESSMAN LaTOURETTE: Are you there
19 yet?
20 MR. CONDON: I'm getting to it.
21 CONGRESSMAN LaTOURETTE: Dated November
22 29, 1971.
23 MR. CONDON: Thirty-five; okay.
24 CONGRESSMAN LaTOURETTE: In that one it
25 indicates that you and Mr. Rico were going to come

1 out and testify against William Geraway; because the
2 belief is that Mr. Geraway is a prosecution witness,
3 and the testimony is basically going to be that
4 Mr. Geraway, prosecution's star witness, is a liar.
5 When you received the subpoena, was that
6 the purpose of your testimony, to go out and call
7 the prosecution's witness a liar?
8 MR. SCHUELKE: With your indulgence, why
9 don't you read this memorandum.
10 CONGRESSMAN LaTOURETTE: Oh, sure; take
11 your time. (Pause)
12 You can read while I talk. The most
13 instructive is the second-to-the-last full paragraph
14 on the second page, is what I'm talking about.
15 MR. CONDON: Second-to-the-last what?
16 CONGRESSMAN LaTOURETTE: It says,
17 "Special Agents Condon and Rico will testify."
18 The second-to-the-last full paragraph on
19 Page 2.
20 MR. SCHUELKE: But I would like you to
21 read --
22 CONGRESSMAN LaTOURETTE: Sure; read the
23 whole thing, but my question is going to be about
24 that paragraph. (Pause)
25 MR. CONDON: What's your question,

1 please?
2 CONGRESSMAN LaTOURETTE: My question is,
3 in that paragraph that I'm talking about on Page 2
4 in this memo from Judge Harrington to
5 Mr. Featherstone, it says the purpose of your
6 testimony will be basically to indicate that
7 Mr. Geraway, the prosecution's star witness, is not
8 a truthful person. Is that your recollection of
9 what your testimony was?
10 MR. CONDON: No, that is not my
11 recollection.
12 In fact, I don't have any recollection
13 of what testimony was expected from me out there.
14 MR. SCHUELKE: Here's your testimony.
15 We have a transcript of his testimony;
16 so to ask him to recall or speculate about what he
17 said or didn't say -
18 CONGRESSMAN LaTOURETTE: Well, do you
19 want to take a minute to refresh your memory about
20 your testimony in answer to that question, or do you
21 feel comfortable with the answer as you've given it?
22 MR. CONDON: I'm comfortable with the
23 answer I gave.
24 CONGRESSMAN LaTOURETTE: Okay; good.
25 Then the other document I want to direct

1 you to is going to take a long time to read. Maybe
2 we can bookmark it and come back to it.
3 The other thing that bothered me when we
4 had Judge Harrington in front of us is Exhibit No. 6
5 in the book. Let me give you a characterization;
6 and I'm not going to ask you to answer right away,
7 because I'm sure your attorney will want you to read
8 it.
9 In 35, the insinuation, and I know
10 that's not your writing --
11 MR. CONDON: We're on Exhibit 6?
12 CONGRESSMAN LaTOURETTE: Yes, sir.
13 In 35, Judge Harrington is indicating
14 that you and Mr. Rico are going to testify about the
15 fact that the star witness in the prosecutor's case
16 is a liar.
17 No. 6 again is something written by
18 Judge Harrington; and to my reading, it is asking
19 permission to let you and Mr. Rico testify to
20 impeach someone who came forward during the course
21 of the trial, a fellow named Hughes.
22 Let me ask first not about the document.
23 Do you remember a witness named Hughes in the Clay
24 Wilson trial in California?
25 MR. CONDON: No.

1 CONGRESSMAN LaTOURETTE: Do you remember
2 ever having a conversation about your perhaps being
3 recalled to the stand in that trial?
4 MR. CONDON: No.
5 CONGRESSMAN LaTOURETTE: I know
6 Mr. Wilson might want to finish tonight; but if it's
7 all right with your lawyer, read No. 6 tonight, and
8 we'll come back tomorrow and ask some questions.
9 MR. CONDON: Read No. --
10 CONGRESSMAN LaTOURETTE: No. 6; and I
11 want you to be able to take your time.
12 CONGRESSMAN DELAHUNT: I have some very
13 brief questions to pose before I turn it over to
14 Mr. Wilson.
15 In California, do you remember speaking
16 to the District Attorney or a representative of the
17 District Attorney's office?
18 MR. CONDON: I don't believe I ever
19 spoke to a District Attorney or a representative of
20 the District Attorney.
21 CONGRESSMAN DELAHUNT: Or any law-
22 enforcement agent, local or state?
23 MR. CONDON: Of course, I may have
24 spoken --
25 CONGRESSMAN DELAHUNT: But you don't

1 have a memory of it?
2 MR. CONDON: No. I may have spoken to
3 Marteen Miller; I might have spoken to someone from
4 the prosecution's side, Greg Evans. I don't know.
5 CONGRESSMAN DELAHUNT: Before you took
6 the stand, you spoke to counsel for --
7 MR. CONDON: Marteen Miller? I would
8 say yes to that, because it would be normal
9 practice.
10 CONGRESSMAN DELAHUNT: But you have no
11 specific memory of it?
12 MR. CONDON: I have no memory of it, no.
13 MR. WILSON: If we can just finish up in
14 four or five more minutes of questions for today.
15 As we sit here today, one of the
16 fundamental questions concerns, when Barboza was
17 prepared to testify against Patriarca, the FBI was
18 in possession of information that indicated that
19 Patriarca might have been involved in the Deegan
20 murder.
21 You have told us you didn't have this
22 information, and we understand that; but certainly
23 Special Agent Rico did, and the recipients of his
24 memoranda had information that Patriarca might have
25 been involved, if nothing else, in the conspiracy to

1 murder Deegan.
2 Do you recall whether Barboza was ever
3 asked whether he would give up Patriarca for the
4 Deegan murder?
5 MR. CONDON: I don't recall that ever
6 happening. I don't recall it ever being discussed.
7 MR. WILSON: We've seen all the various
8 communications and memoranda; and the principal
9 objective of the Boston office, according to
10 communications, was to get information to put
11 Patriarca in prison. We've seen those
12 communications.
13 Here we have not informant information,
14 but microphone-surveillance information, that put
15 Patriarca into the Deegan-murder fact pattern; and
16 ultimately four men got the death penalty, and two
17 men got life in prison.
18 One of the things that's difficult for
19 us to understand is, why didn't the FBI, federal
20 prosecutors, state prosecutors, attempt to go after
21 Patriarca for the Deegan murder?
22 MR. CONDON: That's a question that
23 would have to be addressed to either U.S. Attorney
24 Paul Markham, or Ted Harrington, as the head of the
25 organized-crime section, or one of the prosecutors.

1 I mean, it's not for me to answer that, I don't
2 believe. I can't --
3 MR. WILSON: The reason we ask you is
4 because, having read all of the interviews that you
5 conducted with Barboza as the investigators, we
6 don't find any questions to Barboza that use the
7 information that seemed to be in the FBI's
8 possession.
9 For example, you would perhaps expect
10 somebody to have asked Barboza, can you tell us
11 about Patriarca's involvement in the Deegan murder?
12 And then you would have written up in your answer,
13 Barboza said he wasn't involved, or Barboza said he
14 was involved; there would have been some answer to
15 that question. But we can't find that that question
16 was ever asked.
17 MR. CONDON: Well, I may be off your
18 track, but the prosecutors obviously made a decision
19 to prosecute Patriarca, Tameleo, and Ronald Cassesso
20 in the federal court. Maybe they were so confident
21 in that case there that they didn't branch out. I
22 don't know the answer.
23 But it wasn't like they ignored
24 Patriarca. He was prosecuted in the federal court
25 with the underbosses, Henry Tameleo and Ronald

1 Cassesso.
2 MR. WILSON: But given the focus on
3 Patriarca, and the fact that he ultimately got the
4 death penalty for people in the Deegan case, you've
5 got Barboza; and he's prepared to testify against
6 Patriarca.
7 The question is, why did Barboza not
8 testify against Patriarca for the Deegan murder?
9 MR. CONDON: I think that question would
10 have to be addressed to somebody on the
11 prosecutorial side.
12 Really, as an investigator, I wouldn't
13 be making that kind of a decision.
14 MR. WILSON: Well, fair enough. We
15 understand you wouldn't make the decision, but you
16 would be attempting to get the information that
17 would allow the prosecutors to make the decisions
18 they made.
19 For example, if you or Mr. Rico had
20 asked Barboza about the Deegan murder, you would
21 have had an answer, and then the prosecutors could
22 have acted according to Barboza's answer.
23 What we can't find is any indication in
24 all of the 209s that have been written up as to what
25 Barboza would have said about Patriarca's

1 involvement in the Deegan murder.
2 The question is, why didn't anybody ask
3 those questions?
4 MR. CONDON: I can't answer that. I
5 can't answer that.
6 MR. WILSON: Let me just sort of provide
7 some speculation, and you can address the
8 speculation.
9 At the time that Barboza was being
10 questioned, before you were questioning Barboza,
11 there was a Supreme Court case, the Black case; and
12 the Black case was interpreted in the Taglianetti
13 case. You're familiar with the Taglianetti case?
14 MR. CONDON: Faintly.
15 MR. WILSON: My understanding is that
16 what happened in the Taglianetti case was that it
17 required the federal government to provide
18 Taglianetti's defense lawyers information from the
19 Patriarca logs, the logs of his microphone
20 surveillance. Is that a fair understanding?
21 MR. CONDON: Yes.
22 MR. WILSON: Now, it seems that, if
23 there had been some type of federal prosecution
24 against Patriarca for the Deegan murder, the federal
25 government would have had to turn over information

1 to Patriarca's defense lawyers about Deegan.
2 If they had done that, there would have
3 been information about Jimmy Flemmi; and Barboza had
4 already told you that he wouldn't provide
5 information about Jimmy Flemmi.
6 It seems that one possibility is, you
7 just couldn't bring a federal prosecution against
8 Patriarca, because you would have to turn over
9 exculpatory information. Was that something that
10 was ever discussed?
11 MR. CONDON: I don't recall discussing
12 it. But I'm sitting here having the impression that
13 Patriarca was prosecuted federally, although not on
14 a murder charge, on ITAR; and it's my understanding
15 that the Taglianetti information was made available
16 to the defense attorneys in that case.
17 MR. WILSON: Maybe you can help us with
18 that; because we know that in the Taglianetti case,
19 a very small subset of information was provided to
20 Taglianetti's attorneys. Last week at our hearing,
21 Judge Harrington indicated that he thought that
22 everything from the Patriarca tapes was turned over
23 to Patriarca's defense counsel.
24 Do you know one way or another what was
25 provided to them?

1 MR. CONDON: I really don't know; and
2 part of my last answer was probably from reading
3 what Judge Harrington had said down in Washington.
4 MR. WILSON: We don't know the answer,
5 either, so I'm trying to track you on that.
6 CONGRESSMAN LaTOURETTE: You say you
7 read what Judge Harrington had to say before our
8 Committee?
9 MR. CONDON: Pardon?
10 CONGRESSMAN LaTOURETTE: You read what
11 Judge Harrington had to say?
12 MR. CONDON: I read, I think, his
13 opening statement. I read his opening statement. I
14 didn't see his testimony.
15 CONGRESSMAN LaTOURETTE: What was your
16 impression of his observations and the accuracy of
17 his recollection?
18 MR. CONDON: On his opening statement?
19 CONGRESSMAN LaTOURETTE: Right.
20 MR. CONDON: I liked his opening
21 statement, and I thought he put things in enough
22 perspective.
23 CONGRESSMAN LaTOURETTE: Thank you.
24 CONGRESSMAN DELAHUNT: During the course
25 of these hearings, there's been no disagreement that

1 the so-called Patriarca bug was an illegal bug; and
2 presumably the wiretap or electronic-surveillance
3 statutes at the time were violated. I have never
4 done the research.
5 MR. CONDON: You better give me that one
6 again, please.
7 CONGRESSMAN DELAHUNT: Well, there seems
8 to be a conclusion that no one has registered any
9 disagreement that the so-called Patriarca bug was
10 done illegally.
11 Now, I haven't researched what the
12 federal statute was back in the early '60s. I don't
13 even know if it existed. I see Jim Wilson shaking
14 his head. Maybe staff can help me with this.
15 But if it did exist, are you aware of
16 any investigation conducted by the FBI into who was
17 responsible for placing the bug?
18 MR. CONDON: Just give me the last part
19 of that question, at the end, please.
20 CONGRESSMAN DELAHUNT: Well, let's
21 presume that it's correct to say that the so-called
22 Patriarca bug was done illegally. Was there ever an
23 investigation that you were aware of as to who was
24 responsible for the placement of the Patriarca bug?
25 MR. CONDON: No.

1 CONGRESSMAN DELAHUNT: And yet the
2 premier federal law-enforcement agency, the FBI,
3 continued to utilize and monitor the information
4 that came across as a result of the Patriarca bug?
5 MR. CONDON: Repeat that, please.
6 You're saying continues to utilize?
7 CONGRESSMAN DELAHUNT: Continued.
8 MR. CONDON: To utilize?
9 CONGRESSMAN DELAHUNT: Right. In other
10 words, there was a plethora of information that was
11 developed as a result of the Patriarca bug, which
12 presumably was illegal.
13 MR. CONDON: But when you're talking
14 about utilizing today, I think that electronic
15 coverage was up until like 1965, and I think that
16 was the end of it.
17 So it's kind of hard to figure that that
18 would be being utilized now. We're talking
19 almost
20 CONGRESSMAN DELAHUNT: I'm not talking
21 now; I'm talking back then, for intelligence
22 purposes.
23 MR. CONDON: Sure; it was used for
24 intelligence purposes, yes.
25 CONGRESSMAN DELAHUNT: But it was

1 illegal.
2 MR. SCHUELKE: I must say --
3 MR. CONDON: I'm not --
4 MR. SCHUELKE: I don't understand the
5 question either, so maybe you could take another
6 shot at it.
7 CONGRESSMAN DELAHUNT: Let me take
8 another shot at it. Maybe my colleague can help me.
9 We have an illegal bug.
10 MR. SCHUELKE: Let's assume --
11 CONGRESSMAN DELAHUNT: Let's assume that
12 it's an illegal bug, that was placed by someone,
13 presumably a representative or agent of the FBI.
14 Was there ever conducted an
15 investigation into who was responsible for violating
16 a statute --
17 MR. SCHUELKE: Patriarca's Fourth
18 Amendment rights? I think he said he doesn't know
19 of any such investigation.
20 CONGRESSMAN DELAHUNT: Okay.
21 MR. SCHUELKE: Is that the only
22 question?
23 CONGRESSMAN DELAHUNT: He's unaware of
24 any investigation?
25 MR. CONDON: That's right.

1 MR. WILSON: If I could ask one quick
2 question about bugs.
3 We're aware of a Patriarca bug, an
4 Angiullo bug, and a bug at the Piranha Finance
5 Company. Do you know of any others?
6 MR. CONDON: No.
7 MR. WILSON: Were you aware of the
8 Piranha Finance Company bug?
9 MR. CONDON: I was not aware of the
10 Piranha.
11 CONGRESSMAN DELAHUNT: Were you part of
12 the monitoring of the conversations that were
13 overheard because of the bug?
14 MR. CONDON: I may have on a few
15 occasions been plugged in to monitor.
16 CONGRESSMAN DELAHUNT: But no one in a
17 supervisory capacity ever told you or informed you
18 that the bug was illegal?
19 MR. CONDON: I don't recall that ever
20 happening.
21 CONGRESSMAN DELAHUNT: Again, I haven't
22 done the research; I'm sure staff has, and maybe
23 Mr. Schuelke just simply knows because of his
24 experience.
25 I'm just presuming that, somewhere in

1 the federal criminal code, to place an illegal bug
2 in contravention of Fourth Amendment rights would be
3 a crime.
4 MR. SCHUELKE: Let's go off the record
5 for a second.
6 (Adjourned, 5:07 p.m.)
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1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, Janis T. Young, Certified Realtime
4 Reporter, the officer before whom the foregoing
5 deposition was taken, do certify that DENNIS M.
6 CONDON, whose testimony appears herein, was duly
7 sworn by me; that the testimony of said witness was
8 taken by me in machine shorthand and thereafter
9 reduced to writing by means of computer-aided
10 transcription; that said deposition is a true record
11 of the testimony given by said witness; that I am
12 neither counsel for, related to, nor employed by any
13 of the parties to the action in which this
14 deposition was taken, and further that I am not a
15 relative or employee of any attorney or counsel
16 employed by the parties thereto, nor financially or
17 otherwise interested in the outcome of the action.

18

19

20 _____

21 Janis T. Young, RMR/CRR

22 Notary Public in and for the

23 Commonwealth of Massachusetts

24 My commission expires: June 28, 2007

25

1 **DENNIS M. CONDON**

2 SIGNATURE PAGE / ERRATA SHEET

PAGE	LINE	CHANGE OR CORRECTION AND REASON
28	9	Angiullo Should Be Angiulo
44	14	1997 Should Be 1967

I have read the foregoing transcript of my deposition on February 21, 2002. Except for any corrections or changes noted above, I hereby subscribe to the transcript as an accurate record of the statements made by me.

Signed under the pains and penalties of perjury.

Deponent:_____/___/2002

DENNIS M. CONDON

Notary Public:_____/___/2002

in and for:_____

My commission expires:_____

INDEX OF EXHIBITS (FIRST REFERENCE IN TRANSCRIPT)

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3
4 EXECUTIVE SESSION
5 COMMITTEE ON GOVERNMENT REFORM
6 U.S. HOUSE OF REPRESENTATIVES
7 WASHINGTON, D.C.
8
9
10
11 DEPOSITION OF: DENNIS M. CONDON
12
13
14
15 February 22, 2002
16
17 Boston, Massachusetts
18
19
20 The deposition in the above matter was held
21 at the offices of Meyer, Connolly, Sloman &
22 MacDonald LLP, 12 Post Office Square, Boston,
23 Massachusetts 02109, commencing at 12:00 noon.
24
25

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INDEPENDENT

June 13, 2002

Henry F. Schuelke, III, Esq.
Janis Schuelke & Wechsler
1728 Massachusetts Avenue, N.W.
Washington, DC 20036

Dear Mr. Schuelke:

The Committee on Government Reform has included your letter of May 23, 2002, in the official transcript of Dennis M. Condon's deposition. It has also redacted the name of one individual discussed with Mr. Condon.

Although the Committee is satisfied that the transcript of the deposition is not in error, your response has been included to ensure that Mr. Condon has been afforded every opportunity to provide accurate responses to the questions asked of him. Thus, although the deposition transcript has not been altered, we are in agreement that your letter of May 23,2002, provides information that should be included in order to provide the correct answer to the question asked.

Sincerely,

James C. Wilson
Chief Counsel

LAW OFFICES
JANIS, SCHUELKE & WECHSLER
1728 MASSACHUSETTS AVENUE, N.W.
WASHINGTON, D.C. 20036

HENRY F. SCHUELKE, III

TELEPHONE
(202) 861-0600

May 23, 2002

BY FACSIMILE: (202-225-3974)

James C. Wilson, Esquire
Majority Counsel
Committee on Government Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Re: Deposition of Dennis Condon on February 22, 2002; Executive Session of Committee on Government Reform, United States House of Representatives

Dear Mr. Wilson:

I am writing to correct an error contained in the transcript of the February, 22, 2002, deposition of my client, Dennis Condon. Specifically, page 229 (Volume 2), Line 4, of the transcript states that Mr. Condon answered "that's correct" to a question from Congressman LaTourette concerning whether certain information in a prosecution memo had been disclosed to him. Mr. Condon and I have reviewed the transcript and both of us agree that the transcript is in error. Mr. Condon is adamant that the correct answer to the question posed is "no." Moreover, it is clear that, when the relevant question and answer are viewed in the context of Mr. Condon's testimony concerning what, if any, disclosures were made to him by prosecutors in the 1960s, Mr. Condon had no knowledge about what was contained in the prosecution memo at issue. Mr. Condon and I are confident that either the question and/or the answer in the transcript is inaccurate; if the question is accurately transcribed, Mr. Condon's answer to the question would be "no."

Please include this correction letter with any release of the transcript of Mr. Condon's deposition.

Sincerely yours,

H F Schuelke WCB

Henry F. Schuelke, III

cc: Dennis Condon

1 Present:

2

3

4 For THE COMMITTEE ON GOVERNMENT REFORM,

5 U.S. HOUSE OF REPRESENTATIVES:

6

7 JAMES C. WILSON, ESQ.

8 JIM SCHUMANN, ESQ.

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18 CONGRESSMAN WILLIAM D. DELAHUNT

19 Tenth District, Massachusetts

20

21 CONGRESSMAN STEVEN C. LaTOURETTE

22 Nineteenth District, Ohio

23

24 (Continued)

25

1 Present (continued):
2
3 For DENNIS M. CONDON:
4
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1 Friday, February 22, 2002
2 P R O C E E D I N G S (12:00 noon)
3 - - - - -
4 DENNIS M. CONDON, Previously Sworn
5 MR. WILSON: This is a continuation of
6 the deposition.
7 Resuming where we left off, I think
8 Mr. LaTourette had some questions just to conclude
9 one of the issues we were discussing yesterday.
10 CONGRESSMAN LaTOURETTE: Mr. Condon, I
11 think yesterday I asked if you would spend some time
12 last evening looking at Exhibit 6; and we had also
13 talked about Exhibit 35.
14 In pertinent part, the second page of
15 35 --
16 MR. CONDON: Excuse me one minute until
17 I go to it.
18 MR. WILSON: Sure.
19 MR. SCHUELKE: Do you have 35, Dennis?
20 MR. CONDON: I do.
21 CONGRESSMAN LaTOURETTE: On the second
22 page, the second full paragraph --
23 MR. CONDON: Second paragraph of Page 2?
24 CONGRESSMAN LaTOURETTE: It says,
25 "Special Agents Condon and Rico will testify."

1 I thank your lawyer for giving me a copy
2 of your testimony from the Clay Wilson trial in
3 California. It appears in that testimony that all
4 you talked about was confidential information that
5 you and the Bureau had received relative to
6 individuals that may be coming to California to do
7 Mr. Barboza harm. Does that pretty well fit with
8 what you testified?
9 MR. CONDON: I just wanted to check one
10 thing, the part about "to do Mr. Barboza harm." I
11 don't think there was any specific information that
12 he was the target.
13 CONGRESSMAN LaTOURETTE: Right. I agree
14 with you; but I think that, obviously, the defense
15 was hoping the jury would draw the inference that
16 they were coming to get Mr. Barboza, or else the
17 testimony didn't have any relevance.
18 In the second paragraph that I'm
19 referring to, however, it indicates that you and
20 Mr. Rico will testify about Mr. Geraway's reputation
21 for truth and veracity. Do you see that first
22 sentence?
23 MR. CONDON: Yes.
24 CONGRESSMAN LaTOURETTE: Was that your
25 intention when you went to California?

1 MR. CONDON: I don't recall that that
2 was my intention at the time, to so testify.
3 CONGRESSMAN LaTOURETTE: Were you
4 aware that Judge Harrington was sending this
5 communication advising others that that was your
6 purpose?
7 MR. CONDON: I can't say that I'm aware
8 of it today, and I don't recall it from 1971.
9 CONGRESSMAN LaTOURETTE: Do you recall
10 any meetings with the public defender in California
11 where this issue was discussed, whether or not you
12 would be able to testify about Mr. Geraway's
13 veracity?
14 MR. CONDON: The only recollection I
15 have of the public defender is that he came to
16 Boston on one occasion, and I had some contact with
17 him; and it would seem logical that I must have had
18 some contact with him when we went to California,
19 but I don't recall that contact out there.
20 CONGRESSMAN LaTOURETTE: Do you ever
21 remember being asked by anybody to be ready to
22 testify about Mr. Geraway's veracity?
23 MR. CONDON: No, I do not.
24 CONGRESSMAN LaTOURETTE: Then Exhibit
25 36, that I asked you to read last night.

1 MR. CONDON: Yes; I did.
2 CONGRESSMAN LaTOURETTE: And I'll
3 briefly summarize, and if you disagree with the
4 summary, let me know.
5 It appears to be a communication to
6 headquarters asking that the scope of authority
7 given to you and Mr. Rico relative to testimony in
8 the Clay Wilson murder case be expanded to include
9 observations that you may have about a fellow by the
10 name of Lawrence Hughes. Is that a fair
11 characterization?
12 MR. CONDON: That's what I would deduct
13 from the document.
14 CONGRESSMAN LaTOURETTE: Specifically,
15 Mr. Hughes was apparently called as a surprise
16 witness in the Wilson homicide case, and there was
17 some discussion about whether or not your authority
18 to testify would be expanded so you could provide
19 information to impeach Mr. Hughes' testimony.
20 MR. CONDON: I think that's a reasonable
21 assumption from what I've read in the documents.
22 CONGRESSMAN LaTOURETTE: My question to
23 you is the same as about the other document. Were
24 you apprised by Mr. Harrington that he was
25 contemplating having you impeach Mr. Hughes?

1 MR. CONDON: I have no memory of that
2 happening, really.
3 CONGRESSMAN LaTOURETTE: And likewise,
4 any contact with the public defender relative to
5 impeaching Mr. Hughes?
6 MR. CONDON: I don't have any memory of
7 that, really.
8 CONGRESSMAN LaTOURETTE: Would you agree
9 with me that if you, as a special agent of the
10 Federal Bureau of Investigation, testified and
11 impeached Mr. Geraway, who was the main witness
12 against Mr. Barboza in this murder trial, and then
13 came back on the stand and impeached Mr. Hughes, who
14 was the second important witness, relative to the
15 issue of bonds being stolen, against Mr. Barboza,
16 that that would be information that the defense
17 would certainly find useful?
18 MR. CONDON: I would say yes, yes.
19 CONGRESSMAN LaTOURETTE: Do you think
20 that that type of testimony would have been
21 appropriate on your part?
22 MR. CONDON: Would it be appropriate?
23 CONGRESSMAN LaTOURETTE: Would it have
24 been appropriate? I understand you didn't do it.
25 MR. CONDON: I think, if I was called as

1 a witness and I was aware of something that had a
2 bearing on the case, I would be obligated to testify
3 and to tell the truth.
4 CONGRESSMAN LaTOURETTE: Of course you
5 would.
6 I guess the theory is that the Bureau is
7 going above and beyond for Mr. Barboza; in that,
8 even though he received some consideration in the
9 Deegan murder and things that occurred in Boston,
10 while in the Witness Protection Program he kills
11 somebody else, Mr. Wilson.
12 To me, at least, it looks like that's
13 sort of an extra step for the Bureau to take, to go
14 out and impeach the two main witnesses against him
15 in the California murder case.
16 MR. SCHUELKE: Is there a question?
17 CONGRESSMAN LaTOURETTE: Well, what do
18 you think about that?
19 MR. CONDON: What do I think about that?
20 CONGRESSMAN LaTOURETTE: Yes.
21 MR. CONDON: I think that, as an agent
22 of the FBI and as a potential witness, we take our
23 direction and our guidance from the prosecutor. We
24 go to California because we're subpoenaed to go to
25 California. We try to put forth as best we can the

1 information that the prosecutor or the defense
2 attorney is trying to get at in connection with our
3 being a witness there.
4 That's the way I feel about it.
5 CONGRESSMAN LaTOURETTE: Well, let me
6 ask you this.
7 Exhibit No. 6, the request for
8 permission to expand your authority to impeach
9 Lawrence Hughes, you say you didn't know that that
10 communication was going on at the time it was sent?
11 You did not know that this document existed, or that
12 they were asking to expand your --
13 MR. CONDON: The request to expand the
14 testimony, in my memory or my opinion, would have
15 come from the Justice Department officials, not from
16 potential FBI witnesses.
17 CONGRESSMAN DELAHUNT: The point is, you
18 have no clear memory on that?
19 MR. CONDON: No, I do not.
20 CONGRESSMAN DELAHUNT: But I think what
21 the Congressman is suggesting is that one could draw
22 an inference that the government is cooperating at
23 some level with defense counsel, in terms of
24 impeaching the State of California's case against
25 Barboza.

1 MR. CONDON: Apparently that inference
2 has been drawn.
3 MR. SCHUELKE: Can we go off the record
4 a second?
5 CONGRESSMAN LaTOURETTE: Sure.
6 (Discussion off the record)
7 CONGRESSMAN LaTOURETTE: Just going back
8 to Judge Harrington's appearance before our
9 Committee, he expressed in so many words that
10 because Barboza was the first, and because, I think
11 as you said yesterday, it led to people like Kelley,
12 they cited that as why they eventually came forward,
13 because Barboza was taken care of well, Judge
14 Harrington expresses the view that there was a great
15 desire on the part of the Justice Department and the
16 FBI to make sure that he was well maintained, to
17 attract others and to do other good work.
18 Was that your view as well?
19 MR. CONDON: I'd rather state my own
20 view.
21 My own view would be, I would hope that
22 if we had a cooperating organized-crime witness, his
23 family members would be taken care of, so that their
24 lives weren't jeopardized by his coming forward and
25 testifying.

1 I would have the view that if anything
2 happened to the prospective witness, to a member of
3 his family, it would certainly discourage anyone
4 else in the criminal element from coming forward as
5 a government witness.
6 CONGRESSMAN LaTOURETTE: When does that
7 stop?
8 MR. CONDON: What?
9 CONGRESSMAN LaTOURETTE: When would that
10 stop?
11 The reason I ask you that question is, I
12 understand his value here in New England. He goes
13 while under the protection of the federal government
14 and kills Mr. Wilson in California; he kills others,
15 and commits additional crimes, for which he's
16 punished eventually.
17 MR. CONDON: I have read that; and when
18 you say he killed others, are you saying that he
19 killed others while in the Witness Protection
20 Program? Or prior?
21 CONGRESSMAN LaTOURETTE: Well, we know
22 he killed Mr. Wilson while in the Witness Protection
23 Program, and I can't answer your question; I don't
24 know that he definitely killed others. We have
25 information that we believe he did.

1 My question to you is, after his help
2 here, he goes to California and he kills Mr. Wilson.
3 It appears that the federal government was inclined
4 to help him out in that murder case. Is that wrong?
5 MR. CONDON: I don't think it's entirely
6 correct.
7 I think the members of the federal
8 government were subpoenaed out there, testified as
9 best they could to the facts, and the case turned
10 out the way it did.
11 I don't believe that the federal
12 government made the decision, or had anything to do
13 with him pleading guilty out there. It had nothing
14 to do with the sentencing, nor expressed any
15 influence in there.
16 It happened, but I don't think that the
17 federal government was responsible for what happened
18 out there.
19 CONGRESSMAN LaTOURETTE: Two things from
20 the hearing that we had with Judge Harrington and
21 the public defender that I found unusual.
22 One was that Judge Harrington indicated
23 that when he went out to California, he didn't meet
24 with the District Attorney's office, he didn't meet
25 with the police department; he immediately went to

1 meet with Mr. Barboza.
2 And I find that to be unusual, and I'd
3 ask you, do you find that to be unusual?
4 MR. CONDON: I'm not aware today that
5 that's what happened. I'm not even sure, unless he
6 has testified to that, that he met with Mr. Barboza.
7 I don't know that.
8 CONGRESSMAN LaTOURETTE: I can tell you
9 he did.
10 MR. CONDON: Okay; if he says he did, he
11 did.
12 CONGRESSMAN LaTOURETTE: And so my
13 question to you is, do you find that unusual?
14 MR. CONDON: Well, in my mind, that is
15 not so unusual; but I think it would be unusual if
16 he didn't meet with the District Attorney who was
17 prosecuting the case. And --
18 MR. SCHUELKE: Which he did, according
19 to the letter.
20 CONGRESSMAN LaTOURETTE: Later; much
21 later.
22 MR. CONDON: I would suppose that better
23 protocol would have been to meet with the District
24 Attorney first, and then tell the District Attorney
25 what he wanted to do. That's just my opinion.

1 CONGRESSMAN LaTOURETTE: And the other
2 thing that came out of this hearing -- again with
3 Judge Harrington, with the prosecuting agency in
4 California, and again the public defender was on the
5 same panel -- the public defender indicated that he
6 came to Boston to meet with the Justice Department
7 and the FBI; and was treated very, very well, and
8 found the cooperation to be good, to say the least.
9 The prosecuting authorities indicated
10 they came to Boston, and found the cooperation level
11 to be less than you would expect, I guess, from
12 another branch of law enforcement. Do you remember
13 those visits?
14 MR. CONDON: I was very chagrined to
15 read that attitude expressed in the newspaper.
16 I personally met with Marteen Miller
17 when he came to Boston prior to this case, and I met
18 with the representative of the prosecutor's office;
19 and I can't say for sure right now who it was. It
20 might have been Craig Evans, but I'm not positive of
21 that.
22 We cooperated with both sides
23 completely, gave them whatever we could that they
24 were interested in, and treated them equally.
25 I was very chagrined, personally, to

1 read somewhere some comments that were made that
2 indicated apparently they didn't feel that way; at
3 least they expressed that they didn't feel that way.
4 CONGRESSMAN LaTOURETTE: They did. So
5 you disagree with that expression?
6 MR. CONDON: I really do.
7 MR. SCHUELKE: Excuse me one second.
8 (Discussion off the record)
9 MR. CONDON: May I get a letter that I
10 have? Mary has it in that folder.
11 (Brief recess; a document was provided.)
12 CONGRESSMAN LaTOURETTE: Do you want to
13 have this marked and added? I'd be happy to do that
14 if you think it helps.
15 MR. SCHUELKE: I'm sort of indifferent.
16 It seems to me that you might want to
17 make the record complete; since this contradicts, in
18 my view, the premise of your question.
19 CONGRESSMAN LaTOURETTE: Okay. (Pause)
20 Mr. Condon, during your break, you
21 received a letter.
22 I think, if you want to make an
23 observation about that letter relative to the
24 questions I was asking you, about the cooperation
25 that you feel was afforded to the prosecuting

1 authorities in California, I think this letter dated
2 March 19, 1971 has some bearing; and that's why you
3 gave it to us.
4 MR. CONDON: Yes.
5 CONGRESSMAN LaTOURETTE: Is there a
6 comment you would like to make about it?
7 MR. CONDON: The only comment that I
8 would make is that up until I read the newspapers
9 recently, I had not the least idea or inclination
10 that either the prosecutorial side or the defense
11 side out in California was not happy or satisfied
12 with the handling they received by the FBI here in
13 Boston.
14 Did I make that clear?
15 CONGRESSMAN LaTOURETTE: It was clear to
16 me.
17 MR. CONDON: Thank you.
18 CONGRESSMAN LaTOURETTE: I want you to
19 be clear.
20 Last night, Mr. Wilson was kind enough
21 to give me a chronology of the documents that the
22 Committee has collected; and contained in that
23 chronology are the times that you and Mr. Rico met
24 with Mr. Barboza, first in Walpole, and then -- is
25 it Barnstable?

1 MR. CONDON: Yes, Barnstable.
2 CONGRESSMAN LaTOURETTE: Barnstable.
3 And then he eventually moved to another location,
4 that has an English name that I'm not going to get
5 into.
6 It would be fair to say that in 1967,
7 leading up to the indictments in the prosecution
8 that you testified to yesterday, you and Special
9 Agent Rico had a number of meetings with
10 Mr. Barboza, wherever he was being kept?
11 MR. CONDON: True.
12 CONGRESSMAN LaTOURETTE: I want to focus
13 on one such meeting. The date is not really
14 important, other than our records show that it
15 occurred on September 12 of 1967.
16 I want to ask you if you remember being
17 at a meeting in Barnstable with Detective Frank
18 Walsh, Detective John Doyle, and Mr. Rico, where a
19 formal statement was taken from Mr. Barboza on the
20 Deegan murder. Do you remember that as an event?
21 MR. CONDON: I remember being in the
22 company of the people you cited there at Barnstable
23 on an occasion. I don't have any memory of a formal
24 statement being taken.
25 CONGRESSMAN LaTOURETTE: Do you have a

1 memory of a formal statement ever being taken from
2 Mr. Barboza on the Deegan murder?
3 MR. CONDON: I do not.
4 CONGRESSMAN LaTOURETTE: Then, six
5 days later, a fellow by the name of, I think he's
6 referred to as Tony Stats -- the only thing that
7 I've seen is Stathopoulos -- I guess, surrenders
8 himself; and a statement is taken from him.
9 Do you recall being in a meeting with
10 other law-enforcement officials when Tony Stats
11 gives a statement about the Deegan murder?
12 MR. CONDON: None whatsoever, no.
13 CONGRESSMAN LaTOURETTE: I'm done with
14 that.
15 MR. WILSON: Mr. Condon, did you give
16 any documents to Mr. Barboza's defense lawyers in
17 California?
18 MR. CONDON: Do I have any?
19 MR. WILSON: Did you give any? Do you
20 remember giving any documents to --
21 MR. CONDON: I don't remember giving any
22 documents.
23 MR. WILSON: Do you recall whether you
24 were asked to provide any documents?
25 MR. CONDON: No, I do not.

1 MR. WILSON: One of the issues that
2 Lawrence Hughes was to testify about was possession
3 of bonds. It's my understanding there was $300,000
4 of negotiable bonds. Did you ever see or have in
5 your possession any of these negotiable bonds?
6 MR. CONDON: I don't have any
7 recollection of having seen or having in my
8 possession any bonds.
9 MR. WILSON: When you provided the
10 Committee with this document a moment ago --
11 MR. SCHUELKE: Why don't you mark it as
12 an exhibit, so the record will reflect what we're
13 talking about.
14 MR. WILSON: This is a letter from a
15 sheriff in Santa Rosa --
16 MR. CONDON: I think he was the sheriff
17 of Santa Rosa County; I believe.
18 MR. WILSON: It's a letter from him to
19 Director Hoover. It appears to be the original copy
20 of this letter.
21 Is this something you maintained in your
22 personal records?
23 MR. CONDON: I did; I did. I kept that.
24 MR. WILSON: Do you have any other
25 documents that pertain to the California trial?

1 MR. CONDON: No, I do not.
2 MR. WILSON: Do you have any other
3 documents that pertain in any way to Joseph Barboza,
4 except for newspaper clippings or that sort of
5 thing?
6 MR. CONDON: No.
7 MR. WILSON: If you could, please take a
8 look at Exhibit 23.
9 While you're looking for it, I'm going
10 to characterize what it is, just for the record; and
11 we can talk about it. It appears to be a document
12 about Joseph Barboza. We're not sure whether it was
13 directed to the Director of the FBI.
14 The first sentence of the document
15 reads, quote, "Investigation is being initiated in
16 connection with the TECIP to develop subject as a
17 top-echelon criminal informant. Therefore, subject
18 is being designated a target under this program."
19 The date of the document is April 14, 1969.
20 MR. CONDON: I've read it.
21 MR. WILSON: The Committee does not know
22 what this document stands for, but it appears on its
23 face to stand for the proposition that Joseph
24 Barboza was being considered as a top-echelon
25 informant in 1969.

1 Does that seem a fair characterization,
2 from the face of the document?
3 MR. CONDON: It does.
4 MR. WILSON: Do you have any
5 recollection as to whether Barboza was being
6 considered to be an informant in 1969?
7 MR. CONDON: No.
8 MR. WILSON: Drawing your attention to
9 the bottom right-hand corner of the document,
10 underneath what appears to be a date stamp, it
11 appears to be your name.
12 MR. CONDON: That's correct.
13 MR. WILSON: Is this your handwriting?
14 MR. CONDON: The name does not appear to
15 be my handwriting. The initials, however, do appear
16 to be my initials.
17 MR. WILSON: The initials where?
18 MR. CONDON: DMC.
19 MR. WILSON: I think I asked the
20 question as broadly as possible, but do you know
21 whether the government was considering using Barboza
22 as an informant in 1969?
23 MR. CONDON: I don't know that; I don't
24 know that.
25 MR. WILSON: The reason we're

1 particularly interested in this is because there
2 has been a great deal of articulation that the
3 government was concerned with protecting Barboza
4 from retaliation, and providing for him; and that,
5 in addition to his being rewarded for his
6 cooperation with the government, the government
7 would make sure that other possible cooperating
8 witnesses or informants would understand that they
9 would be treated well.
10 From our perspective, if Barboza was to
11 be used as a top-echelon criminal informant, that
12 would somewhat contradict some of the explanations
13 we've had for being so solicitous of him in
14 California, and helping him in his commutation
15 process, parole process, later.
16 Would it have been consistent with the
17 government's objectives regarding Barboza to put him
18 back into a criminal-informant status?
19 MR. CONDON: I don't know. I can't
20 answer whether it would be consistent with the
21 government's efforts.
22 If you want my personal opinion --
23 MR. WILSON: I do.
24 MR. CONDON: -- it's not consistent.
25 MR. WILSON: I ask here for your

1 speculation.
2 We don't know what the redacted sections
3 of this document say; but if there was anybody in
4 the Boston office that would be the person in charge
5 of using Barboza as a top-echelon informant in 1969,
6 who would that person be?
7 MR. CONDON: I gather from reading this
8 document in front of me, although it's redacted, it
9 appears to be authored by the San Francisco office
10 of the FBI; and obviously, although it's redacted, I
11 assume it was addressed to the Boston office.
12 It also appears that they're expressing
13 what they want to do, what San Francisco wants to
14 do, as far as Mr. Barboza is concerned, and their
15 top-echelon informant program.
16 And I would like to hear the question,
17 based on what I've said.
18 MR. WILSON: No; I think you've answered
19 my question.
20 The initials on the bottom left-hand
21 corner of this document are CNH. Do you have a
22 recollection that that would be Chuck Hiner?
23 MR. CONDON: My best estimate would be
24 that it would be Chuck Hiner.
25 MR. WILSON: Do you recall any

1 conversations with Hiner or anybody else in the San
2 Francisco office about using Barboza in any way as
3 an informant or as a cooperating witness in trials?
4 MR. CONDON: I'm sure that I had
5 conversations with Chuck Hiner over the years.
6 I don't recall any conversations relative to the
7 substance of what's contained in this document here,
8 Exhibit No. 23.
9 MR. WILSON: When Barboza was ultimately
10 relocated to California, it appears from records
11 that we have that he traveled back to Massachusetts
12 a number of times. Were you aware at the time that
13 Barboza was returning to Massachusetts from
14 California?
15 MR. CONDON: Was I aware that he was
16 returning?
17 MR. WILSON: Correct.
18 MR. CONDON: No.
19 MR. WILSON: It's my assumption that
20 once the Clay Wilson trial began, you would have
21 become aware of it, because he had obviously come
22 back to Massachusetts; he had been apprehended in
23 Massachusetts.
24 MR. CONDON: Yes, yes.
25 MR. WILSON: But you're telling us now

1 you have no knowledge that he was coming back to
2 Massachusetts prior to the Clay Wilson trial?
3 MR. SCHUELKE: You mean, no advance
4 knowledge of his plan to come?
5 MR. WILSON: Well, no contemporaneous
6 knowledge.
7 MR. CONDON: My answer was no advance
8 knowledge; no. I did not know that he was coming
9 back to Massachusetts.
10 MR. WILSON: Then, prior to the Clay
11 Wilson trial, did you have contemporaneous knowledge
12 that Barboza had been back in Massachusetts?
13 MR. CONDON: Yes.
14 MR. WILSON: And how did you know that?
15 MR. CONDON: I knew that he was back in
16 Massachusetts because I recall on one occasion
17 meeting with him.
18 MR. WILSON: And why did you meet with
19 him?
20 MR. CONDON: I met with him as a result
21 of a call, I assume a call to the office, that he
22 wanted to meet with me; and I met with him.
23 MR. WILSON: Do you remember what the
24 subject of the meeting was?
25 MR. CONDON: I don't remember what the

1 subject of the meeting was, but speculation would be
2 it was complaints about his treatment in the Witness
3 Protection Program.
4 MR. WILSON: Were you surprised that
5 Barboza had returned to Massachusetts?
6 MR. CONDON: Shocked.
7 MR. WILSON: And it's my understanding
8 that under the terms of his release and subsequent
9 government assistance, he was not supposed to come
10 back to Massachusetts.
11 MR. CONDON: That's probably correct.
12 MR. WILSON: Do you recall whether you
13 took any steps to --
14 MR. CONDON: I can't recall what steps I
15 took.
16 MR. WILSON: If you would just let me
17 finish the question -- steps to notify anyone else
18 that Barboza had come back to Massachusetts?
19 MR. CONDON: I don't recall what action
20 I took.
21 MR. WILSON: From the time that Barboza
22 was moved away from Massachusetts until the
23 commencement of the Clay Wilson trial, do you know
24 whether he provided information to the FBI?
25 MR. CONDON: I don't; I don't.

1 MR. WILSON: Now, I'm asking in addition
2 to whatever your meeting was about, because you've
3 told us you don't remember the subject of the
4 meeting.
5 MR. CONDON: That's correct.
6 MR. WILSON: Do you know whether he met
7 with anybody else from the time that he was
8 relocated away from Massachusetts until the Wilson
9 trial?
10 MR. CONDON: Of my own knowledge, no.
11 MR. WILSON: If Barboza or any
12 individual was being considered for the top-
13 echelon informant program, who was involved in the
14 decision-making process as to open that individual
15 as a top-echelon informant?
16 MR. CONDON: To the best of my
17 knowledge, it would emanate from an agent in the
18 particular office, and then it would probably go
19 through the supervisor for approval, and maybe it
20 would be run by the agent in charge of the office.
21 Maybe; I'm not sure.
22 Then it would go to Washington, D.C., to
23 a section chief down there, who would probably make
24 the decision. Many communications I remember went
25 down to say, unless there's contrary advice of the

1 Bureau, such-and-such is going to happen, is my best
2 recollection.
3 MR. WILSON: That recollection comes to
4 you because you were involved handling top-echelon
5 informants?
6 MR. CONDON: Yes, I was.
7 MR. WILSON: So that was the process
8 that you recall from your personal experience?
9 MR. CONDON: Yes.
10 MR. WILSON: We'll change subjects, and
11 talk for a little while about the commutation and
12 parole process for the Deegan defendants.
13 Just to characterize it, it's our
14 understanding that over the course of many years,
15 the various Deegan defendants applied for parole or
16 commutation, and they went through the Massachusetts
17 system, and there were various results.
18 After the Deegan trial, were you ever
19 asked to provide any information to the
20 Massachusetts parole board for consideration prior
21 to or during any commutation or parole hearings?
22 MR. CONDON: Not to my knowledge.
23 MR. WILSON: I asked whether you were
24 asked to provide it, but did you ever provide any
25 information?

1 THE WITNESS: Not to my recollection,
2 no.
3 MR. WILSON: Do you recall having any
4 discussions with Massachusetts officials about
5 commutation or parole for any of the Deegan
6 defendants?
7 MR. CONDON: Absolutely not.
8 MR. WILSON: For example, just to
9 eliminate all the possibilities, did the Governor,
10 or any of his employees, or any non-parole-board
11 individuals, ask your opinion about commutation or
12 parole?
13 MR. CONDON: No.
14 MR. WILSON: Are you aware of any such
15 communications between Massachusetts officials and
16 any of your former colleagues at the FBI?
17 MR. CONDON: Absolutely not.
18 MR. WILSON: I'm going to leave that for
19 now. Does anybody else have any commutation
20 questions for now?
21 CONGRESSMAN DELAHUNT: I want to just
22 see if I can solicit an opinion, because obviously
23 Mr. Condon has served both in a federal and state
24 capacity.
25 On that Exhibit 23, as I read that

1 memorandum -- and I concur with you; it would appear
2 that this memorandum was prepared in the San
3 Francisco office --
4 MR. CONDON: Yes.
5 CONGRESSMAN DELAHUNT: -- one
6 inference could be that the San Francisco office
7 had information that Barboza was either preparing
8 for or more likely was already involved in some
9 criminal enterprise.
10 MR. CONDON: I think the last sentence
11 would indicate that; I agree.
12 CONGRESSMAN DELAHUNT: That's the
13 inference that I draw. The murder of Clay Wilson
14 occurred in --
15 MR. CONNOLLY: July of '70, is my
16 understanding.
17 CONGRESSMAN DELAHUNT: -- July of 1970?
18 Is that correct; July of 1970?
19 Who was your contact in the FBI office
20 in San Francisco when you and Mr. Harrington and
21 Mr. Rico went to --
22 MR. CONDON: I don't know that I had a
23 specific contact; but to try to answer your question
24 as best as I possibly can, if I had occasion to talk
25 to somebody out there, I would talk to Chuck Hiner.

1 I'm not sure; he may have been the supervisor of the
2 OC, organized crime, squad at the time, but he would
3 be the person I would talk to.
4 CONGRESSMAN DELAHUNT: If you remember,
5 was Agent John Connolly assigned to the office --
6 MR. CONDON: He was assigned to the San
7 Francisco office before he went to the New York
8 office, from which he came to Boston.
9 CONGRESSMAN DELAHUNT: Would he have
10 been there during that --
11 MR. CONDON: Some period of time he was
12 out there, yes.
13 CONGRESSMAN DELAHUNT: Do you remember
14 meeting with him or interacting with him during that
15 time?
16 MR. CONDON: I had contact with him when
17 I was in San Francisco, yes.
18 CONGRESSMAN DELAHUNT: Would you have
19 occasion to have discussed Barboza with him?
20 MR. CONDON: I can't hear you.
21 CONGRESSMAN DELAHUNT: Do you have a
22 memory of having any conversation with John Connolly
23 relative to Barboza?
24 MR. CONDON: I don't recall any specific
25 conversations with him about Barboza, but I do have

1 a memory that he was sent out to talk to Barboza on
2 at least one occasion, and maybe others. I don't
3 have any specific memory.
4 CONGRESSMAN DELAHUNT: While stationed
5 in San Francisco?
6 MR. CONDON: Yes.
7 CONGRESSMAN DELAHUNT: This is just from
8 hearsay, and there's nothing in the documents; but
9 when he was stationed in New York, was he also
10 credited with the apprehension of Frank Salemme?
11 MR. CONDON: He was.
12 CONGRESSMAN DELAHUNT: Are you familiar
13 with the circumstances surrounding that
14 apprehension?
15 MR. CONDON: The best way I can do it is
16 as briefly as I can narrate to you what happened.
17 This matter came up before Judge Wolf in his mob
18 hearings.
19 Both Frank Salemme and Steven Flemmi
20 were unlawful-flight fugitives that were being
21 sought by the federal government. There was some
22 information that they might be in the New York area.
23 And we routinely sent information to the
24 New York office -- I don't know whether I sent that
25 or somebody else did -- to alert New York that

1 supposedly they were in the New York area, and that
2 the New York office should make every effort they
3 could to locate them.
4 Some time went by, and I received
5 information -- I don't recall whether it came from a
6 particular informant or from another agent -- that
7 Frank Salemme was frequenting the New York Athletic
8 Club.
9 I thereafter called John Connolly, who
10 was in the New York office, because I knew Connolly;
11 I had met him before he came into the FBI. To put
12 it in layman's language, I said, "John, we've sent
13 Lee down there to try to come up with Frank Salemme
14 and Steve Flemmi, and I'm not sure we're getting the
15 right kind of a shake from the New York office. I'm
16 sending you photographs and descriptions of both" --
17 both, I emphasize both -- "Frank Salemme and Steve
18 Flemmi, and see what you can do; see if you can help
19 us."
20 Supposedly, Frank was up around the New
21 York Athletic Club, or words to that effect. That's
22 my memory of what happened. Anything I tell you,
23 and I would be glad to answer, is what I've heard
24 from New York on how the apprehension took place,
25 and so forth.

1 CONGRESSMAN DELAHUNT: No; that
2 suffices.
3 Was Steve Flemmi, if you remember, an
4 informant at that point in time?
5 MR. CONDON: In 1970 --
6 CONGRESSMAN DELAHUNT: I'm not aware of
7 the date of that.
8 MR. CONDON: In 1970, when Frank Salemme
9 and Steve Flemmi fled this area, if Flemmi had been
10 an informant prior to that process being issued, he
11 wouldn't have been carried as an informant after he
12 was being sought on the warrant.
13 Does that answer you?
14 CONGRESSMAN DELAHUNT: So he would have
15 been either closed or suspended; that would be the
16 normal practice?
17 MR. CONDON: That would be what I think
18 would happen.
19 CONGRESSMAN DELAHUNT: Even if he was a
20 top-echelon informant?
21 MR. CONDON: Yes; correct.
22 MR. WILSON: Just to finish up on that,
23 is it possible that the information about Salemme's
24 whereabouts was provided by Steven Flemmi?
25 MR. CONDON: To my knowledge, it

1 certainly wasn't.
2 MR. WILSON: Was the information
3 initially provided to you, or was it provided to
4 Special Agent Rico?
5 MR. CONDON: I don't believe that
6 Mr. Rico was even in the Boston office at that time.
7 I think he left and went to Florida in around June
8 of 1970. So he wouldn't have been here at the time;
9 and in answer to your question, I don't believe the
10 information was ever furnished to Paul Rico.
11 MR. WILSON: One of the issues that's
12 come out of Judge Wolf's proceedings is that there
13 is speculation that Special Agent Rico provided
14 information to Steven Flemmi prior to Flemmi's
15 indictment for the Fitzgerald bombing and one of the
16 Bennett murders, and that that enabled Steven Flemmi
17 to flee pre-indictment. Do you know anything about
18 that issue?
19 MR. CONDON: No, I do not.
20 MR. WILSON: Did you at the time hear
21 speculation that that might have been the case?
22 MR. CONDON: I absolutely did not.
23 CONGRESSMAN DELAHUNT: Dennis, can I
24 direct your attention to Exhibit 36?
25 In there, there's a memorandum to the

1 Director of the FBI from the SAC here in Boston.
2 It's dated the 23rd --
3 MR. SCHUELKE: Have you found it?
4 MR. CONDON: I have it.
5 CONGRESSMAN DELAHUNT: -- January 23 of
6 1974.
7 As you leaf through this particular
8 exhibit, there is a letter, presumably by Barboza to
9 his girlfriend; the salutation is, "Hi, Baby." If
10 you could just read through that quickly.
11 MR. CONDON: Where do you want me to
12 read?
13 CONGRESSMAN DELAHUNT: Just read the
14 letter first.
15 MR. CONDON: From Boston to the
16 Director, or the letter?
17 CONGRESSMAN DELAHUNT: Why don't you
18 read the whole thing; it might be easier.
19 MR. CONDON: All right. (Pause) I've
20 read it.
21 CONGRESSMAN DELAHUNT: The letter by
22 Barboza to his girlfriend dated January 9, 1974,
23 just directing your attention to the last paragraph
24 of that letter, "That I will wait until" -- and I'll
25 read it out loud, into the record. "That I will

1 wait until Ted H. and Dimmy" -- and Dimmy is your
2 nickname; is that correct?
3 MR. CONDON: Yes.
4 CONGRESSMAN DELAHUNT: -- "contact you,
5 and if there is no response, then I will have a
6 letter sent to the Providence Journal and Record
7 American." And that would appear to be dated
8 January 9, 1974. It's not very legible, but that
9 seems to be the date.
10 One interpretation of that letter could
11 be that there's implicit in there a threat to
12 embarrass the FBI or the U.S. Attorney's office;
13 that's one interpretation.
14 It would then appear that the Airtel
15 from the SAC in Boston dated January 23 is in
16 response to that what I interpret to be threat to
17 embarrass.
18 And then going to the third paragraph,
19 it states that "Mr. McDowell and Mr. Harrington had
20 previously advised that Baron's credibility as a
21 witness has been seriously diminished by events that
22 have transpired in regard to him since his testimony
23 in federal and state courts in 1968, and this is
24 also the opinion of authorities in the organized
25 crime section of the Justice Department in

1 Washington.
2 "Attorney Harrington advised that he has
3 no plans to contact Baron. Intention of Rhode
4 Island authorities not known at this time, but
5 Bureau will be kept advised.
6 "Boston sees no useful purpose in
7 interview with Baron at this time, in that events
8 referred to by him occurred prior to his testimony
9 in 1968. It is felt that this is another effort on
10 the part of Baron to obtain government support and
11 bid for his parole.
12 "Strike Force will not consider any
13 future prosecutions based on Baron testimony."
14 Reading the letter in this Airtel
15 together, at least as I review the exhibits and the
16 documents that the Committee has in its possession,
17 it would appear to be for the first time an effort
18 or a decision for the Department of Justice and the
19 FBI to distance themselves from Barboza.
20 What I'm unaware of, and maybe you can
21 help in this regard, is that third paragraph, which
22 says that both McDowell and Harrington advised that
23 Baron's credibility as a witness has been seriously
24 diminished since his testimony in federal and state
25 courts.

1 Are you aware of the facts that support
2 that statement?
3 MR. CONDON: No.
4 CONGRESSMAN DELAHUNT: No?
5 MR. CONDON: No. They would be pure
6 speculation on my part.
7 CONGRESSMAN DELAHUNT: I'm not asking
8 for speculation; but do you remember receiving this
9 letter from Baron?
10 MR. CONDON: No.
11 CONGRESSMAN DELAHUNT: You don't
12 remember receiving it; okay.
13 It is stated here that you and --
14 MR. CONDON: Excuse me. The handwritten
15 letter was apparently not directed to the FBI.
16 CONGRESSMAN DELAHUNT: Who was it
17 directed to?
18 MR. CONDON: It was directed to the
19 girlfriend, who then must have forwarded it to us.
20 CONGRESSMAN DELAHUNT: Exactly.
21 But I'm somewhat perplexed here, because
22 there was intervention by the government in terms of
23 the Montana parole board, and that was voted on in
24 May of 1973. My recollection is there was another
25 letter there somewhere in this book of exhibits;

1 there was a thank-you to Ted Harrington -- I don't
2 know if you were even referenced -- saying that it
3 was the fastest parole permit issued in the history
4 of Montana. That was the statement made by Barboza.
5 It's Exhibit 40, but it's not necessary
6 to review it.
7 But here we are in January of 1974, a
8 space of six or seven months, and my interpretation
9 is that the government was beginning to wash its
10 hands of Barboza; that something had occurred,
11 events, facts, that were developed that led McDowell
12 and Harrington to advise that Barboza's credibility
13 has been seriously diminished.
14 MR. CONDON: Well, give me your
15 question.
16 CONGRESSMAN DELAHUNT: I'm just making a
17 statement. I don't know how to frame a question,
18 because, from your earlier response, you have no
19 recollection. I guess we would have to inquire of
20 McDowell and Harrington.
21 MR. CONDON: As I read this, it says,
22 "Mr. McDowell and Mr. Harrington previously advised
23 that Baron's credibility as a witness had been
24 seriously diminished by events that had transpired
25 in regard to him since his testimony in federal and

1 state courts in 1968, and this is also the opinion
2 of authorities in the organized crime section of the
3 Justice Department."
4 I don't like to give an assumption. If
5 you want an assumption on it, I'll be glad to.
6 CONGRESSMAN DELAHUNT: Sure.
7 MR. CONDON: I think the events that
8 they're talking about was his subsequent contact
9 while he was in the Witness Protection Program, the
10 murder case of Clay Wilson, and maybe other events
11 concerning his conduct while in the Witness
12 Protection Program; and in my one man's opinion,
13 those type of activities would reflect on
14 credibility for the future.
15 CONGRESSMAN DELAHUNT: Thank you.
16 MR. WILSON: Turning to the federal
17 prosecution of Patriarca for the Marfeo conspiracy,
18 is it fair to say that it was Special Agents Rico
19 and yourself that were responsible for convincing
20 Barboza to testify in the Marfeo conspiracy trial?
21 MR. CONDON: I would say it's fair.
22 MR. WILSON: On March 28, 1967, you
23 and Special Agent Rico prepared a summary of an
24 interview with Barboza. He told you that he did not
25 know who killed Marfeo, and that information was

1 ultimately sent to the Director. There were
2 subsequent interviews, and ultimately there was a
3 federal prosecution.
4 Do you recall whether in preparation for
5 the federal prosecution you reviewed all of the
6 Patriarca logs?
7 MR. CONDON: No, I do not.
8 I want to interject that there were two
9 Marfeo killings; and would you specify which one in
10 future questions?
11 MR. WILSON: This would be the trial of
12 the William Marfeo conspiracy to commit murder.
13 MR. CONDON: Oh; okay.
14 MR. WILSON: There were three trials;
15 the Angiullo trial with Barboza as a witness, the
16 Marfeo trial with Barboza as a witness, and then the
17 Deegan prosecution. I'm referring exclusively to
18 the William Marfeo. Ultimately Raymond Patriarca
19 was convicted of conspiracy involving the Marfeo
20 murder, along with two other co-defendants.
21 Do you recall what information from the
22 Patriarca wiretap logs was provided to the defense
23 in that case?
24 MR. CONDON: No, I do not.
25 MR. WILSON: We've been told that

1 information was provided to the defense, but do you
2 recall whether information was provided to the
3 defense from the Patriarca wiretap logs?
4 MR. CONDON: I don't have any direct
5 recollection of that. I think I've read somewhere
6 in recent days in connection with Judge Harrington's
7 appearance before the Committee that that may have
8 come out in his testimony. I'm not sure.
9 MR. WILSON: It did; and we're trying to
10 determine whether the defense was provided with the
11 entire universe of the logs, or a subset of that
12 which was recorded.
13 Is it fair to say that the Witness
14 Protection Program was created for Barboza?
15 MR. CONDON: Oh, I think that's a
16 stretch. I think the government probably gained its
17 first experiences with the Witness Protection
18 Program with Barboza, and it went from there. He
19 was probably the first witness in the program. But
20 I don't think that it was modeled because of him
21 specifically.
22 MR. WILSON: But he was, to your
23 recollection, the first individual --
24 MR. CONDON: The first one that I'm
25 aware of.

1 MR. WILSON: -- that was handled in the
2 way that ultimately became the Witness Protection
3 Program?
4 MR. CONDON: That I'm aware of, yes.
5 MR. WILSON: I ask that question because
6 the book that I referred to yesterday that's just
7 been published, which was co-authored by the man who
8 administered the Witness Protection Program, doesn't
9 recognize Barboza as having been in the Witness
10 Protection Program.
11 MR. CONDON: That would be Gerald Shur?
12 MR. WILSON: Yes. Which obviously is
13 somewhat mysterious, because --
14 MR. CONDON: It is; it is.
15 MR. WILSON: And the book is somewhat
16 contradictory. In the beginning it doesn't
17 recognize him as being in the program, and later on
18 it makes an oblique reference to him in the program.
19 MR. CONDON: Well, when he was in it, it
20 probably was not formalized as the Witness
21 Protection Program; but certainly they learned some
22 of the things they should do for the future in the
23 program.
24 MR. WILSON: Who defined the terms and
25 conditions for Barboza's relocation and subsequent

1 treatment?
2 MR. CONDON: Give me that again, please.
3 MR. WILSON: Who defined the terms and
4 conditions for Barboza's relocation and subsequent
5 treatment at the hands of the federal government?
6 MR. CONDON: The first part would have
7 been set down by the Justice Department in
8 Washington, probably with Attorney Gerald Shur
9 playing a big part in that.
10 The second part of the question, I would
11 have to have again.
12 MR. WILSON: I'm just trying to get at,
13 who was a participant in determining how Barboza
14 would be treated? Who made the decisions?
15 MR. CONDON: The Justice Department, in
16 Washington, D.C.
17 MR. WILSON: Did FBI personnel play any
18 part in that?
19 MR. CONDON: Not that I can recall.
20 MR. WILSON: Do you recall any documents
21 that relate to Barboza's treatment by the federal
22 government?
23 MR. CONDON: No.
24 MR. SCHUELKE: Would this be a
25 convenient time for us to take our break?

1 MR. WILSON: Yes.
2 (Recess taken)
3 MR. WILSON: We'll jump around a little
4 bit, a few odds and ends.
5 Mr. Condon, were you aware of efforts to
6 assist Joseph Barboza in obtaining a book contract?
7 MR. CONDON: No.
8 MR. WILSON: So you were not aware at
9 all that there were people who were trying to help
10 him get a book contract?
11 MR. CONDON: That's correct.
12 MR. WILSON: We spoke recently with a
13 man who is in the Witness Protection Program who has
14 told us that he was brought to Washington and was
15 asked to write a book to corroborate Barboza's
16 testimony; and he said, "I won't do that, because
17 Barboza's testimony was false, and I'm not going to
18 write a book that's not true," and he allegedly was
19 threatened, and ultimately did not write a book.
20 Are you aware of any efforts to work
21 with other individuals to write books, and in those
22 books describe their impressions of some of the
23 events of the 1960s?
24 MR. CONDON: No, I am not.
25 MR. WILSON: Now we'll change gears

1 completely, to a finding by the Rhode Island Supreme
2 Court.
3 In 1988 the Supreme Court found that
4 Special Agent Rico encouraged the state's main
5 witness in a particular trial -- that would be John
6 Kelley -- to lie under oath at the 1970 trial of
7 Maurice Lerner and four other defendants.
8 The Rhode Island Supreme Court found
9 that this was done to protect the informant, and to
10 assist with obtaining a conviction in the trial; the
11 court found that Special Agent Rico lied in that
12 trial.
13 Were you aware of this finding?
14 MR. CONDON: Was I aware of what?
15 MR. WILSON: The finding by the Rhode
16 Island Supreme Court that Special Agent Rico had
17 suborned perjury.
18 MR. CONDON: I was not aware of that
19 finding by the Supreme Court. Somewhere, somehow, I
20 became under the impression that the trial judge had
21 said something. That was my understanding of this
22 matter that you're talking about. But I was not
23 aware of the Supreme Court decision.
24 MR. WILSON: We asked Judge Harrington
25 whether he was aware of the 1988 Supreme Court of

1 Rhode Island decision; and he also said no, and you
2 say no. That surprises us.
3 MR. CONDON: I have no awareness of this
4 being a Supreme Court decision. My memory is that
5 somewhere, somehow, I came under the impression that
6 the trial judge in that trial we're talking about
7 had made such statements. That's the extent of my
8 knowledge.
9 MR. WILSON: Do you have any knowledge
10 as to what happened after these statements that
11 you're referring to were made? Were there
12 consequences?
13 MR. CONDON: My belief, understanding,
14 is that there were never any consequences as a
15 result of what I had heard.
16 MR. WILSON: Are you aware of whether
17 the federal or state authorities in Massachusetts
18 ever conducted any type of investigation to
19 determine whether Special Agent Rico had suborned
20 perjury, and himself committed perjury?
21 MR. CONDON: I'm not aware of any
22 inquiry taking place as a result of that.
23 CONGRESSMAN DELAHUNT: Dennis, when is
24 the last time you spoke with Paul Rico?
25 MR. CONDON: I want to be accurate, now.

1 CONGRESSMAN DELAHUNT: Approximately.
2 MR. CONDON: He called me... Let me
3 see. 14th, 15th...
4 I think he called me on the 16th of this
5 month, when he returned to Florida from having an
6 appearance before the Congressional Committee, and
7 inquired as to my physical health and how I was
8 doing.
9 CONGRESSMAN DELAHUNT: Have you been in
10 regular contact with him in the past five or ten
11 years?
12 MR. CONDON: By regular, what is
13 regular?
14 CONGRESSMAN DELAHUNT: Two or three
15 conversations a year.
16 MR. CONDON: Yes, he'd call me two,
17 three, four times a year, socially; asked how I was
18 doing, and I did the same with him.
19 CONGRESSMAN DELAHUNT: Would you two
20 discuss the activities of the informant committee?
21 MR. CONDON: No.
22 MR. WILSON: Just to go back to
23 something Congressman LaTourette was speaking about
24 before, we were discussing speculation that Joseph
25 Barboza had committed murders in addition to the

1 Clay Wilson murder while in the Witness Protection
2 Program.
3 Were you aware at the time, the time
4 being the 1970s, that there was speculation that
5 Barboza might have committed murders in addition to
6 the Clay Wilson murder?
7 MR. CONDON: I was not.
8 MR. WILSON: A few minutes ago, we were
9 talking about an exhibit that indicated that Barboza
10 wanted to provide more information to the FBI, and
11 I'll characterize this just quickly. It appeared
12 that in 1974 Barboza sent a letter to you stating
13 that he wanted to give information about the July
14 1965 murder of Romeo Martin.
15 Did you at the time -- do you have any
16 recollection of it -- believe that Barboza would
17 provide truthful information about the Romeo Martin
18 murder?
19 MR. CONDON: I didn't give it any
20 thought; I didn't give it any thought.
21 MR. WILSON: I'm just asking. He was
22 prepared to come forward with new information about
23 a murder.
24 MR. CONDON: He was prepared to come
25 forward?

1 MR. WILSON: Apparently he was.
2 MR. CONDON: Where is that indicated in
3 here?
4 MR. WILSON: I don't think I have the
5 document here.
6 MR. CONDON: Well, without that, try to
7 rephrase it.
8 MR. WILSON: He was prepared to come
9 forward with information about the Romeo Martin
10 murder.
11 I think we looked at Exhibit 36 a few
12 minutes ago, and this is the exhibit that we spent
13 some time over. It's the exhibit that indicates
14 that Barboza's credibility as a witness had been
15 seriously diminished, and you explained that part of
16 the diminishing credibility would have been the
17 Wilson murder trial.
18 MR. CONDON: That was my speculation,
19 based on a statement attributed to McDowell and
20 Harrington.
21 MR. WILSON: I don't want to belabor
22 this point, but it does appear to us that Barboza
23 was prepared to come forward and try to provide
24 information about the Romeo Martin murder. I guess
25 I should ask the simple question.

1 Do you remember that Barboza was
2 prepared to provide information about the Romeo
3 Martin murder?
4 MR. CONDON: I do not. I'm not
5 disputing that he may have been; I don't remember.
6 MR. WILSON: Fair enough.
7 When Barboza was ultimately paroled in
8 October of 1975 from the California prison system,
9 do you have any knowledge as to what steps were
10 taken to ensure his safety?
11 MR. CONDON: To ensure his safety? No,
12 I do not. I have no memory of it now.
13 MR. WILSON: Do you recall whether the
14 Boston office had any involvement with Joseph
15 Barboza after he was released from the California
16 prison system?
17 MR. CONDON: I don't know; I don't know.
18 MR. WILSON: One of the things that
19 we've learned in the last few months is that Ted
20 Chaliss, a man who ultimately pled guilty to setting
21 Barboza up to be murdered, was serving as an FBI
22 informant at the time that he assisted in setting
23 Barboza up to be murdered. Were you aware that Ted
24 Chaliss was an FBI informant?
25 MR. CONDON: No, I was not.

1 MR. WILSON: Was the Boston office aware
2 of any efforts to kill Barboza prior to his eventual
3 murder?
4 MR. CONDON: I don't know that we were
5 aware of any specific efforts.
6 For Congressman Delahunt's edification,
7 the Chaliss that they refer to, that Counsel Wilson
8 refers to, was actually James Chalmers,
9 C-h-a-l-m-e-r-s, from the Boston area.
10 He was an associate of George
11 MacLaughlin, who was on the Ten Most Wanted for
12 the FBI, and is currently still confined in Walpole.
13 Chalmers fled the Boston area out of fear of George
14 MacLaughlin; ended up in San Francisco, California.
15 Somehow or other, he and Barboza --
16 CONGRESSMAN DELAHUNT: Found each other?
17 MR. CONDON: -- made contact; found each
18 other. I say this explanation to try to answer your
19 question. We were always concerned that Barboza, or
20 any previous government witness, that starts an
21 association with anyone from their history is
22 jeopardizing their personal safety.
23 And I'm sure that Barboza had been told
24 a number of times, you better give James Chalmers --
25 not James Chalmers; Jimmy Chaliss, as he was there,

1 a wide berth; and obviously he didn't.
2 MR. WILSON: We interviewed many months
3 ago Joseph Barboza's then girlfriend, who expressed
4 to us great surprise that when Barboza was killed
5 FBI agents turned up almost immediately.
6 We're not trying to determine whether
7 there was any contact between Chaliss and any FBI
8 agents, and I think you've answered the question as
9 fully as we can ask you to answer right now. You're
10 just not aware of any relationship between Chaliss
11 and the FBI that pertains to Joseph Barboza; is that
12 a fair characterization?
13 MR. CONDON: See if you can break that
14 down a little bit, please.
15 MR. WILSON: I want to make this as
16 broad as possible.
17 MR. CONDON: All right.
18 MR. WILSON: You've helped us out, and
19 you gave us a good explanation; we really appreciate
20 that.
21 I'm just trying to get at whether you or
22 anybody in the Boston office was aware in 1975 of
23 whether Chaliss was providing information about
24 Joseph Barboza to FBI agents.
25 MR. CONDON: No, I was not aware of

1 that.
2 MR. WILSON: Subsequently, because he
3 pled to the crime, we're aware that Chaliss was
4 providing information to the people that ultimately
5 killed Barboza.
6 MR. CONDON: Correct.
7 MR. WILSON: We're trying to determine
8 whether Chaliss was also providing any information
9 about Barboza to FBI agents, and you've told us you
10 don't know.
11 MR. CONDON: No.
12 MR. WILSON: We don't know either, so
13 that's fine.
14 Chaliss pled guilty to a conspiracy to
15 assist in Barboza's murder. It took many years; it
16 took over a decade for others to be prosecuted for
17 the Barboza murder.
18 Again, I'm not trying to be mysterious.
19 We don't know why it took so long. It appeared that
20 Chaliss provided information about others that were
21 involved in the actual murder. Do you know why it
22 took so long to prosecute other people for the
23 murder?
24 MR. CONDON: My opinion is that there
25 was a lack of evidence; and I believe that it took

1 some time and some convincing before Chaliss would
2 tell the truth about what happened out there.
3 And then, I also think that there was
4 electronic coverage on the Mafia headquarters here
5 in Boston, and subsequent electronic coverage that
6 they had.
7 My understanding, my recollection, is
8 that ultimately the consigliere of the Mafia family
9 in the New England area went in and pled guilty in
10 federal court to numerous charges, and one of them
11 was the murder of Joseph Barboza. That was Joseph
12 Russo, who passed away while in confinement in the
13 federal system.
14 I think a lot of things probably played
15 into why it took so long. Probably took too long to
16 convince people. And then the pressure on Russo was
17 a result of the electronic coverage that came out.
18 Many factors, probably, in there.
19 MR. WILSON: Well, this is the concern
20 to us.
21 At the time Chaliss admitted to his
22 complicity in the murder, he was incarcerated. He
23 was ultimately taken into the Witness Protection
24 Program, because he did provide information about
25 others complicit in the murder; and yet it still

1 took well over ten years to bring charges against
2 anybody else.
3 So it seems there was a witness, and
4 there was a body. There was a witness; there was
5 some evidence at the time.
6 MR. CONDON: The best I can say to that,
7 that's information that would probably have to be
8 coming from prosecutors or Strike Force attorneys,
9 or other people that make those decisions.
10 MR. WILSON: We were talking a little
11 bit earlier about the Flemmi and Salemme indictment
12 for the Bennett murder and the Fitzgerald bombing.
13 Are you aware of any conversations with
14 Flemmi by anybody after he had fled, post-
15 indictment?
16 MR. CONDON: Absolutely not.
17 MR. WILSON: Were you aware at the time
18 that he had left the United States and was in
19 Canada?
20 MR. CONDON: No.
21 MR. WILSON: Ultimately, Salemme was
22 apprehended in New York. He was brought back and
23 tried; Robert Daddieco testified against him.
24 MR. CONDON: Robert Daddieco.
25 MR. WILSON: How is it that, as far as

1 your recollection, Salemme was tried and convicted;
2 and Flemmi, who had been indicted for the crime, was
3 not tried?
4 MR. CONDON: My understanding is
5 that while Salemme was convicted, Flemmi was in a
6 fugitive status. As I later learned, years after, I
7 guess he was up in Montreal. This is not firsthand
8 information.
9 MR. WILSON: That's fine; I appreciate
10 your help.
11 MR. CONDON: The key witness in the case
12 was Robert Daddieco, who testified against Salemme
13 in Middlesex County Superior Court on the bombing
14 case of John Fitzgerald's car.
15 It's also my understanding that
16 Daddieco positively refused to testify against
17 Flemmi, supposedly because he had a dislike for
18 Salemme that he did not have for Flemmi, and refused
19 to testify. That's my understanding.
20 MR. WILSON: Now, accommodations were
21 made with Daddieco; he was provided assistance. Do
22 you recall whether there was any discussion about
23 what type of assistance would be provided, seeing as
24 he was apparently testifying in a selective fashion?
25 He was testifying against one guy, but he wasn't

1 testifying against the other person?
2 MR. CONDON: I don't; I don't.
3 MR. WILSON: I mean, sort of put simply,
4 did anybody try and lean on him to provide testimony
5 against both people?
6 MR. CONDON: I don't know.
7 MR. WILSON: In 1969, an individual
8 named Peter Poulos was murdered in Nevada.
9 The Committee has recently been provided
10 some information that Nevada law enforcement had
11 information that Steven Flemmi was involved in the
12 Poulos murder. Do you have a recollection of any of
13 the events surrounding the Poulos murder?
14 MR. CONDON: None.
15 MR. WILSON: Do you have any
16 recollection as to whether Nevada law enforcement
17 sought the support of the Boston FBI in helping to
18 solve the murder?
19 MR. CONDON: No.
20 MR. WILSON: I won't ask too many more
21 questions, but Nevada law enforcement seems to be
22 under the impression that the Boston FBI impeded
23 their investigation of Steven Flemmi in the Poulos
24 murder.
25 Do you have any recollection of any

1 controversy between yourselves and Nevada law
2 enforcement?
3 MR. CONDON: I don't even have any
4 recollection of the Nevada authorities contacting
5 the Boston office; and if they did, it never came to
6 my attention, or I don't remember it.
7 MR. WILSON: If we could just take a
8 quick look at Exhibit 37, which is an Airtel dated
9 5-23-68 from the SAC in Boston to the Director, FBI.
10 Just take a moment to read that, please. (Pause)
11 Specifically, just for the record, let
12 me characterize this.
13 It talks about four agents who have been
14 subpoenaed to testify in Suffolk County Superior
15 Court at the trial relating to the murder of Teddy
16 Deegan. Mr. Condon's name is mentioned; three other
17 special agents are mentioned.
18 The very last sentence of this memo
19 states, "SAs Condon and/or Rico may also testify re
20 contacts with Witness Glavin, referral of him to
21 District Attorney's offices, no promises made, et
22 cetera." Do you have any recollection as to what
23 this sentence refers to?
24 MR. CONDON: The last sentence?
25 MR. WILSON: Yes.

1 MR. CONDON: "Condon and Rico may
2 testify re contacts with Witness Glavin, referral of
3 him to District Attorney's offices."
4 My recollection is Glavin, who was an
5 inmate in prison at the time, furnished some
6 information about contacts, I think, with Ronald
7 Cassesso, who was one of the defendants in this
8 case.
9 And just as it says in here, Glavin was
10 then referred to the District Attorney's office in
11 Suffolk County. Part of the promises made was that
12 that may be an issue, what promises were made to
13 Glavin to obtain this information.
14 Glavin subsequently escaped from the
15 Barnstable County Jail. I can't remember; I guess
16 it was after he testified.
17 And then, when he was apprehended, he
18 later was in the Massachusetts prison system, went
19 to work in the gift shop, and walked out years ago,
20 and has never been seen since. I think that he's
21 probably still a fugitive in the Mass. State Police
22 system.
23 MR. WILSON: Pre trial, what was
24 envisioned for you to say when asked about whether
25 Barboza received any promises? Do you have a

1 recollection as to what you were prepared to say
2 regarding no promises?
3 MR. CONDON: What I was prepared to say?
4 I have no recollection, but I have no
5 promises that I would have to speak about, other
6 than protection would be afforded to him and his
7 wife if he cooperated with the government. That's
8 about the most promise that we ever made that I know
9 of.
10 MR. WILSON: Were you aware of any money
11 given to Barboza?
12 MR. CONDON: Absolutely not.
13 MR. WILSON: We've been told that he was
14 given money; we've been told that he was given an
15 automobile; we've been told that there were many
16 accommodations for him. Were you aware of any of
17 these accommodations?
18 MR. CONDON: No, no.
19 MR. WILSON: Knowing the type of person
20 Barboza was, knowing the difficulty in relocating
21 somebody, would you have assumed at the time that
22 the government would have to help him by providing
23 amounts of money and various things?
24 MR. CONDON: As far as assumptions are
25 concerned, in his circumstance, I would assume that

1 the government would, as part of the relocation,
2 have to get him some means of support, hopefully
3 some type of employment, and maybe initially some
4 kind of a stipend to keep him going until they were
5 able to get him legitimately employed and a place to
6 live, taking care of his wife, et cetera, et cetera.
7 MR. WILSON: Which would be something
8 materially different than just providing protection
9 for him.
10 MR. CONDON: Well, I assume that your
11 question was promises made in connection with the
12 testimony. Now we've shifted over to when he's
13 relocated, and I don't know what the government
14 would have done as far as promises in his
15 relocation.
16 Even in those days, most of that was
17 handled out of Washington, D.C.
18 MR. WILSON: So is it fair to say that
19 if there were promises to provide Barboza with money
20 or a car, that sort of thing, you might not have
21 been aware of those promises?
22 MR. CONDON: I am not aware of any
23 promises being made re money or vehicles or anything
24 of that nature.
25 MR. WILSON: Right; but my question was,

1 if they had been made, it seems that in the natural
2 course of events you would not be aware of those.
3 MR. CONDON: That's correct.
4 MR. WILSON: That's a fair
5 characterization?
6 MR. CONDON: That's true.
7 MR. WILSON: So if the Justice
8 Department had decided to do something specific for
9 Barboza, you may not have known about that?
10 MR. CONDON: True.
11 MR. WILSON: Just to shift gears, after
12 you left the FBI, it's my understanding that you
13 were personally briefed on efforts to conduct
14 surveillance of James Bulger and Steven Flemmi.
15 Is that correct?
16 MR. CONDON: Repeat that, please,
17 Mr. Wilson.
18 MR. WILSON: After you had left the FBI
19 and were serving in your capacity as, I don't know
20 how to characterize this, the head of --
21 MR. CONDON: Commissioner of Public
22 Safety, Massachusetts State Police.
23 MR. WILSON: It's my understanding
24 that there were a number of efforts to conduct
25 surveillance of James Bulger and Steven Flemmi.

1 It's also my understanding that you were personally
2 briefed on the surveillance efforts regarding Bulger
3 and Flemmi. Is that correct?
4 MR. CONDON: I was never personally
5 briefed on surveillance efforts in regard to Bulger
6 and Flemmi. I had been informed about surveillances
7 that were taking place, but not specifically as it
8 pertained to Bulger and Flemmi.
9 MR. WILSON: Is it fair to say, then,
10 that you were unaware of any specific efforts to
11 conduct microphone surveillance or install bugs in
12 other premises or cars or residences --
13 MR. CONDON: That is correct.
14 MR. WILSON: -- related to Bulger and
15 Flemmi?
16 MR. CONDON: That is correct.
17 CONGRESSMAN DELAHUNT: Can I interrupt
18 you?
19 For context purposes, if you can help,
20 counsel, are you talking about a Massachusetts State
21 Police investigation where targets would have been
22 James "Whitey" Bulger and Stevie Flemmi while
23 Mr. Condon was the Commissioner of the State Police,
24 or Superintendent of the State Police?
25 MR. WILSON: Yes, I am.

1 CONGRESSMAN DELAHUNT: Not as an FBI
2 agent, but when you were the Commissioner of the
3 State --
4 MR. CONDON: I think I understand what
5 he's talking about.
6 MR. WILSON: Correct.
7 And it's my understanding that there
8 were at least three separate efforts to conduct
9 microphone surveillance on Bulger and Flemmi.
10 CONGRESSMAN DELAHUNT: By the State
11 Police.
12 MR. WILSON: By the State Police; and I
13 think you've answered the question, but you were the
14 Commissioner of Public Safety at these times.
15 MR. CONDON: I want to answer it again.
16 I was never aware of any efforts to put microphone
17 surveillance on the individuals you have mentioned
18 while I was in that capacity.
19 CONGRESSMAN LaTOURETTE: What were you
20 aware of?
21 MR. CONDON: I was aware of a lot of
22 things.
23 CONGRESSMAN LaTOURETTE: But you've
24 answered Mr. Wilson's questions that you weren't
25 aware of specific electronic surveillance of these

1 two individuals, but you were aware of electronic
2 surveillance being conducted by the State Police.
3 So, what electronic surveillance were you aware of?
4 MR. CONDON: I don't believe I said that
5 I was aware of electronic coverage by the State
6 Police. I don't believe that I said that.
7 CONGRESSMAN LaTOURETTE: Well, were you?
8 MR. CONDON: No.
9 CONGRESSMAN LaTOURETTE: Then I guess I
10 misunderstood.
11 MR. CONDON: Maybe I misunderstood your
12 question. I'm sorry.
13 MR. WILSON: Well, that raises a
14 question.
15 If microphone surveillance was sought by
16 the State Police, who would be in the chain of
17 command in terms of authorizing and being kept
18 informed as to what was happening?
19 MR. CONDON: I believe in those days --
20 and maybe Congressman Delahunt can help; I'm not
21 sure --
22 CONGRESSMAN DELAHUNT: If I may,
23 Mr. Wilson.
24 How did you become the Commissioner of
25 the State Police?

1 MR. CONDON: I was appointed by Governor
2 Michael Dukakis.
3 CONGRESSMAN DELAHUNT: Did you apply for
4 the position?
5 MR. CONDON: I was called and asked if I
6 was interested in the position; and I said, yes, I
7 was.
8 CONGRESSMAN DELAHUNT: By Governor
9 Dukakis?
10 MR. CONDON: His personnel
11 representative.
12 CONGRESSMAN DELAHUNT: Do you remember
13 who his personnel representative was?
14 MR. CONDON: Yes, Bill Geary.
15 CONGRESSMAN DELAHUNT: Bill Geary called
16 you; and at the time he was the Superintendent of
17 the Metropolitan District Commission?
18 MR. CONDON: No; this predates that. I
19 think he was in charge of personnel for the office.
20 CONGRESSMAN DELAHUNT: He contacted you,
21 in any event, and he invited you to submit an
22 application to be considered?
23 MR. CONDON: Yes.
24 CONGRESSMAN DELAHUNT: What amount of
25 time passed until you were appointed actually by

1 Governor Dukakis?
2 MR. CONDON: I would say a month, month
3 and a half.
4 CONGRESSMAN DELAHUNT: So a month or six
5 weeks?
6 MR. CONDON: Yes.
7 CONGRESSMAN DELAHUNT: In what year was
8 that?
9 MR. CONDON: That was in August of 1978.
10 CONGRESSMAN DELAHUNT: August of 1978.
11 And in your role as Commissioner of
12 State Police, you had responsibility for the Bureau
13 of Investigative Services?
14 MR. CONDON: Yes.
15 CONGRESSMAN DELAHUNT: Now, in 1978, who
16 was the commander of the Bureau of Investigative
17 Services?
18 MR. CONDON: Lieutenant Colonel John
19 O'Donovan.
20 CONGRESSMAN DELAHUNT: Do you have any
21 memory of anybody else in the senior command?
22 MR. CONDON: Sure. Major John Regan was
23 the executive officer of the Bureau of Investigative
24 Services.
25 CONGRESSMAN DELAHUNT: And within the

1 Bureau of Investigative Services, was there a
2 special unit that had the responsibility to
3 investigate organized crime activity?
4 MR. CONDON: I think there was at that
5 time. I think there was, yes. I think it was SIS
6 or something like that; I forget the initials.
7 CONGRESSMAN DELAHUNT: If I suggested to
8 you it was Sergeant Charles Henderson at that point
9 in time, would that refresh --
10 MR. CONDON: I think you're probably
11 right.
12 CONGRESSMAN DELAHUNT: -- your
13 recollection?
14 MR. CONDON: I think so.
15 CONGRESSMAN DELAHUNT: In your position
16 as the Commissioner of State Police, in the normal
17 course of events, either Colonel O'Donovan or Major
18 Regan, possibly Sergeant Henderson, would brief you
19 on their activities; is that a fair statement?
20 MR. CONDON: No. If we're talking about
21 briefing on a day-to-day basis on the happenings of
22 the State Police, I don't think that is so.
23 I think that they would be somewhat
24 selective. If they thought there was something of
25 consequence, serious purport and so forth, I assume,

1 I hope, they would have briefed me on that. Not
2 everything that was going on.
3 CONGRESSMAN DELAHUNT: Right; I
4 understand that. But if there was something of
5 consequence?
6 MR. CONDON: That was a judgment call on
7 their part.
8 CONGRESSMAN DELAHUNT: And during the
9 course of your tenure as the Commissioner of the
10 State Police, did it come to your attention that
11 there was an investigation within the Bureau of
12 Investigative Services conducted by members of that
13 Bureau, probably more specifically the SIS or
14 Special Intelligence Services, or whatever was
15 labeled that, into the activities of Bulger and
16 Flemmi?
17 MR. CONDON: I don't recall ever being
18 apprised of any specific investigation that was
19 going on relative to Bulger and Flemmi.
20 CONGRESSMAN DELAHUNT: At some point in
21 time, did it come to your attention that a bug was
22 placed in a garage, I believe, on Lancaster Street?
23 MR. CONDON: Not while I was in the
24 position as Commissioner of the State Police.
25 Subsequently, I learned that that was the case.

1 CONGRESSMAN DELAHUNT: Subsequently,
2 after --
3 MR. CONDON: Through readings and so
4 forth in the newspaper. But I was not aware of a
5 bug in Lancaster Street while I was in the capacity
6 as Commissioner of the State Police.
7 CONGRESSMAN DELAHUNT: You became aware
8 of it after you left as Commissioner of the State
9 Police?
10 MR. CONDON: Yes, yes.
11 CONGRESSMAN DELAHUNT: And during your
12 tenure, do you remember, would that have been in the
13 time from 1982, I think you said until 1991, when
14 you served the Commonwealth as Undersecretary of
15 Public Safety?
16 MR. CONDON: I don't know when exactly I
17 became aware of Lancaster Street, but it was not
18 while I was with the State Police.
19 I think, if I may, Mr. Wilson --
20 CONGRESSMAN DELAHUNT: If you want to go
21 off the record and just surmise out loud, that would
22 be all right.
23 MR. CONDON: I think the direction
24 you're going in, I would like to try to make your
25 work easier, and be very straightforward with you.

1 I cite this because it came up previously, I think
2 with a request from some representative of John
3 Durham's organization.
4 While I was the Commissioner, a then
5 trooper by the name of Richard Fraelick, a current
6 major for the State Police, came into my office when
7 I was Commissioner, sometime between 1978 and when I
8 left in 1980 in that position.
9 Knowing that I had a history of having
10 worked organized crime, he asked me if I would
11 examine some photographs for him to see if I could
12 help identify anyone in the photographs. He showed
13 me a series of photographs.
14 To this day -- that contact lasted about
15 five minutes -- I cannot tell you whether I was able
16 to be helpful or not; but most certainly, if I could
17 have helped him, I would have.
18 I don't remember who the photographs
19 were of. I was never told by Trooper Fraelick, then
20 Trooper Fraelick, or anyone else, what the site was
21 where these photographs were taken, and what it was
22 all about. I was never told that there was
23 microphone coverage or anything of that nature.
24 Now, I only cite that because in
25 subsequent years there was a lot of talk about

1 Lancaster Street.
2 Then I heard from some investigative
3 body, I think it was Mr. Durham's organization, that
4 they wanted to talk to me because now Major
5 Fraelick, formerly Trooper Fraelick, had told them
6 that he had shown me some photographs in an effort
7 to identify people in the photographs.
8 And I believe the implication,
9 therefore, was that maybe I knew all about this
10 investigation, what the site of it was, that there
11 was microphone coverage. None of that was the case.
12 I want to be specific and try to not go around
13 corners here.
14 As the Commissioner of Public Safety and
15 Superintendent of the State Police, I was concerned
16 about trying to do the job that I had, and being
17 responsible for 1,200 people under me.
18 If you factor in the other departments
19 that came under the Department of Public Safety, a
20 five-minute conversation with a state trooper, and
21 to examine some photographs, as the boss of that
22 agency, all I wanted to do was help him as much as I
23 could to identify these people; and there was no
24 conversation about Lancaster Street.
25 I couldn't have told you where the

1 pictures were taken. I couldn't tell you that there
2 was microphone coverage, because I was never told.
3 And I think that's what you're trying to get at, and
4 that's why I'm explaining it.
5 CONGRESSMAN DELAHUNT: I don't think
6 that in the line of questioning there's a suggestion
7 or an inference that you're in any way trying to
8 thwart the investigation.
9 I find it, however, surprising that,
10 given, A, your background, and the fact that you
11 came from an agency where the focus of your career
12 had been in organized crime and in investigative
13 services, in an investigation of this magnitude,
14 this significance, you were not, I'm not saying
15 daily, but on a regular basis briefed as to what was
16 transpiring.
17 I find it surprising that you did not
18 know, that you didn't have that information.
19 MR. CONDON: That's correct.
20 CONGRESSMAN DELAHUNT: Because it would
21 appear to me that, in the normal course of the
22 administration of the State Police, you should have
23 been informed.
24 Now, did you instruct Colonel O'Donovan
25 or someone in the Bureau of Investigative Services

1 that it was unnecessary?
2 MR. CONDON: No, I can't say that. I
3 can't say that. But I do want to add one thing on
4 that topic, Mr. Wilson, before we leave it.
5 I forgot to say that when that inquiry
6 was made, I think it was made to Max Beck, who was
7 acting as my lawyer here, from somebody representing
8 John Durham's organization.
9 The question in their mind was, did
10 somebody tell me that this was an investigation
11 going on on Lancaster Street; and did I -- and they
12 used the term inadvertently -- did I happen to pass
13 on any information I received to Lieutenant Richard
14 Schneiderhan.
15 And I think Max Beck, a former associate
16 of Jack Connolly's here, now deceased, told them
17 that was not the case.
18 MR. WILSON: I was going to ask that
19 exact question.
20 MR. CONDON: I don't plan to run off at
21 the mouth; but I thought if we could get that item
22 out on the table, because it has been put to me
23 before.
24 MR. WILSON: I appreciate the fact that
25 you've been very straightforward in your answer; and

1 I was going to ask that precise question, and you
2 answered it. I have some more questions, but not on
3 this.
4 CONGRESSMAN DELAHUNT: I spoke yesterday
5 to Mr. Schuelke regarding a case on which I want to
6 take maybe 15 or 20 minutes with Mr. Condon, that is
7 outside the purview of the Committee's current
8 efforts, but is one that I would suggest is
9 something that the Committee should look into.
10 That's the Hamilton case.
11 MR. WILSON: Well, I'll just finish up
12 with some questions.
13 CONGRESSMAN DELAHUNT: One other
14 question. If counsel could provide us a copy of
15 Mr. Condon's testimony in the Deegan trial, I'm sure
16 we have it, but it's not within the exhibit books.
17 MR. SCHUELKE: I can do that.
18 MR. CONDON: That was before the
19 Committee --
20 MR. SCHUELKE: My normal approach in
21 life, I'm from the defense; I'm here to help you.
22 CONGRESSMAN DELAHUNT: Well, we
23 appreciate that, Mr. Schuelke.
24 MR. WILSON: Trying to wrap up some
25 loose ends.

1 Attorney Fitzgerald, the fellow who was
2 the subject of the bombing at the hands of Salemme
3 and allegedly Flemmi, was he an FBI informant?
4 MR. CONDON: No, no. Not to my
5 knowledge, no.
6 MR. WILSON: I only ask because there is
7 some indication we have that indicates he was.
8 MR. CONDON: That he was?
9 MR. WILSON: So I'm --
10 MR. CONDON: I don't ever recall that he
11 would be carried as an informant. I don't believe
12 so.
13 MR. WILSON: His girlfriend, do you have
14 a recollection as to whether she was an informant?
15 MR. CONDON: I don't have any personal
16 information that she was an informant.
17 MR. WILSON: Dorothy Barchard.
18 Do you have any recollection as to
19 whether Attorney Fitzgerald made efforts to have
20 somebody murder a man named Jimmy O'Toole?
21 MR. CONDON: No.
22 MR. WILSON: I don't have any knowledge
23 as to how Jimmy O'Toole fits into this picture; but
24 do you have any recollection as to how Fitzgerald
25 and Jimmy O'Toole were related to each other?

1 MR. CONDON: I don't believe they were
2 related to each other.
3 MR. WILSON: Well, I don't mean related
4 as in a familial relationship. There's an oblique
5 reference to the fact that Fitzgerald had animosity
6 against O'Toole; and I'm just asking you if you know
7 why this might have been. I don't.
8 MR. CONDON: It's strictly hearsay; that
9 they both were enamored of Dorothy Barchard, Jimmy
10 O'Toole and Fitzgerald.
11 MR. WILSON: Do you have any more
12 information regarding this?
13 MR. CONDON: No, not on that point.
14 MR. WILSON: A subject we discussed
15 yesterday.
16 At the time of the Deegan murder,
17 police officers saw a stocky, balding man with
18 Barboza at the scene of the Deegan murder, and we
19 discussed yesterday that this description fit Jimmy
20 Flemmi.
21 When Barboza came to testify in the
22 Deegan trial, he needed to have somebody at the
23 scene of the crime to fit the description that had
24 been provided by the police officer. When Barboza
25 testified that Joe Salvati was at the site of the

1 Deegan murder and was wearing a bald wig, were you
2 aware of that testimony?
3 MR. CONDON: I don't know if I was aware
4 of it at the time, but over the years I became aware
5 in some readings that that was the testimony.
6 MR. WILSON: At the time that you became
7 aware of the testimony, was it believable to you?
8 MR. CONDON: Was it believable? I don't
9 know whether it was believable or not. I can't
10 answer that question.
11 MR. WILSON: Well, I'm asking, even as
12 you sit here today, is it believable? The ultimate
13 issue would be whether Barboza had somebody dress in
14 a disguise that made that person appear similar to
15 his best friend and cohort and partner in numerous
16 crimes.
17 It seems that, if he was going to choose
18 a disguise, he would have the person look somewhat
19 different from his best friend and co-conspirator in
20 what appear to be a number of murders. So on a
21 commonsense level --
22 MR. CONDON: I'm not of the opinion
23 that they think that far ahead into those matters.
24 I just don't think so. I don't think there's that
25 much advance planning. That's just an opinion.

1 MR. WILSON: Well, it's significant
2 advance planning to have somebody bring along a bald
3 wig; and it appears from the testimony at trial that
4 everybody else went as themselves, and the only guy
5 that didn't go as himself was this fellow Salvati,
6 who ends up wearing a bald wig, which necessitates a
7 reasonable degree of advance planning in this case,
8 which in itself seems unrealistic.
9 Have you ever speculated that this just
10 is an incredible piece of testimony?
11 MR. CONDON: No.
12 MR. WILSON: Is it fair for us to
13 characterize the FBI as having taken a great deal of
14 credit for the Deegan prosecution?
15 MR. CONDON: No, I don't believe so; I
16 don't believe so.
17 MR. WILSON: Just take a quick look at
18 Exhibit 39. And while you're looking at it, this is
19 a lengthy letter; the date is November 15, 1968.
20 It's from J. H. Gale to Mr. DeLoach.
21 And my understanding is Cartha
22 DeLoach --
23 MR. CONDON: Excuse me; what is the
24 exhibit?
25 MR. SCHUELKE: Thirty-nine. It's the

1 DeLoach memo.
2 MR. WILSON: Right.
3 MR. SCHUELKE: November of '68. Have
4 you got it?
5 MR. WILSON: My understanding is Cartha
6 DeLoach was Director Hoover's deputy; is that
7 correct?
8 MR. CONDON: I believe he was.
9 MR. WILSON: This is a lengthy memo,
10 that discusses many things. The thing I'm mainly
11 interested in is on Page 5.
12 MR. CONDON: Page 5?
13 MR. WILSON: Yes, the second full
14 paragraph. The second full paragraph states, I'll
15 read it: "Also, as a result of FBI investigation,
16 in state court in Boston, Massachusetts, six more
17 were convicted in the 1965 slaying of Edward Deegan.
18 La Cosa Nostra members Henry Tameleo, Ronald
19 Cassesso, Peter Limone, and Louis Grieco were all
20 sentenced to death, while two confederates were
21 given life sentences."
22 This sentence, from our perspective,
23 indicates that at least at the higher levels of the
24 FBI, individuals thought that the FBI was in large
25 part responsible for the Deegan prosecution, the

1 investigation that led to the prosecution. At least
2 looking at this one sentence, is that a fair
3 summary?
4 MR. CONDON: No. My interpretation of
5 that would be, to give it some justification, is
6 that Barboza was first contacted and interviewed by
7 the Federal Bureau of Investigation. Subsequently
8 that information ended up in the hands of the lawyer
9 in charge of the organized crime section of the U.S.
10 Attorney's office, who in turn passed it on to the
11 Suffolk County District Attorney's office.
12 So my interpretation of that is, FBI
13 contact with Barboza was the starting point, and
14 then it went from there to the DA's office and the
15 subsequent trial and convictions.
16 MR. WILSON: In '67-'68, when you
17 were working with Barboza, when you obtained his
18 recollections of what happened in the Deegan murder,
19 were you aware that the FBI had a Deegan file?
20 MR. CONDON: No.
21 MR. WILSON: And we won't beat around
22 the bush here.
23 It seems that the first step
24 investigators would have taken when they started
25 looking at the Deegan murder would have been to go

1 back and examine their own file.
2 MR. CONDON: Mm-hmm.
3 MR. WILSON: And you were very clear
4 yesterday; let me summarize. I think you told us
5 that you were not aware of any of the documents
6 prepared by Special Agent Rico that we showed to
7 you; correct?
8 MR. CONDON: That's correct.
9 MR. WILSON: Should you have been aware
10 of those documents?
11 MR. SCHUELKE: What does that mean?
12 MR. WILSON: I'm asking for his belief
13 right now as to whether he thinks he should have
14 been aware of those documents.
15 MR. SCHUELKE: Should have been as a
16 matter of FBI policy?
17 MR. WILSON: Well --
18 MR. SCHUELKE: It sounds sort of
19 argumentative to me.
20 MR. WILSON: Fair enough; fair enough.
21 MR. SCHUELKE: If you've got a
22 question --
23 MR. WILSON: We can phrase that a few
24 different ways.
25 In hindsight, do you wish that you had

1 been made aware of those documents?
2 MR. CONDON: I would prefer that I had
3 been aware of them, yes.
4 MR. WILSON: I'll characterize our
5 perspective. To conduct a full, fair, thorough
6 investigation, it seems that the investigator should
7 have been in possession of all potentially relevant
8 information. Is that correct?
9 MR. SCHUELKE: But we know that the
10 investigators -- that is, Suffolk County -- were
11 aware of all the information.
12 MR. WILSON: We're not entirely clear on
13 that point.
14 MR. SCHUELKE: It seems pretty clear to
15 me.
16 MR. WILSON: Well, you've included
17 all the --
18 MR. SCHUELKE: It seems that we
19 exhausted that subject yesterday.
20 MR. WILSON: Well, I don't think we're
21 fully in control of information that indicates that
22 Suffolk County investigators had all the
23 information.
24 Nevertheless, in hindsight, do you
25 think your efforts were impeded by not having had

1 possession of the information of Special Agent Rico?
2 MR. CONDON: I don't know, and I'll
3 never know. I don't know.
4 MR. WILSON: Well, again, we've read all
5 of the interview summaries prepared by yourself and
6 Special Agent Rico. The striking thing from our
7 perspective is, there are no difficult questions put
8 to Barboza.
9 For example, we don't see a reflection
10 of a question that would go along the lines of,
11 "Mr. Barboza, it appears that a couple of years ago
12 you and your partner Jimmy Flemmi went to Raymond
13 Patriarca to obtain permission to kill Deegan. Did
14 you do that?" All the obvious questions that would
15 flow from this information.
16 MR. CONDON: What's the question?
17 MR. WILSON: Well, this was a capital
18 case; it's a very significant matter for the people
19 on trial. As you sit here today, do you wish you
20 had been able to ask those tough questions?
21 MR. CONDON: As we sit here today, I
22 want to say that I have never, in my 48 career-years
23 in law enforcement and public safety, done anything,
24 to my knowledge, purposely that would result in any
25 innocent person being found guilty of any crime. I

1 have never done that; I never would do that.
2 Now, if you want to analyze things that
3 I didn't do, or should have done, we're talking 35
4 years ago; that's your judgment. As I sit here, I
5 know that I did nothing to bring about such a thing.
6 If innocent people were convicted and went away to
7 jail, it's horrendous; and I never, never would have
8 any part of that, or do anything along those lines.
9 Not only because of the people involved,
10 but for self-motivation, too. How could I stand
11 myself, or live my life, knowing that I had done
12 anything to bring about an unfair, an unjust
13 conviction? It wouldn't be worth it to me; never
14 mind the more serious thing of innocent people going
15 to jail.
16 Now, if we were to go back 35 years,
17 could I have done this, could I have done that?
18 Maybe I could have. I don't know. That's, I guess,
19 the determination you're trying to make.
20 MR. WILSON: No, I understand; and I'm
21 not trying to be critical here. You've provided us
22 information, and the information you provided us is
23 you didn't have access to information.
24 CONGRESSMAN DELAHUNT: Can I interrupt,
25 counsel?

1 I think at this point in time that what
2 we're saying is our role as legislators, members of
3 Congress, is to diagnose what we see as problems in
4 terms of policy, whether that policy be the policy
5 of the FBI or whether it be the policy of the
6 Department of Justice, as it relates to the efforts
7 of this particular community.
8 We're not here to accuse or to do
9 anything other than accumulate as much information
10 that's accurate as we can to define what the problem
11 is. That's really our role.
12 The Justice Task Force has a totally
13 different function. Obviously, we have to conduct
14 these hearings and a deposition like this so that we
15 can really gain some insights; and you've provided
16 us with some valuable insights.
17 The reality is, and this I know doesn't
18 come as any great shock to you given your 48 years,
19 is that for many individuals in law enforcement, as
20 well as many citizens and policymakers, there's a
21 concern about the Federal Bureau of Investigation
22 and some accountability, some transparency, with
23 appropriate mechanisms to ensure confidentiality in
24 the FBI's relationship with state and other federal
25 agencies.

1 We both know of situations where the
2 Bureau here in Boston was not involved in
3 investigations by the DEA because of concerns,
4 maybe, or not, but who might have already moved on
5 to another career.
6 Let me just make a statement, because I
7 believe you're sincere and genuine in your statement
8 that the conviction of someone who is innocent is
9 something that you would have great difficulty to
10 live with on a personal basis, on a moral basis; and
11 let me make that a matter of record.
12 I believe that about you, Dennis; okay?
13 I believe that about you. But we have to take a
14 look at what's wrong in a systemic sense with this
15 particular agency.
16 The idea of sending Barboza to
17 California after the Director of the FBI himself
18 makes a public statement that this individual is
19 responsible for 20-plus homicides, this was a man
20 who anybody knew, and clearly the San Francisco
21 office, when they started to examine his potential
22 as a top-echelon CI for them, knew that this guy was
23 unable to stay out of trouble. It's just the way it
24 is.
25 So that's really, I think, what the

1 purpose of this Committee is about. That's what I'm
2 here about.
3 I mentioned this yesterday; I just
4 wanted to go over with you -- and again, I really
5 want to be clear, then, that this is not accusatory;
6 okay? I want you to understand that.
7 MR. CONDON: Mm-hmm.
8 CONGRESSMAN DELAHUNT: But I want to go
9 over a murder case that happened in my jurisdiction.
10 MR. CONDON: Fine.
11 CONGRESSMAN DELAHUNT: And no one on
12 this staff is familiar with it; okay? And I don't
13 know --
14 MR. WILSON: Can we just go off the
15 record for one minute?
16 CONGRESSMAN DELAHUNT: Sure.
17 (Recess taken)
18 MR. WILSON: Mr. Condon, if you could
19 please take a look at a document that I've just
20 provided to you. It's a prosecution memorandum; it
21 appears to be from Henry Petersen, or appears to be
22 to Henry Petersen from Walter T. Barnes and Edward
23 F. Harrington.
24 On Page --
25 MR. SCHUELKE: Dated June 6, 1967.

1 MR. WILSON: Correct.
2 MR. CONDON: Page what?
3 MR. WILSON: On Page 16. I'm going to
4 ask you some questions about text on Page 16; but
5 the first question is, have you ever seen this
6 document before?
7 MR. CONDON: Not to my memory, no.
8 MR. WILSON: Were you aware in 1967 that
9 Mr. Harrington was preparing a prosecution
10 memorandum?
11 MR. CONDON: No.
12 MR. WILSON: On any subject?
13 MR. CONDON: No.
14 MR. WILSON: Were you ever aware of any
15 prosecution memoranda that were prepared by Justice
16 Department prosecutors?
17 MR. CONDON: No.
18 MR. WILSON: On Page 16, there's a
19 heading that says Electronic Surveillance -
20 Disclosure. The second paragraph commences, "Walter
21 Barnes of the organized crime section and Assistant
22 U.S. Attorney Edward F. Harrington reviewed 26
23 volumes of FBI logs, memoranda, and Airtels in the
24 Boston office of the FBI."
25 Do you have any recollection of

1 Mr. Barnes or Mr. Harrington reviewing logs of
2 conversations and memoranda or Airtels in the FBI's
3 Boston office?
4 MR. CONDON: No, I do not.
5 MR. WILSON: Do you have a recollection
6 of any instance where prosecutors would review
7 documents in the Boston FBI offices?
8 MR. CONDON: No.
9 MR. WILSON: Is it fair to say, then, if
10 this did happen -- and we assume it did happen -- it
11 would have been quite unusual for Justice Department
12 prosecutors to review documents in FBI office space?
13 MR. CONDON: I don't really think that I
14 can answer that. In general, I don't think it would
15 be unusual. Specifically, do I remember any review
16 of the documents by the U.S. Attorney's
17 representatives? No, I don't.
18 MR. WILSON: And I guess I don't have a
19 good familiarity with the way the offices would have
20 worked. Can you just provide a little bit of an
21 explanation?
22 When you were working on a case,
23 developing information in pursuit of a possible
24 prosecution, where would you meet with prosecutors?
25 Would you go to your offices; would they come to

1 your office?
2 MR. CONDON: In my day, it was the
3 practice, if the United States Attorney wanted to
4 discuss something to you, he didn't come to you; you
5 went to him, to his offices.
6 MR. WILSON: And that's why I asked the
7 question about whether this was out of the ordinary.
8 I mean, the indication here is that Mr. Barnes and
9 Mr. Harrington reviewed materials in the FBI
10 offices.
11 I asked whether it was out of the
12 ordinary; you said you weren't sure whether you
13 could answer it.
14 MR. CONDON: Well, if we're talking
15 about electronic surveillance, then it does not
16 appear to be unusual that they would come to the FBI
17 office to do it.
18 MR. WILSON: Now, I've got a lot of
19 friends who have been Assistant United States
20 Attorneys; and generally when they're reviewing
21 electronic surveillance they have copies, and they
22 take it wherever they are, and they review it at
23 their convenience.
24 This is somewhat of a different
25 situation, because -- we won't go back over this;

1 we covered it yesterday -- but it appears that this
2 type of electronic surveillance at this stage, '67
3 and '68, was somewhat unusual, because this was a
4 different type of electronic surveillance. It was
5 not pursuant to Title III authorization; it was
6 pre-Title III. So this FBI surveillance was
7 somewhat different.
8 Is that a fair characterization, that
9 this surveillance was treated differently?
10 MR. CONDON: To try to elaborate on it,
11 I think this surveillance was of such importance and
12 of such magnitude, because of the time and the early
13 stages of development of information, that it would
14 be more logical that they came to the FBI office to
15 review this material than the FBI going over to the
16 U.S. Attorney's offices.
17 I don't think this can be compared with
18 just a normal type of situation.
19 MR. WILSON: I'll avoid a number of
20 questions. Is it fair to say that the reference
21 here to memoranda and Airtels is a reference with
22 which you have no familiarity whatsoever? You don't
23 know what these memoranda were; you don't know what
24 these Airtels were?
25 MR. CONDON: No; that's correct.

1 MR. WILSON: The third paragraph, and
2 I'll read it, states the following. "It is clear
3 that we will have to disclose all of the material
4 pertaining to the FBI electronic surveillance of
5 Patriarca, since the device was in his place of
6 business and some of the overheard conversations are
7 clearly relevant. Some of this material has already
8 been disclosed in connection with the income-tax
9 case against Louis Taglianetti of Providence, Rhode
10 Island. In fact, the conversation overheard on June
11 22, 1965, concerning the killing of Willy Marfeo,
12 has been turned over to defense counsel for
13 Taglianetti."
14 I don't want to be redundant; we got to
15 this yesterday. But do you have any recollections
16 whatsoever of discussions about what would have to
17 be turned over in any trial that ultimately would
18 take place?
19 MR. CONDON: No.
20 MR. WILSON: Do you recall at the
21 time whether, on the part of anybody involved in
22 preparing information which was later shared with
23 United States Attorneys pre-indictment and pre-
24 trial, there was any concern that there might be
25 information that would have to be turned over that

1 might be damaging to a prosecution?
2 MR. CONDON: No.
3 MR. WILSON: Now, on Page 18, the second
4 complete reference on the page begins March 9, 1965;
5 and it reads, "James Flemmi and Joseph Barboza
6 contact Patriarca and during the meeting explain to
7 Patriarca that they are having a problem with Teddy
8 Deegan and desire to get an 'okay' to kill him."
9 It continues, "Flemmi and Barboza tell
10 Patriarca that Deegan is looking for an excuse to
11 'whack out' Bobby Denati, who was friendly with Rico
12 Sacrimone. Patriarca instructs Flemmi and Barboza
13 to obtain more information relating to Deegan, and
14 then to contact Jerry Angiullo in Boston, who would
15 furnish them with a decision whether they could kill
16 Deegan."
17 Do you have any recollection as to
18 whether at any stage of your talks with Barboza he
19 mentioned Mr. Angiullo in relation to the Deegan
20 murder?
21 MR. CONDON: No.
22 MR. WILSON: A very quick look at an
23 entry on Page 19.
24 On a May 5, 1965 entry, about two-
25 thirds of the way down, there's a sentence that

1 reads, "Tameleo tells Patriarca that Joe Lombard
2 was perturbed because Cassesso and Barboza were
3 associating with the Flemmi brothers, and
4 information had been put out to the effect that
5 Barboza was with Flemmi when Teddy Deegan was
6 killed."
7 Again, is it fair to say that this is
8 information that you have never seen before?
9 MR. CONDON: That's correct.
10 MR. WILSON: Outside of information
11 released by the Congressional Committee?
12 MR. CONDON: That's correct.
13 MR. WILSON: Do you recall whether
14 there were any discussions about providing any of
15 the types of information described in this document,
16 Airtels or memoranda or logs, to anybody outside of
17 the FBI or Justice Department?
18 MR. CONDON: No.
19 CONGRESSMAN LaTOURETTE: I just want to
20 ask some questions.
21 MR. SCHUELKE: Are we finished with
22 this?
23 CONGRESSMAN LaTOURETTE: No; my
24 questions deal a little bit with that.
25 I just want to be clear, because you and

1 I got off on the subject of confidential informants;
2 and I think you told me that you put more credence
3 in a fellow who raises his right hand and takes an
4 oath than you necessarily do in confidential
5 information.
6 As you look at this prosecutor's
7 memorandum, in the sections Mr. Wilson was just
8 asking you about, it appears that the fellows who
9 were preparing for this case against Mr. Patriarca
10 had access to, and reference in there, the
11 overhearing of conversations relative to who was
12 going to kill Teddy Deegan and why, and that
13 Patriarca was being asked for permission.
14 Do you remember that, just from those
15 questions you were asked?
16 MR. CONDON: Yes.
17 CONGRESSMAN LaTOURETTE: Yesterday I was
18 asking you about a memorandum that had been prepared
19 by Mr. Rico where he had confidential informants
20 come in and tell him the same thing, both before
21 Mr. Deegan was murdered and then after Mr. Deegan
22 was murdered; one, that he was going to be murdered,
23 who was going to do it, and they were asking
24 Patriarca for permission; and then two, after he was
25 murdered, who did it.

1 You said you hadn't seen those before
2 yesterday; I understand that. Is that right?
3 MR. CONDON: I saw them before
4 yesterday. I saw them in April or May when
5 they were listed as exhibits by the Congressional
6 Committee, and I saw reprints of a couple of them in
7 the Boston newspapers.
8 CONGRESSMAN LaTOURETTE: But you didn't
9 see them in 1965?
10 MR. CONDON: That's true.
11 CONGRESSMAN LaTOURETTE: The question I
12 have is, if you follow this time line -- and the
13 time line is Rico receives confidential information
14 that Barboza and Flemmi want to kill Deegan -- you
15 don't see that in '65, the department is also
16 picking up from this microphone or coin-op whatever
17 Patriarca conversations that confirm that
18 confidential conversation where they overhear a
19 conversation that Barboza and Flemmi say they
20 actually go down and say they want to take out
21 Teddy; the department has that. Were you aware of
22 that in 1965 or 1966?
23 MR. CONDON: Not to my knowledge.
24 CONGRESSMAN LaTOURETTE: But when this
25 prosecution memo that you have in front of you was

1 written, apparently the Assistant United States
2 Attorneys are able to ferret that out. Was that
3 disclosed to you?
4 MR. CONDON: That's correct.
5 CONGRESSMAN LaTOURETTE: I think the
6 difficulty I had is this, and it came about when
7 Mr. Wilson was asking questions before, when
8 Mr. Barboza is being prepared as a witness in the
9 Deegan trial, which we now know was testimony that
10 wasn't right in terms of who he fingered.
11 Were you ever in a meeting with Mr. Rico
12 or the representatives of the state prosecuting
13 authority where somebody asked him or confronted him
14 about the discrepancies in versions that the
15 department had information on, both the Rico
16 documents and also these tapes from Patriarca's
17 place of business?
18 MR. CONDON: Not to my memory, no.
19 CONGRESSMAN LaTOURETTE: Were you ever
20 in a meeting where anybody asked him, where was
21 Jimmy Flemmi?
22 MR. CONDON: I don't remember ever being
23 in such a meeting.
24 CONGRESSMAN LaTOURETTE: Okay; I don't
25 have anything else. Thank you very much.

1 MR. SCHUELKE: Now can I unburden
2 myself?
3 CONGRESSMAN DELAHUNT: Dennis, before I
4 get into the Hamilton case, and I will be short on
5 that, prior to your testimony in the Deegan case,
6 who ran you through your direct testimony? Who
7 prepped you for direct testimony? If you remember.
8 MR. CONDON: I can't answer that. I
9 don't remember. I do know that the prosecutor was
10 Jack Zalkind, the assistant prosecutor was Jimmy
11 McDonough, but I have no recollection of if there
12 was any preparation prior to going in there.
13 CONGRESSMAN DELAHUNT: In the normal
14 course of events, there would be --
15 MR. CONDON: There would be, yes.
16 CONGRESSMAN DELAHUNT: There would be
17 some preparation?
18 MR. CONDON: There would be.
19 CONGRESSMAN DELAHUNT: But your
20 testimony is you don't have a recollection?
21 MR. CONDON: I don't remember any such
22 preparation.
23 CONGRESSMAN DELAHUNT: Back in 1976,
24 there was a homicide that occurred in the Norfolk
25 district. It was the homicide of a George Hamilton,

1 who was one of the principals in a retail furniture
2 store of significant size right near the South Shore
3 shopping mall.
4 In the aftermath of that particular
5 homicide, there was an ongoing investigation that I
6 guess continues to this day, presumably, because
7 it's a capital case.
8 The Assistant District Attorney that
9 supervised the investigation, as well as conducted a
10 prosecution in matters related to the homicide, was
11 John Kivlin. You remember John Kivlin?
12 MR. CONDON: An excellent attorney.
13 CONGRESSMAN DELAHUNT: My first
14 assistant.
15 Do you have any memory of receiving
16 information at any point in time, or becoming aware
17 of information at any point in time, from federal
18 agents, whether they be from the Department of
19 Justice or from the Strike Force, or from the FBI?
20 MR. CONDON: I want to answer that,
21 Congressman Delahunt, in a short narrative. I'll
22 try to be as brief as I can, which may generate
23 questions from you more to the point.
24 CONGRESSMAN DELAHUNT: I have no
25 documents in front of me; I want you to know that.

1 MR. CONDON: I think what you may be
2 referring to is that while I was in charge of the
3 State Police, which would have had to be sometime
4 between August of '78 and July of 1980, I received a
5 telephone call from an FBI agent. For the life of
6 me, I can't remember right now who it was.
7 CONGRESSMAN DELAHUNT: Let me suggest
8 some names.
9 MR. CONDON: Go ahead.
10 CONGRESSMAN DELAHUNT: Kelly?
11 MR. CONDON: Joe Kelly.
12 And I don't know whether he came to the
13 office to see me at 1010 Commonwealth Avenue, or he
14 talked on the phone.
15 And he said, "We have some information
16 that I want to pass on to you." And then we talked.
17 I don't remember whether it was on the phone or he
18 came over.
19 He said, in the Hamilton murder case,
20 the weapon that was used was discarded where an
21 automobile would leave Route 24 going south toward
22 Fall River in the Stoughton area, but he did give me
23 the exact number exit, so that I would know.
24 He said that weapon from that murder was
25 disposed of in a particular green area as you come

1 off of the ramp. And then he said, in effect,
2 "That's all I can tell you."
3 At that time I called in to Lieutenant
4 Colonel John O'Donovan, who was the commanding
5 officer of the Bureau of Investigative Services.
6 I told him that I had received this
7 call, or visit -- I forget, whichever it was -- from
8 an FBI agent, and told him exactly what I had been
9 told, that the alleged murder weapon in the Hamilton
10 murder case was thrown out of an automobile as you
11 come off the exit from Route 24 in such-and-such a
12 location.
13 Colonel O'Donovan said that he'd take
14 care of it.
15 He came back to me a day or two later,
16 and said to me that he had caused a search to be
17 made of that area, and they found no weapon. I
18 thanked him, and did not inquire as to whether he
19 had done anything further.
20 Sometime thereafter, and I can't
21 remember whether it was weeks or months, I got a
22 call from John Kivlin, Congressman Delahunt's first
23 assistant in the DA's office. It was obvious to me
24 that he was not happy.
25 He said to me that "You got some

1 information about a murder weapon; my unit didn't
2 become aware of it. Ultimately," he said, "somebody
3 from the Department of Public Works came in with a
4 weapon that was found in that area where you spoke
5 about. It had been allowed to sit in the Department
6 of Public Works for so long that it's now useless to
7 us as to doing any ballistic examination."
8 I don't know this, but I suppose I said
9 to him, "I'm sorry; this is what we did." And of
10 course in retrospect, there were other things that
11 could have been done.
12 I guess what happened was that when
13 Colonel O'Donovan caused the search to be made of
14 this area and there was no gun, there was no gun
15 there because it had previously been picked up by a
16 Department of Public Works worker who put it in a
17 locker or someplace, and left it there; and with the
18 passage of time, and Attorney Kivlin's right, it
19 became useless as far as ballistic examination.
20 In hindsight, I wish that I had done
21 other things; and that's about as much as I can
22 narrate.
23 And now I'm ready to answer any
24 questions you can give me.
25 CONGRESSMAN DELAHUNT: Do you remember,

1 when you received the call from Kelly, and there was
2 another agent, now, you indicated that you became
3 head of the State Police in 1978?
4 MR. CONDON: That's correct.
5 CONGRESSMAN DELAHUNT: What month?
6 MR. CONDON: I started over there
7 exactly September 6.
8 CONGRESSMAN DELAHUNT: Of 1978?
9 MR. CONDON: Correct.
10 CONGRESSMAN DELAHUNT: And your term as
11 Commissioner of State Police ended --
12 MR. CONDON: July 1, 1980.
13 CONGRESSMAN DELAHUNT: So within that
14 time frame, this call from a special agent of the
15 FBI --
16 MR. CONDON: Kelly.
17 CONGRESSMAN DELAHUNT: -- Joe Kelly,
18 and/or his partner --
19 MR. CONDON: I think it was Kelly.
20 CONGRESSMAN DELAHUNT: -- had to come
21 sometime within that time frame.
22 MR. CONDON: Oh, sure.
23 CONGRESSMAN DELAHUNT: Was it ever
24 brought to your attention that the FBI had an
25 informant at the time by the name of Arthur Rowell?

1 MR. CONDON: I don't believe so; I don't
2 believe so.
3 CONGRESSMAN DELAHUNT: I had a
4 conversation last evening with Mr. Kivlin to refresh
5 my own memory; and he relates to me that Jeremiah
6 O'Sullivan, who was the head of the Organized Crime
7 Strike Force, came to the District Attorney's office
8 some four or five or six years after the homicide,
9 to provide him with 202s or whatever the designation
10 is for the informants.
11 MR. CONDON: 209.
12 CONGRESSMAN DELAHUNT: 209s.
13 That this Arthur Rowell had information
14 before the homicide occurred that George Hamilton
15 was the target, and in the immediate aftermath of
16 the homicide itself, regarding an individual by the
17 name of Billy Kelly, who I understand is still on
18 death row in Florida.
19 MR. CONDON: In Florida.
20 CONGRESSMAN DELAHUNT: As the
21 perpetrator of the crime.
22 Had you ever heard any information like
23 this prior to my just relating this to you?
24 MR. CONDON: No.
25 CONGRESSMAN DELAHUNT: You didn't?

1 MR. CONDON: No.
2 CONGRESSMAN DELAHUNT: And were you ever
3 aware that John Kivlin summonsed Rowell before a
4 Norfolk district grand jury?
5 MR. CONDON: If I were aware of that, I
6 forgot it. It doesn't ring any bells.
7 CONGRESSMAN DELAHUNT: And he took the
8 Fifth Amendment.
9 MR. CONDON: No, I don't know that.
10 CONGRESSMAN DELAHUNT: According to John
11 Kivlin.
12 I'm going to request that the chairman
13 authorize a deposition of Mr. Kivlin along with some
14 correspondence he has in his possession relative to
15 this particular homicide; because I would suggest it
16 goes to a problem that I see in terms of the sharing
17 of information by the FBI with appropriate local and
18 state law enforcement.
19 MR. CONDON: Congressman, I don't know
20 anything about those aspects that you're getting at.
21 CONGRESSMAN DELAHUNT: I know you don't.
22 MR. CONDON: My regret is that more
23 investigation wasn't done, so that that weapon would
24 have come to light and been made available to a
25 ballistician, who could have gotten something good

1 out of it, than was. That's unfortunate.
2 CONGRESSMAN DELAHUNT: Well, it's my
3 understanding that you're correct, in terms of a DPW
4 worker did pick up that weapon; it was transported
5 to the Avon Police Department, who then submitted it
6 to 1010 Commonwealth Avenue, where ballistic tests
7 were taken; and --
8 MR. CONDON: It was too late.
9 CONGRESSMAN DELAHUNT: -- it was too
10 late.
11 And never within the Department of
12 Public Safety here in Massachusetts was there any
13 match, or could there be any match, therefore; and
14 there was no reason to believe that this was a
15 firearm that was used in the commission of the
16 Hamilton murder.
17 So according to my conversation with
18 Mr. Kivlin, and his refreshing my memory on this,
19 the office of the District Attorney was not aware,
20 totally, of the existence of the firearm, even after
21 an attempt had been made to subject it to ballistic
22 testing.
23 But it wasn't until O'Sullivan came
24 forward with information years later relative to the
25 information provided by -- and I know I'm testifying

1 here; I'm not asking a question, I'm just making
2 this a matter of record, and maybe after you hear my
3 comments and reflect over the period of time, maybe
4 it will jog your memory -- that it was Kivlin's
5 understanding that Rowell was being utilized as an
6 informer regarding a ring that was receiving stolen
7 property.
8 And the decision was made somewhere in
9 the Bureau not to disclose this information to the
10 appropriate prosecutor regarding a very high-profile
11 murder involving well-known organized-crime figures
12 here in Massachusetts.
13 I guess that wraps it up.
14 MR. WILSON: I'll ask a very quick last
15 question, if I may.
16 After the Deegan prosecution took place
17 and six individuals were convicted, were you aware
18 of any books or information that indicated that
19 certain individuals were innocent of the crimes they
20 had been convicted for?
21 MR. CONDON: Not that I can recall.
22 MR. WILSON: For example, Vinnie
23 Theresa, who was a cooperating witness, wrote a
24 couple of books, one of which was, I believe, a New
25 York Times bestseller; and he states very clearly in

1 the book that individuals that were convicted were
2 not guilty of the crimes that they had been
3 convicted of. Did you read the Theresa book?
4 MR. CONDON: I don't believe I ever read
5 the book, and I don't know that I ever heard of it.
6 MR. WILSON: There were other books that
7 were written; including one by a fellow named
8 Fopiano, who also explained at some length that some
9 of the individuals indicted in the Deegan murder
10 were innocent.
11 MR. CONDON: What was that name?
12 Fopiano?
13 MR. WILSON: Fopiano.
14 MR. CONDON: I'm not aware of that.
15 MR. WILSON: Did you ever use polygraphs
16 in your professional endeavors?
17 MR. CONDON: I'm not familiar with, and
18 have never used, a polygraph personally.
19 MR. WILSON: Were you aware that Louie
20 Grieco had taken a number of polygraphs, and that
21 the results of the polygraphs indicated that he was
22 not in Massachusetts at the time of the Deegan
23 murder?
24 MR. CONDON: I have read somewhere,
25 or I have heard somewhere, that he took a polygraph.

1 I don't recall being ever made aware of what the
2 results of it were, or reading what the results of
3 it were.
4 MR. WILSON: Did you know that in a
5 somewhat contemporaneous fashion to the Deegan
6 prosecution, or is this something you learned much
7 later?
8 MR. CONDON: Give me that again, please.
9 MR. WILSON: Did you know this around
10 about the time of the Deegan prosecution, or is this
11 something you learned much later?
12 MR. CONDON: It could be both. I don't
13 remember.
14 MR. WILSON: But what you've just said
15 is that you don't know what the results of the
16 polygraphs were?
17 MR. CONDON: I don't know.
18 MR. WILSON: Until, just now, I told you
19 what the result was; correct?
20 MR. CONDON: Yes.
21 MR. WILSON: I guess, to conclude the
22 record, I would just like to say thank you very much
23 for taking the time to answer our questions over
24 these two days. We appreciate your being here.
25 Thank you very much, Mr. Schuelke, for

1 making this happen. We greatly appreciate that.
2 MR. SCHUELKE: My pleasure.
3 MR. WILSON: Thank you, Mr. Connolly,
4 for making the premises available.
5 MR. CONDON: I just want to express my
6 thanks to the chairman, Mr. Burton, and the minority
7 leader, Congressman Waxman, and you people, the
8 Congressmen from Massachusetts and Ohio, for making
9 this arrangement, and acceding to the wishes of my
10 doctor due to my physical condition; and I thank you
11 very much.
12 MR. SCHUELKE: Since we've been
13 characterizing this as a deposition, may we employ
14 the normal procedure; that is, review for signature
15 of the transcript?
16 MR. WILSON: Can we just go off the
17 record for a moment?
18 (Discussion off the record)
19 MR. WILSON: It's my assumption that
20 what will happen is we'll be provided with a copy of
21 the transcript somewhere in the middle of next
22 week, at which point we'll provide you with a copy
23 of the transcript for review. Unless you have
24 suggestions to the contrary, we'll use an errata
25 sheet to provide your emendations or corrections to

1 the transcript.
2 We're still not entirely clear
3 what we're going to do with the exhibit numbers.
4 Yesterday Mr. Schuelke and I had a conversation that
5 centered around the difficulty because we had used
6 two different sets of exhibits. They have different
7 numbers. One suggestion would be that we would
8 change the numbers. That may not be as easy as we
9 thought. That's something we'll discuss off the
10 record. We'll come to a mutually acceptable
11 agreement, and we will do whatever is acceptable to
12 all parties.
13 MR. SCHUELKE: That's all perfectly
14 agreeable with me.
15 MR. WILSON: Now, we have not discussed
16 the public release of the transcript.
17 It will not be publicly released until
18 you have an opportunity to review the transcript,
19 and we will come to a mutually acceptable period of
20 time as to how long it will take you to do that, if
21 that's acceptable.
22 MR. SCHUELKE: Very well.
23 MR. WILSON: And with that, thank you
24 very much, Mr. Condon.
25 (Concluded, 3:26 p.m.)

1 CERTIFICATE OF NOTARY PUBLIC

2

3 I, Janis T. Young, Certified Realtime
4 Reporter, the officer before whom the foregoing
5 deposition was taken, do certify that DENNIS M.
6 CONDON, whose testimony appears herein, was duly
7 sworn by me; that the testimony of said witness was
8 taken by me in machine shorthand and thereafter
9 reduced to writing by means of computer-aided
10 transcription; that said deposition is a true record
11 of the testimony given by said witness; that I am
12 neither counsel for, related to, nor employed by any
13 of the parties to the action in which this
14 deposition was taken, and further that I am not a
15 relative or employee of any attorney or counsel
16 employed by the parties thereto, nor financially or
17 otherwise interested in the outcome of the action.

18

19

20 _____

21 Janis T. Young, RMR/CRR

22 Notary Public in and for the

23 Commonwealth of Massachusetts

24 My commission expires: June 28, 2007

25

1 **DENNIS M. CONDON**

2 SIGNATURE PAGE / ERRATA SHEET

3 PAGE LINE CHANGE OR CORRECTION AND REASON

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5 _____|_____|_____

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14 _____|_____|_____

15 I have read the foregoing transcript of my

16 deposition on February 22, 2002. Except for any

17 corrections or changes noted above, I hereby

18 subscribe to the transcript as an accurate record of

19 the statements made by me.

20 Signed under the pains and penalties of perjury.

21 Deponent:_____/___/2002

22 DENNIS M. CONDON

23 Notary Public:_____/___/2002

24 in and for:_____

25 My commission expires:_____

1 INDEX OF EXHIBITS (FIRST REFERENCE IN TRANSCRIPT)

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JUSTICE DEPARTMENT MISCONDUCT IN BOSTON: ARE LEGISLATIVE SOLUTIONS REQUIRED?

WEDNESDAY, FEBRUARY 27, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The committee met, pursuant to notice, at 10:42 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Barr, Morella, Shays, LaTourette, Waxman, Norton, Cummings, Kucinich, Tierney, Turner, Watson, and Lynch.

Also present: Representatives Frank, Delahunt, and Meehan.

Staff present: Kevin Binger, staff director; James C. Wilson, chief counsel; David A. Kass, deputy chief counsel; Mark Corallo, director of communications; Elizabeth Frigola, deputy communications director; Chad Bungard and James J. Schumann, counsels; Robert A. Briggs, chief clerk; Joshua E. Gillespie, deputy chief clerk; Robin Butler, office manager; Nicholis Mutton, assistant to chief counsel; Corrine Zaccagnini, systems administrator; Phil Barnett, minority chief counsel; Michael Yeager, minority deputy chief counsel; Ellen Rayner, minority chief clerk; and Jean Gosa, minority assistant clerk.

Mr. BURTON. Good morning.

A quorum being present, the Committee on Government Reform will come to order.

I ask unanimous consent that all Members' and witnesses' written and opening statements be included in the record, and without objection, so ordered.

I ask unanimous consent that all articles, exhibits and extraneous or tabular material referred to be included in the record, and without objection, so ordered.

I also ask consent that Representatives Frank, Delahunt and Meehan, who are not members of the committee, be permitted to participate in today's hearing. Without objection, so ordered.

I ask unanimous consent that the statement by Professor Bennett L. Gershman be included in the record and without objection, so ordered. He is one of the Nation's leading experts on prosecutorial misconduct.

The committee invited Professor Gershman to testify today. Unfortunately, he is teaching abroad and cannot be here. In his statement, he refers to a recent study by the Chicago Tribune that docu-

mented some 300 homicide convictions that were reversed because prosecutors suppressed exculpatory evidence. The landmark study describes the connection between prosecutorial misconduct and suppressing exculpatory evidence in the conviction and capital sentencing of scores of innocent defendants. I want to thank him for his valuable contribution. I hope to get a chance to meet with him at some future date.

[The prepared statement of Mr. Gershman follows:]

U.S. House of Representatives
House Government Reform Committee
February 25, 2002

Statement of Professor Bennett L. Gershman

The incidence of misconduct by federal prosecutors and their agents appears to be widespread, and shows no sign of abating or being controlled by institutional or other sanctions. Courts and commentators repeatedly bemoan prosecutorial violations of constitutional and ethical rules, and note that frequent ritualistic admonitions by courts do little to inhibit future excesses.

Sanctions to deter misconduct by prosecutors and their agents are limited. Prosecutors enjoy absolute immunity from civil liability for litigation misconduct; federal agents enjoy qualified immunity. Professional discipline of a prosecutor's misconduct is virtually never invoked. The Office of Professional Responsibility in the U.S. Justice Department rarely sanctions prosecutors for courtroom misconduct. And the invocation of criminal penalties against prosecutors and their agents for an obstruction of justice is almost unheard of.

The cost of misconduct by prosecutors and their agents is considerable. Reversals of convictions require that significant time and resources be devoted to retrials. Moreover, it is increasingly apparent that misconduct has resulted in the conviction of innocent persons, as the Joseph Salvati case illustrates. Even more commonly, with the advent of DNA testing, it has been shown that prosecutors and police have engaged in misconduct by suppressing identification evidence that would have exculpated the accused. And the cost to the system of justice in terms of increased public cynicism cannot be overlooked.

Among the most common forms of prosecutorial and police misconduct is the suppression of exculpatory evidence. This form of misconduct is both unconstitutional and unethical. It is exceedingly difficult to check such misconduct because once the evidence is concealed, the only persons who usually know about it are the prosecutors and their agents. If they do not divulge the information, it may never be revealed. Indeed, in the Salvati case the evidence lay hidden for 30 years before it came to light.

A recent study by the Chicago Tribune documented some 300 homicide convictions that were reversed because prosecutors suppressed exculpatory evidence. The landmark study by Hugo Bedau and Michael Radelet describes the connection between prosecutorial misconduct in suppressing exculpatory evidence and the conviction and capital sentencing of scores of innocent defendants.

The duty to disclose exculpatory evidence grates on prosecutors. This is because they are required to reveal evidence to the other side that might impair the government's chances of winning a conviction. Attorneys practicing in the civil area do not have such a duty of disclosure. But, of course, a prosecutor's duty is different from that of a civil lawyer. The prosecutor's duty is to see that justice is done, not merely to win a conviction.

Given the limited effectiveness of sanctions to punish prosecutors and police for suppressing exculpatory evidence, it would be worthwhile to consider specifically denominating such misconduct as an obstruction of justice under 18 U.S.C. 1503. It would appear that suppression of exculpatory evidence by prosecutors and police presently fits within the omnibus provision, as it plainly involves a corrupt effort to influence a grand jury or petit jury's decision. Indeed, the U.S. Supreme Court has described the suppression of evidence as a "corruption of the fact-finding process". Moreover, federal courts have held that obstruction of justice may take the form of concealment from an authorized tribunal of information germane to its functions.

It might be useful to add clarity to the obstruction of justice statute by adding a subdivision that specifically includes intentional or reckless suppression of exculpatory evidence by federal officials as an obstruction of justice. Whether the obstruction of justice should apply only when it results in the conviction of an accused, or in any other case, is unclear.

Accompanying such an amendment, it would also be useful to amend the federal five-year statutory limitations period (18 U.S.C. 3283) to create an exception for acts of misconduct by federal officers that involve the suppression of exculpatory evidence. There is presently a statutory exception for terrorism offences. 18 U.S.C. 3286. Given the difficulty of learning of the existence of suppressed evidence, it seems clear that an exception for such misconduct is reasonable and appropriate.

An exception to the limitation period should be invoked for the suppression of exculpatory evidence on either of two theories. First, the courts already recognize an exception under the doctrine of "continuing offenses". Suppression of evidence as an obstruction of justice would appear to continue as long as it produces the continued confinement of a defendant who was tried in violation of his constitutional rights. Second, most courts also recognize that the statute of limitations begins to run when the crime is completed. It is certainly reasonable to contend that the crime of obstruction of justice through concealment of exculpatory evidence is not complete as long as the suppressed evidence is unknown and the justice of the conviction impaired.

Mr. BURTON. We are meeting again today to talk about FBI misconduct in Boston and possibly elsewhere. This is an investigation we are very serious about. I think it is clear to everyone at this point. We have held 4 days of hearings. We have heard testimony about some things I think everyone finds pretty shocking.

A lot of people in this country, myself included, grew up revering the FBI. I still believe there are a great many, in fact, the vast majority of FBI agents, are honest people, who are doing a good job as well as the Justice Department. I think they are dedicated to protecting the public and their reputation should not be stained by the actions of a few people but it has been very sobering to hear about some of these terrible abuses going on at an agency I have always had on a pedestal.

It was a sad day 2 weeks ago when we had a former FBI agent take the fifth amendment. When I was growing up, criminals took the fifth amendment. I never thought we would see an FBI agent before a congressional committee taking the fifth.

Last year, we heard about Joe Salvati for the first time. The FBI had a prize mob witness, Joe "the Animal" Barboza. Joe "the Animal" Barboza testified against Joe Salvati and others. He implicated Salvati in a murder that happened in 1965. Mr. Salvati was sent to prison for life and could have gotten the death penalty. Others went to prison for crimes they might not have been involved in.

Joe Barboza lied and the FBI knew he was lying. They had document after document in their possession showing who the real killers were and they never turned them over to the defense. Joe Salvati had never been involved in organized crime. He had four little children when he went to prison. When he was finally cleared, after 30 years, his kids were all grown.

How could the FBI stand by and let this happen? Two weeks ago, we held a hearing about Joe "the Animal" Barboza's murder trial. The Justice Department put Joe Barboza in the Witness Protection Program. In fact, it was created for him. They put him in California and he committed another murder. He went on trial and the FBI and the Justice Department went out to California and helped him get a lighter sentence. The sentence was so light he was out in less than 3 years for murder, premeditated.

A Justice Department lawyer and an FBI agent testified on Barboza's behalf during the trial. Their testimony was devastating to the prosecutors. I can't forget one of the statements we heard at the hearing, "The FBI at the time was considered pretty sacrosanct. They had damaged our case to the point that we didn't think the jury would give us a first degree murder verdict." So as a result, they plea bargained.

This man who had already committed more than 20 murders, a man who the FBI said was the most dangerous criminal known, a man who murdered again after they put him in the Witness Protection Program and they helped him get a light sentence. He would have gotten the death penalty according to the prosecutors who thought they had an ironclad case. Because the FBI and the prosecutor in the case testified in his behalf, he got 5 years most of which was suspended and he was out in about 2½ to 3 years.

Joe "the Animal" Barboza, who had probably killed two dozen people, was up for parole in 3 years and at the very first parole

hearing, the Justice Department lawyer flew out and testified on his behalf. That Justice Department lawyer is now a Federal judge in Massachusetts. His name is Edward Harrington. He testified here 2 weeks ago. We asked him why he did all this. His response was they had just created the Witness Protection Program and they wanted to send a message to people that if you went into the program, the Justice Department would stand by you. I want you to think about that.

They put him in the Witness Protection Program because he turned in some of the mafiosi but then he murdered someone else and after he murdered someone else, they said, we are going to stand by you and went out and testified to get him a lighter sentence and keep him out of the electric chair. What kind of message is that? If you go into the Witness Protection Program and you murder somebody, we are going to stand by you? I think that is outrageous.

We need to have a Witness Protection Program. The people who go into that program are obviously criminals in many cases but I think we have to lay down the law that if the Government pays you money and protects you and you murder somebody, you are finished, period.

What we have looked at so far is just the tip of the iceberg. What the FBI did in Boston was tragic. They had a group of mob informants committing murders with impunity. They tipped off killers so they could flee before they were arrested. This is the FBI. They interfered with local investigations of drug dealing and arms smuggling. Some FBI agents were getting payoffs. When people went to the Justice Department with evidence about murders, some of them ended up dead. In other words, the FBI was tipping off the guys in the mafia there was somebody that was coming with evidence against them. They would tell the mafioso about it and they would go out and kill them. So the FBI, in some cases, was complicitous in these murders.

We are conducting this investigation because there are some basic questions we want answered. How extensive were the abuses? We need to find out the extent of what government officials did and explain it to the American people. How high up the food chain did this go? We know that memo after memo was sent to J. Edgar Hoover. In fact, he asked for information twice a week. Did he sign off on all these things that were done? It is hard for me to believe he didn't know. I am confident he did know. Breaking the back of the mob was his No. 1 priority and all indications are that he paid very close attention to these memos and what was happening.

There are other cases where people were knowingly sent to prison for crimes they did not commit. We have an obligation to find out who those people were, who was involved and if they were innocent, to get them out of jail. There may be people who were put to death for crimes they did not commit. There may be a lot of people in jail still for crimes they did not commit. We need to find out who they are, make sure justice is done, and bring to justice those rogue FBI agents and Justice Department officials that were involved.

Finally, are there legislative responses to this that we ought to consider? That is the point of today's hearing. What kind of legislation or action is called for? Do we need tougher penalties? Should the statute of limitations be extended for prosecutorial misconduct? As we have seen in Boston, corruption on the part of a government official can go undetected for decades. Are there other types of legislation we ought to consider?

We have a distinguished panel of witnesses today. First, we have Victor Garo. Victor was the attorney for Joe Salvati. He spent 25 years fighting to get Joe Salvati out of prison. He didn't get paid a penny but Victor wasn't going to abandon Marie Salvati and her four kids. His perseverance paid off and I am looking forward to hearing what he has to say today.

We have a former Connecticut State's Attorney, Austin McGuigan. Mr. McGuigan was the chief prosecutor on Connecticut's Statewide Organized Crime Task Force. He is going to testify about a whole new part of the scandal we haven't yet focused on, the corruption of the World Jai Alai. The State of Connecticut was investigating mob infiltration of the sport of Jai Alai in Bridgeport. The State prosecutors were trying to get some cooperation from the FBI in Boston and they could not get any help. As it turned out, World Jai Alai was being infiltrated by Whitey Bulger and Steve "the Rifleman" Flemmi, the same thugs who were informants for the FBI. In fact, one of those FBI agents, Paul Rico, retired and went to work for the World Jai Alai. He is the same guy we had here a couple of weeks ago who took the fifth amendment against self incrimination.

There were a series of murders. The head of World Jai Alai was murdered in Tulsa, OK. A member of the Winter Hill Gang went to the FBI to offer them information. He was murdered. Connecticut prosecutors went down to Florida to interview another person tied to World Jai Alai and the day they arrived, his dead body was found. Who was tipping off the mob and causing all these murders? That is one of the things we want to find out and want to thank you for being here today.

We also have two distinguished law professors, Frederick Lawrence of Boston University and Stephen Duke of Yale. Mr. Lawrence used to work as a prosecutor for Rudy Giuliani in New York. He has extensive experience in the area of prosecutorial misconduct. Mr. Duke is a distinguished professor at Yale Law School and teaches a course entitled, "Freeing the Innocent." We appreciate both of you being here with us today.

Mr. Waxman is not with us but we will turn to Mr. Tierney and let him make his opening statement.

[The prepared statement of Hon. Dan Burton follows:]

Opening Statement
Chairman Dan Burton
Committee on Government Reform
"Justice Department Misconduct in Boston: Are Legislative Solutions Required?"
February 27, 2002

Good morning.

We're meeting again today to talk about FBI misconduct in Boston. This is an investigation that we're very serious about -- I think that's clear to everyone at this point. We've held four days of hearings. We've heard testimony about some things that I think everyone finds pretty shocking.

A lot of people in this country, myself included, grew up revering the FBI. I still believe that there are many, many good, honest people at the FBI and the Justice Department. I think they are dedicated to protecting the public, and their reputations shouldn't be stained by the actions of a few people. But it's been very sobering to hear about some of these terrible abuses going on in an agency that I've always put on a pedestal.

It was a sad day two weeks ago when we had a former FBI agent come in and take the Fifth. When I was growing up criminals took the Fifth. I didn't think I'd ever see an FBI agent take the Fifth.

Last year, we heard about Joe Salvati for the first time. The FBI had a prized mob witness -- Joe "the Animal" Barboza. Joe Barboza testified against Joe Salvati and others. He implicated Joe Salvati in a murder that happened in 1965. Joe Salvati went to prison for life. Others went to prison for crimes they may not have been involved in. But Joe Barboza lied. And the FBI knew he was lying. They had document after document in their possession showing who the real killers were, and they never turned them over to the defense. Joe Salvati had never been involved in organized crime. He had four little kids when he went to prison. When he finally was cleared -- after thirty years -- his kids were all grown up.

How could the FBI stand by and let that happen?

Two weeks ago, we held a hearing about Joe "the Animal" Barboza's murder trial. The Justice Department put Joe Barboza in the Witness Protection Program. He was the first one in the program. They put him in California and he committed another murder. He went on trial, and the FBI and the Justice Department went out to California and helped him get a lighter sentence.

A Justice Department lawyer and an FBI agent testified on Barboza's behalf during the trial. Their testimony was devastating to the prosecutors. I can't forget one of the statements at our hearing:

"The FBI at the time was considered pretty sacrosanct. They had damaged our case to the point that we didn't think the jury would give us a first degree murder verdict."

This was a man who had already committed more than 20 murders. This was a man who the FBI said was "the most dangerous criminal known." This was a man who murdered again after they put him in the witness protection program -- and they helped him get a light sentence.

Joe "the Animal" Barboza, who had probably killed two dozen people, was up for parole in three years. And at the very first parole hearing, that Justice Department lawyer flew out and testified on Barboza's behalf.

That Justice Department lawyer is now a Federal judge in Massachusetts. His name is Edward Harrington. He testified here two weeks ago. We asked him why he did all this. His response was that they had just created the witness protection program, and they wanted to send a message to people that if you went into the program, the Justice Department would stand by you.

What kind of a message is that? If you go into the witness protection program, and you murder somebody, we'll stand by you. I think that's outrageous. We need to have a witness protection program. The people who go into the program are obviously criminals. But I think we have to lay down the law. If the government pays you money and protects you, and you murder somebody -- you're finished. Period.

What we've looked at so far is just the tip of the iceberg. What the FBI did in Boston was tragic:

- They had a group of mob informants committing murders with impunity.
- They tipped of killers so they could flee before being arrested.
- They interfered with local investigations of drug dealing and arms smuggling.
- Some FBI agents were getting pay-offs.
- When people went to the Justice Department with evidence about murders, some of them wound up dead.

We're conducting this investigation because there are some basic questions we want to get answered:

- How extensive were the abuses? We need to find out the extent of what government officials did and explain it to the American people.

- How high up the food chain did this go? We know that memo after memo was written to J. Edgar Hoover. Did he sign off on all the things that were done? Breaking the back of the mob was his number one priority, and all indications are that he paid very close attention to what was happening.

- Are there other cases where people were knowingly sent to prison for crimes they didn't commit? We have an obligation to find out.

- And finally, are there legislative responses to this that we ought to consider?

That's the point of today's hearing. What kind of legislative action is called for? Do we need tougher penalties. Should the statute of limitations be extended for prosecutorial misconduct? As we've seen in Boston, corruption on the part of a government official can go undetected for decades. Are there other types of legislation that we ought to consider?

We have a distinguished panel of witnesses today. First, we have Victor Garo. Victor was the attorney for Joe Salvati. Victor spent 25 years fighting to get Joe Salvati out of prison. He didn't get paid a penny. But Victor wasn't going to abandon Marie Salvati and her four kids. His perseverance paid off, and I'm looking forward to what he has to say.

We also have a former Connecticut State's Attorney, Austin McGuigan. Mr. McGuigan was the Chief Prosecutor on Connecticut's Statewide Organized Crime Task Force. He's going to testify about a whole new part of this scandal that we haven't focused on yet -- the corruption of World Jai Alai.

The State of Connecticut was investigating Mob infiltration of the sport of Jai Alai in Bridgeport. The state prosecutors were trying to get some cooperation from the FBI in Boston, and they couldn't get any help. As it turned out, World Jai Alai was being infiltrated by Whitey Bulger and Stevie "the Rifleman" Flemmi, the same thugs who were informants for the FBI. In fact, one of those FBI agents, Paul Rico, retired and went to work for World Jai Alai. He's the same man who took the Fifth here earlier this month.

There was a series of murders. The head of World Jai Alai was murdered in Tulsa, Oklahoma. A member of the Winter Hill Gang went to the FBI to offer them information. He was murdered. The Connecticut prosecutors went down to Florida to interview another person tied into World Jai Alai. The day they arrived, his dead body was found.

Who was tipping off the Mob and causing all of these murders? That's one of the things we want to find out. Mr. McGuigan, thank you for being here. We look forward to your testimony.

We also have two very distinguished law professors -- Frederick Lawrence of Boston University and Stephen Duke of Yale. Mr. Lawrence used to work as a prosecutor for Rudy Giuliani in New York. He has extensive experience in the area of prosecutorial misconduct. Mr. Duke is a distinguished professor at Yale Law School and he teaches a course titled "Freeing the Innocent." We appreciate you both being here today and giving us your input.

I now yield to Mr. Waxman for his opening statement.

Mr. TIERNEY. Thank you.

Again, I applaud you for once again determining to pursue justice in these matters. I am going to ask that my formal remarks be placed on the record and submitted if that is acceptable to the committee.

Mr. BURTON. Without objection.

Mr. TIERNEY. I want to say briefly that we have had extensive hearings, and the people in this room may know by now what the chairman says about the testimony and conduct of the FBI is true and is more than just a little bit disturbing to all of us. There apparently remains two things left to discuss. One is how do we make sure that justice or as close to justice as can be done is achieved with respect to Mr. Salvati and others badly treated by the FBI and Federal authorities. The second thing is what do we do about looking at the law or what has to be changed to make sure these behaviors are preempted in the future? I think these two things were ultimately at the heart of these hearings from the beginning.

I have had an opportunity to review the testimony submitted by you gentlemen and I appreciate that. I have to tell you that I have other committee meetings and out of no disrespect, I will be in and out of this hearing. What you have provided in writing and what I am sure I will be able to look at in the transcript will be extremely helpful to us. I appreciate that and all the comments you make with respect to both of those issues, how we might try to afford some sort of justice to the people involved and how we might try to make sure our laws more properly reflect what this country is about and how we expect our law enforcement agencies to act will be extremely useful to us all.

[The prepared statement of Hon. John F. Tierney follows:]

Statement of Rep. John F. Tierney
House Government Reform Committee Hearing on "Justice Department Misconduct in Boston: Are Legislative Solutions Required?" February 27, 2002

Mr. Chairman, I applaud you once again for your determination in pursuing justice for the innocent people whose lives were ruined by the FBI's misconduct in Boston during the past 35 years.

Two weeks ago, we heard testimony about the Justice Department's efforts to protect mob informant Joseph "The Animal" Barboza. Barboza did not have an illustrious career as an informant.

He provided law enforcement officials with false information. He protected his friends and openly flaunted the fact that he would never provide the FBI with information that would damage those friends. And he was more than willing to accuse innocent men of crimes they did not commit.

It is obvious from what we have heard that the Justice Department was aware of Barboza's lack of credibility even as it continued to use him as an informant.

What is amazing to me is the lengths the Justice Department went to to protect Barboza even as he continued to commit murder.

Barboza was sent to live comfortably in California in the witness protection program. He was enrolled in a cooking course so that he could learn a trade. When Barboza committed yet another murder, the Justice Department and FBI sent agents to California to testify on his behalf at his trial.

And when Barboza received a sentence of 5 years, the Justice Department was there to support his early parole.

Contrast the way a violent murderer like Barboza was treated with the treatment that an innocent man like Joe Salvati received. Mr. Salvati was sentenced to prison for a murder he didn't commit. He was placed on death row. His paroles were denied. Then the parole board's recommended commutation was denied. Finally, Mr. Salvati's sentence was commuted. Yet his criminal record remained intact.

It was only last year that prosecutors dropped their case against him. And all of this occurred while law enforcement officials knew of Mr. Salvati's innocence. But instead of helping him gain freedom, exculpatory documents were suppressed for decades.

I am pleased to have an opportunity today to consider steps toward compensating those like Mr. Salvati whose lives were stolen by our government. There is no way that we can ever adequately compensate Mr. Salvati and his family for the years that were taken from them.

No amount of money will ever be enough; no apologies will ever be sufficient. But to admit the injustice that was done and move on is unacceptable.

I thank you again Mr. Chairman for holding this hearing and look forward to hearing from our witnesses.

Mr. BURTON. Mr. Shays.

Mr. SHAYS. As well, I want to thank you for holding these hearings. I consider these hearings some of the most important hearings Congress could have. I am very proud my chairman and this committee is involved.

Twenty-eight years ago as a young, new State legislator, I met this State's attorney involved in an organized crime task force who later became the chief State's attorney for Connecticut and during my time of getting to know and admire him, one of our witnesses, Austin McGuigan, he told me about FBI agents who were working for Jai Alai operations in Connecticut and how they were retiring and then working for these organizations that were very much involved in organized crime, and that the FBI was working for organized crime.

I listened to it, I heard what he was saying but I thought there had to be explanations that went beyond the implication that the FBI was connected with organized crime. Then he told me that he was losing some of his witnesses, that they were being murdered, that these witnesses had sought protection from the FBI and other law enforcement officials and that they were literally being eliminated and in some cases, being put in positions that were a keen message to him and the work he was doing.

He basically described an FBI in New England that had become very corrupt and dangerous. I thought there was some exaggeration to his expressions because as you will find he has a way of telling a story that will captivate you and then we had hearings earlier this year. I put them both together and Marie and Joseph Salvati because both of them are the story and the fact that FBI agents would be involved in sending an innocent man to prison with a young family, and then when he was able to get out—people worked to keep him there, even though he could have gotten out and he wasn't going to be found innocent. They were just going to say he had been there long enough and they fought to keep an innocent man in prison which just blows your mind.

Having said that, this isn't a hearing about Marie and Joseph Salvati. As amazing as this is, about what happened to two precious Americans and how outrageous, this is an even bigger story. It is a story of innocent people sent to jail, who died in prison, a story of people trusting the criminal justice system and having it basically turn against them.

I believe that ultimately this is a story that we are going to get a handle on. One of the things that amazes me in a way is I know the people in the FBI today want a clean force but they are not cooperating with this committee. So in a way the FBI and the crooks in the FBI are still getting away with it. That is what is so astounding. I guess what it amounts to is are they going to win or are the people going to win. I believe this is a hearing that will move the ball forward and in the end, we will get at the story and see the story fully told. I think we will see major reforms come from it. Legislation is necessary.

Mr. BURTON. Let me say I appreciate your comments, Mr. Shays. One of the things we are doing right now, and I know members will be coming and going, is we are still running into the Justice Department and the FBI not giving us documents relevant to our

investigation. This is a 30-year old case. So right now we are having our legal staff prepare a contempt citation on this issue. I don't really want to do that and I have told the Justice Department this time and again but if they continue to be recalcitrant and we cannot get cooperation from them to get these documents, I hope everyone on this committee will assist me in getting the support we need in the Congress to move this forward.

I think once the White House and the Justice Department realize that we are going to go all the way to the mat with this thing, then they will give us the documents. It is not in the national interest to keep this under wraps. I will urge your support and I know you are one of the guys I don't think is concerned about controversy, so I think I am going to have your help.

Mr. Delahunt.

Mr. DELAHUNT. Thank you, Mr. Chairman.

First, let me state that this past week myself and Congressman LaTourette were in Boston conducting depositions. It would be remiss of me not to stress to you the excellent work and performance of your staff, Jim Wilson, and on the Democratic side, Mike Yeager. They put a lot of time and effort into that particular aspect of the committee's work and they were most helpful. I want to make that a matter of record.

I also have had the opportunity to read the testimony of the witnesses here today. It is like an echo that rings with much truth. I think clearly the tragedy of the Salvati family is as a result of a failure to disclose information to counsel representing Mr. Salvati and others. I think what we will hear today is the result of the failure to disclose information to other law enforcement agencies, whether they be State or whether they be Federal.

You just made reference to the fact that you are prepared to go forward with a citation for contempt. It was interesting to read the decision just last night of Judge Wolf where he had to threaten contempt of the Deputy Attorney General before information was disclosed to him. If there is the need for any further evidence that there exists within the FBI particularly, and I dare say the Department of Justice, a culture of concealment, we have overwhelming evidence already. I think it is a question now of how do we encourage a new attitude, a willingness to provide information to State and local law enforcement where terrible crimes have been committed so that we can bring the guilty to justice, and in the case of the innocent, to provide information so that an injustice is not done.

I think these hearings are probably the most significant hearings I have participated in during my time in Congress because they go to the very heart of American democracy which is the integrity of the justice system. Unless the American people have confidence in the integrity of that system, we put at risk not just the justice system, but our democracy.

With that, I yield back. Again, thank you for inviting me to participate.

Mr. BURTON. Thank you, Mr. Delahunt.

Mr. LaTourette, I understand you went up to Boston for our recent depositions?

Mr. LATOURETTE. I did, Mr. Chairman. If you will permit me to make some brief opening remarks?

I do want to commend Mr. Delahunt of the other side for his conducting those depositions in Boston and also our staff, Mr. Wilson, for the outstanding preparation in the deposition of former FBI Special Agent Dennis Condon over 2 days up in Boston.

I do want to thank you, Mr. Chairman, for the continuing conduct of these hearings. I share Mr. Delahunt's observations. It is a fine line, both he and I used to prosecute cases, I used to defend cases. I don't know if he was ever on the dark side but I was and it is always a fine line. A prosecutor is different than a defense lawyer. A prosecutor is charged with doing justice and that creates an obligation. I think today's hearing is going to point to some of those abuses.

I would hope that the testimony that is developed doesn't indict or paint with a broad brush all prosecutors because my experience is that there are many, many fine men and women in the prosecutorial field in this country who do their job and do it within the bounds of not only the law but the ethical constraints of the bar.

I did want to make one comment about something that happened in Boston. We had the opportunity, the Justice Department was kind enough to send to us during the course of that deposition the prosecution memorandum prepared by Judge Harrington that had been billed by testimony that the Justice Department and the President's observation that national security was at risk if these documents were released, I think it was about 20-plus pages. We had the opportunity to review it and then it was taken back from us by U.S. Marshals as is law in Boston.

I can tell you from reviewing the document, I am hard pressed to determined what national security was endangered by our viewing that document or what national security would be endangered by the release of that document to the public. I think it was a well done memorandum by Judge Harrington. I think the only jeopardy it put anybody in is that in pertinent part it clearly indicated the FBI in Boston was aware of information through electronic surveillance information that indicated the people that participated in the murder of Ted Deegan in 1965, that they knew in 1965 it was Mr. Barboza and some of the others that have come to our attention in the course of these hearings, not Mr. Salvati and others who were eventually convicted, but other than that there was no national security compromised by that memorandum.

I know that you, Mr. Chairman, have been a champion in attempting to bring forward these documents. I want you to know you have my assistance in that endeavor and I hope you continue on that course.

Mr. BURTON. Thank you, Mr. LaTourette.

Let me say that it is not just the Salvati case that troubles me. It is what may be beyond that. When we got that executive privilege document from the President saying it was not in the national interest, what troubled me and still bothers me is there may be other Salvatis out there who are still in prison or who may have been worse, put to death. That may be something the Government of the United States doesn't want in the public forum but that is something that needs to come out.

Ms. Watson.

Ms. WATSON. No thank you.

Mr. BURTON. Mr. Cummings. Nice seeing you.

Mr. CUMMINGS. It is good to see you, Mr. Chairman. It is good to be here this morning.

First, I want to thank you and I really do appreciate your holding the series of hearings you have held. I think it draws attention to some of the problems in our justice system. So often people complain about the justice system and their complaints fall on deaf ears because they hear the words come forth "hear they go again." The inquiry you have conducted, I must tell you, I applaud you.

In the case of Mr. Salvati, released FBI documents show that agents not only concealed evidence that he was framed in order to protect informants, but they also knew in advance about the murder plot and did nothing to stop it. I am outraged that the FBI not only allowed Mr. Salvati to spend 30 years in prison, but were partly responsible for him being their in the first place. Such an injustice should never happen. A case like the one before us leaves a very bad taste in anyone's mouth and it is shocking to the conscience.

This committee has spent months investigating Justice Department and FBI misconduct in Boston. Today, we explore the need for legislative changes in the laws governing misconduct on the part of Federal prosecutors and law enforcement agents. I guess you could say that we need to police the police. It is always difficult and regrettable to recognize the need for oversight of our protective agencies. The FBI and other law enforcement organizations are charged with the enormous responsibility of protecting us. They should not be the ones to harm us. It all comes down to trust. If we cannot trust the very people who are supposed to protect us and prevent crimes in our cities, then who can we trust? What parent has not taught their child that in a crisis, they should seek the help of a police officer? I definitely taught this lesson to my children.

Unfortunately, fear of police corruption may cause many parents to teach their children a different lesson. Sadly, I feel that due to this corruption, thousands of men and women are spending time in prison for crimes they may not have committed. I suspect a number staggering for minorities, especially among African Americans.

Mr. Chairman, I know the streets in my district and around the Nation are tired of the injustices heaped upon them by this type of law enforcement corruption. I want to be clear that I am not condemning all law enforcement officers and the FBI. Ninety-nine percent of law enforcement are honest, hardworking, good police officers. They are honorable and hardworking law enforcement officers doing their job the best they can trying to keep our communities safe, stop violence and keep drugs off the streets. But when there are reports of corruption, especially of this magnitude, we lose faith in law enforcement officers, including FBI agents.

After widely publicized disclosures of law enforcement abuses in the Boston office of the FBI, former Attorney General Janet Reno convened a task force to review the Department of Justice's policy in the use of information from confidential informants. On January 8, 2001, Attorney General Reno issued revised guidelines designed

to address many of the problems that arose in the Boston case. Some of the revisions required the Department of Justice must conduct a high level, periodic review of long-term informants and that Federal prosecutors must be told when an informant has committed a crime or is under investigation.

These proposals appear to be reasonable requirements but it is my understanding that the committee has not evaluated the effectiveness of these guidelines as a means of preventing law enforcement and prosecutorial abuses such as those that occurred in Boston. Mr. Chairman, I would recommend that the committee fully review the revised guidelines. I would also say engraved on the front of the U.S. Supreme Court, the highest court in our land, are the words "Justice for All." Never before have those words meant as much as they do now.

This committee needs to explore legislative options to make certain this sort of injustice does not occur again, thus ensuring true justice for all.

Again, thank you for holding this hearing. I look forward to hearing from today's witnesses who will offer additional insight into possible legislative solutions.

[The prepared statement of Hon. Elijah E. Cummings follows:]

Opening Statement
Congressman Elijah E. Cummings
Government Reform Full Committee Hearing
Justice Department Misconduct in Boston: Are Legislative Solutions Required?

February 27, 2002

Thank you, Mr. Chairman.

I first want to thank you for holding this hearing this morning. In the past, we have not seen eye-to-eye on the release of Justice department records but I can tell you that I agree with you today. I commend you for remaining steadfast with this subject.

In the case of Mr. Salvati, released FBI documents show that agents not only concealed evidence that he was framed in order to protect informants, but that they also knew in advance about the murder plot and did nothing to stop it. I am outraged that the FBI not only allowed Mr. Salvati to spend 30 years in prison, but were partly responsible for him being there in the first place. Such an injustice should never happen. A case like the one before us leaves a bad taste in my mouth.

This Committee has spent months investigating the Department of Justice and FBI misconduct in Boston. Today, we explore the need for legislative changes in the laws governing misconduct on the part of federal prosecutors and law enforcement agents. I

guess you could say that we need to police the police.

It is always difficult and regrettable to recognize the need for oversight of our protective agencies. The FBI and other law enforcement organizations are charged with the enormous responsibility of protecting us. They should not be the ones to harm us. It all comes down to trust. If we cannot trust the very people who are supposed to protect us and prevent crimes in our cities, then who can we trust? What parent has not taught their child that in a crisis they should seek the help of a police officer? I definitely taught this lesson to my children. Unfortunately, fear of police corruption may cause many parents to teach their children a different lesson. Sadly, I fear that due to this corruption, thousands of men and women are spending time in prison for crimes they did not commit. I suspect the number is staggering for minorities, especially among African Americans. Mr. Chairman, I know the streets and many in my district and around the nation are tired of the injustices heaped upon them by this type of law enforcement corruption.

I want to be clear that I am not condemning all law enforcement officers and the FBI. There are honest women and men who put their lives on the line every day for us. I appreciate and support them. They are honorable and hard working law enforcement officers who are doing their jobs trying to keep our communities safe, stop violence, and

keep drugs off the streets. But when there are reports of corruption, especially to this magnitude, we lose faith in law enforcement officers, including FBI agents.

After widely publicized disclosures of law enforcement abuses in the Boston office of the FBI, former Attorney General Janet Reno convened a task force to review the Department of Justice's policy on the use of information from confidential informants. On January 8, 2001, Attorney General Reno issued revised guidelines designed to address many of the problems that arose in the Boston case. Some of the revisions require that the Department of Justice must conduct a high-level periodic review of long-term informants and that Federal prosecutors must be told when an informant has committed a crime or is under investigation. These proposals appear to be reasonable requirements. But it is my understanding that the Committee has not evaluated the effectiveness of these guidelines as a means of preventing law enforcement and prosecutorial abuses such as those that occurred in Boston. Mr. Chairman, I would recommend that the committee fully review the revised guidelines.

Mr. Chairman, engraved on the front of the United States Supreme Court, the highest court in our land, are the words "JUSTICE FOR ALL." Never before have those words meant as much as they do now. This Committee needs to explore legislative options to make certain this sort of injustice does not occur, thus ensuring justice for all.

Again, thank you, Mr. Chairman for holding this hearing. I look forward to hearing from today's witnesses who will offer additional insight into possible legislative solutions.

Thank you.

Mr. BURTON. I can assure you, Mr. Cummings, we will be looking at legislative proposals. Obviously that would have to go through the Judiciary Committee but we have a couple of esteemed members of that committee with us and I am sure they will be very helpful in getting things moved there.

We will now turn to our panel. Would you please rise so I may swear you in?

[Witnesses sworn.]

Mr. BURTON. Since Mr. Garo has been with us before and we all know him, I think we will start with Mr. Garo and then move right down the line, Mr. Garo, Mr. McGuigan, Professor Lawrence and Professor Duke.

Mr. Garo.

STATEMENT OF VICTOR GARO, ESQ., ATTORNEY FOR JOSEPH SALVATI

Mr. GARO. Thank you, Mr. Chairman.

I wish to thank you once again for holding this hearing. It is a story that has to be told and should be told.

I am very honored to be with this panel today. I have known all of them for many years. Mr. McGuigan grew up in Medford with me and I haven't seen Austin for over 40 years. We are very proud of him in Medford. Professor Duke has a reputation that is beyond compare and he has been very helpful to me in many aspects of the Salvati case. To my left is also a good friend, Professor Fred Lawrence, who to this day is still a consultant to me on the Joe Salvati matter and has been a great help to us.

I always thought how do I begin when I address this honorable committee on matters so serious and I don't take it lightly, so I would like to begin as follows, Mr. Chairman.

Life, liberty and the pursuit of happiness, famed words from our Constitution but the Federal Government in Boston and to the FBI these words meant nothing because it was the FBI who determined who had life, who got liberty and who was able to pursue happiness. They alone made that decision. Now we know those who did get life, liberty and the pursuit of happiness. They were serial killers. They were Joe "the Animal" Barboza, Steven "the Rifleman" Flemmi, James Whitey Bulger. They were allowed to pursue their happiness with the protection of the FBI. Their pursuit of terror allegedly included killing of witnesses, killing respectable businessmen, raping young women in their neighborhood and killing girlfriends as they tired of them, and the list goes on and on.

On the other hand, we have Joe Salvati. Joe Salvati, not a man of power, position or means but yet a human being who was a husband, a father. He was denied and they were denied their American dream of life, liberty and the pursuit of happiness for circumstances that were beyond their control.

The Federal Government, as we have seen, has allowed Barboza to kill again and again. I say to you, Mr. Chairman, under full oath before this committee, there was more evidence that Barboza killed more than one person while in the Federal Witness Protection Program and I say to you, Mr. Chairman, that under oath, the Government knew and had evidence of complicities of Joe Barboza killing other people while in the Federal Witness Protection Program.

We had a recent witness who stated that he believes to this day that Joe Barboza told the truth, even though there is an incredible volume of evidence showing it the other way. The Federal Government wants this committee and wants those people out there listening to this, and for those write about this, to believe that Joe Barboza would kill 25 to 30 people, that he would maim them, disfigure them, stab them, but he would never lie because that is where he drew the line. Not once in that testimony was there a hint of maybe we didn't believe him, maybe we shouldn't have believed him but we did believe him.

The following questions beg answers. What was so important from the information that Steven Flemmi was giving to the FBI in the early 1960's that warranted him to be so protected in the top echelon informant program? What cases were brought? Who got indicted? What murders did the FBI prevent from all the intelligence they received? We now know, Mr. Chairman, under your guidance, that they knew Teddy Deegan was going to get killed and they didn't prevent that murder.

Mr. Salvati and his wife are here, Mr. Chairman and members of the committee, because they wanted to show respect to the committee. They know how hard and how diligent the committee has worked for well over a year. You have shown not only to us but to the entire country that the little people have access to the government.

You all know I am not a hot shot lawyer. I come from a small town. I am a one-man law office, born of a mother who was an orphan at age 3 and a father born into abject poverty. Joe, his wife and four children, just ordinary citizens, had their lives taken away from them.

I was always told by my parents that when people do something good, you should tell them while they are alive and you have the opportunity. Mr. Chairman, I would just like to make these statements. I want to thank the following members: Representative Barr for the understanding and knowledge he showed in his questioning throughout these hearings; I want to thank Mr. LaTourette for the zeal and tenacity that he has always shown in his questioning, even regarding how he felt about the testimony of the Justice Department; I would like to also thank Representative Waxman for his ability to gather support from the Democratic side so as to not make this a partisan issue; I would like to thank Representative Tierney for doing much legal research and his ability to ask the tough questions; and I would also like to thank Representative Delahunt, a former prosecutor who had the courage to stand up and be counted when he didn't have to. I respect you, Mr. Delahunt for your willingness to spend your free home time to come to my office and sit with me for hours upon hours to learn about this case. I thank you highly.

Representative Shays, I thank you for your ability to grasp the importance of this case and bringing it to the attention of the chairman. I also wish to thank you personally for your kind and gentle words that you have always spoken to my clients, Mr. and Mrs. Salvati.

Mr. Chairman, if we were to look up the definition of what a leader is, your picture has to be in the dictionary. You have shown

to all that you are a man of great principle and that you believe in what you fight for, even to the degree that you are willing to take on the President of the United States. How much more does our country need to know where a leader is willing to do that, even in his own party. You have been an example to all of those, Mr. Chairman, that want to do the right thing.

Last, I would like to make some comments about Mr. Jim Wilson. I cannot believe, Mr. Wilson, it has been over a year since we started talking about this case. I have found Mr. Wilson to be a man of great principle. I think he is a great example of dedication and his staff has followed him and worked so closely with him. He is a man I have known that never leaves a stone unturned, a man who has tried to get to the bottom of this cesspool that we call the Deegan murder case. His work ethic should be a shining example of how our tax dollars are being spent and many don't know what a heavy heart he has had for these last couple of months for something personal in his life. All I can say, Mr. Wilson, you are a man among men and I am proud and honored to call you my friend.

I am here to make some suggestions to this committee for appropriate legislation. As you know, our quest has always been to use your power and wisdom to enact appropriate legislation so that another family will never have to endure the nightmare and hardships that this family has experienced. The time has come to prosecute the dishonest prosecutors, not those that work on a daily basis and do the work they have taken a sacred oath to perform. I, along with Mr. LaTourette, agree that most do but sadly some don't follow their sacred oath.

What I am going to suggest is not going to affect the honest prosecutors. It is only going to affect the dishonest prosecutors. My first suggestion is that when there is an intentional withholding of exculpatory evidence from the defense in a criminal case, there should be no statute of limitations defense for the parties who have violated their oath. Suggestion two, when there has been an intentional withholding of exculpatory evidence from the defense in a criminal case, there should be a mandatory minimum jail sentence. The sentence might be that equal to under the statute if there was a 10-year punishment, 10 years, or equal to what the defendant received as a sentence in the case. This is after the case has been overturned and dismissed and the evidence is shown to be hidden intentionally.

I was sent recently a document and I would like to quote from it. It is "Federal Grand Jury Reform Bill and Bill of Rights" put out by the National Association of Criminal Defense Lawyers. It was sent to me by Mr. Kyle O'Dowd, a legislative director for the National Association. I would like to read from page 3.

"Indeed, as far back as 1990, what disciplinary action it had taken in each of the ten cases in which Federal judges had made written findings of prosecutorial misconduct. After a lengthy delay, the panel was finally informed by the Office of Professional Responsibility that 'No disciplinary action has been taken in any of the ten cases.' The subcommittee observed repeated findings of no misconduct and the Department's failure to explain its disagreements with findings of misconduct by the courts raises serious questions regarding what it considers prosecutorial misconduct."

Mr. BURTON. Mr. Garo, first of all, let me just say we really, really appreciate your testimony. Could we have the rest submitted for the record and then we will get to any additional comments you would like to make at the end of questioning?

Mr. GARO. Yes, sir.

Mr. BURTON. If you have a final comment or two you would like to make real quickly, we can go ahead with that.

Mr. GARO. That I do.

I believe there is an epidemic here in the United States and that is about the criminal cases that are being overturned on a daily and weekly basis through DNA testing, overzealous prosecution and hidden evidence. But what happens to those people who have hidden that evidence? What happens to them? My evidence and research shows that since 1963 when *Brady* v. *Maryland* came down from the Supreme Court of the United States, in over 40 years, there has been less than a handful of prosecutions of thousands of cases that have been overturned.

In conclusion, we all know what awesome power the government has over our lives. It becomes even more evident when they are trying to take away a person's freedom or worse yet, their life. In seeing the tragedy of the Deegan murder investigation and prosecution unfold, we are mindful that our justice system is not perfect.

When the justice system hurts one of us, it has a ripple effect on all of us. We cannot allow the justice system to function as it has in Boston for the last 40 years. You, the Congress, have the right and the power to right this wrong.

Thank you.

[The prepared statement of Mr. Garo follows:]

OPENING REMARKS Victor J. Garo

GOVERNMENT REFORM COMMITTEE HEARING

February 27, 2002

At the very outset, I want to thank the Committee for asking me to participate in this very important Hearing. As you know from my written statement that I submitted for the May 3, 2001 Hearing, the quest of the Salvati family and myself was for you to use your power and wisdom to enact appropriate legislation so that another family will not have to endure the nightmare and hardship that this family experienced.

While I was attending Boston University School of Law, the case of Brady vs. Maryland came down, in 1963, from the Supreme Court of the United States. In essence, it stated that the prosecution must hand over exculpatory evidence to the defense in criminal trials. This opinion affected me greatly because it meant that law enforcement officials and prosecutors were hiding such evidence, apparently, in capital cases where the maximum punishment was death.

I quickly learned as a young criminal defense lawyer that the prosecution had a habit of hiding exculpatory evidence. I think that what was true then is still true today; the Government had to win, at all costs. The Truth Be Damned. We only have to look at the law enforcement officials and prosecution in the Deegan murder case to show that what I have stated is true and correct.

The Government, both Federal and State, seem to justify this type of conduct by arguing that the end justifies the means. However, we are a land of laws that must be followed. There are no short cuts in searching for the truth.

In my opinion, we are currently in the midst of an epidemic. We learn almost daily from the news media that another innocent person, who had been unjustly accused of a crime, has been cleared of all charges and released from prison. But what happens to the law enforcement officials and prosecutors when such cases are overturned and/or dismissed? Sadly, not much. The Brady decision is about 40 years old, yet my research shows that only a handful of law enforcement officials and prosecutors have themselves been prosecuted for their wrongdoing. Since there is no prosecution of these individuals, what incentives are there for them to disclose their information? As a former Assistant U.S. Attorney stated to me, "...there is no incentive to hand over these documents...".

Our most precious possession is freedom. Yet, there are those who are in power who do their best to deny many people their freedom. These public servants who are sworn to uphold the law must be held accountable for their actions. The time has come to raise the stakes in this lopsided game of hide and seek for crucial exculpatory evidence.

I propose that whenever the evidence shows that there has been an intentional withholding of exculpatory evidence from the defense in a criminal case, there should be no statute of limitations defense, and that there should be a mandatory minimum jail sentence for those who participate in the non-disclosure of such evidence. The punishment to be imposed could be the same punishment prescribed by the statute, i.e., if the offense charged calls for prison time of fifteen years, then those who take deliberate action to hide the exculpatory evidence should be punished in jail for the same period of time. Another potential form of punishment would be to impose upon the offending law enforcement officials and prosecutors the same prison sentence that was imposed by the court in the very case where such evidence was withheld. It would seem that such legislation would result in the following: 1. the government would be turning over more questionable exculpatory evidence to the defense, and 2. the playing field would now be level for both the defense and the prosecution. When defense counsel represents public officials who have been found guilty of violating their oath of office, the Government always argues that a lengthy sentence should be imposed, to act as a deterent to others. The same thinking should now apply to law enforcement officials and prosecutors, because they take an oath to uphold the law. They must be accountable for their actions. The time has come to prosecute the prosecutors if they violate their sacred public trust.

We all know what awesome power the Government has over our lives. It becomes even more evident when they are trying to take away a person's freedom, or worse yet, their life. In seeing the tragedy of the Deegan murder investigation and prosecution unfold, we are mindful that our justice system is not perfect. When those who are entrusted with such power act illegally it affects all of us, because we are all part of this great country. When the justice system hurts one of us it has a ripple effect on all of us. We cannot allow the justice system to function as it has in Boston for the past forty plus years. You, the Congress, have the power to right this wrong.

Mr. BURTON. Mr. Garo, I can assure you that your recommendations on legislative action will be closely scrutinized and there will be some legislation put forth to the Judiciary Committee that will deal with those issues.

Mr. McGuigan, I understand you are from Connecticut but you grew up in Massachusetts, is that right?

Mr. MCGUIGAN. That is correct, Congressman.

Mr. BURTON. I just wanted to make sure because Mr. Shays brought that to my attention.

Mr. MCGUIGAN. Mr. Shays has regretted my birth in Massachusetts for many years.

Mr. BURTON. Yes, I know. He is a real strong supporter of Connecticut but we will let that pass.

Mr. McGuigan, you can testify now.

STATEMENT OF AUSTIN MCGUIGAN, FORMER CONNECTICUT CHIEF STATE'S ATTORNEY

Mr. MCGUIGAN. First of all, I would like to thank you and the Members of Congress and counsel for the opportunity to be here today. I would say just in passing that after the death of witnesses in 1982, quite frankly, I never thought that I would be testifying in Congress about the events that happened in the 1970's and 1980's, and the coverups that we perceived. I thought they had done their job and they had won. To me, it is touching today that I am here. Some people who worked so hard to uncover the truth have long passed away and didn't have an opportunity to see justice finally have an opportunity to come out.

It has been many years since the President's Report on the Administration of Justice and Organized Crime which urged us to conduct this great war in 1967, and we passed legislation for wiretapping and the RICO statutes and there was funding for organized crime units where Federal units were established in most of the major cities in America. Local units were formed, many times with Federal assistance. I will say at the beginning there were promises that this war would be fought in a cooperative manner between State and local prosecutors and the Federal Government, but that promise never happened.

I would also comment that the war on the LCN, if viewed through the rearview mirror, has resulted in a substantial reduction, if not destruction, of most of its business activities. There were a great many convictions. I could say that the legalization of gambling and other things may have deprived their revenue source and cut out those groups to a great degree in and of itself, and there has been a rise in all new organized crime units in the drug trade, but I will leave that for another day.

I would point out there were tensions that were clear between State and local prosecutors and investigators and the Federal Government from the very beginning. These tensions have been exacerbated over the years and I think it is something not for this committee to deal with today, but for Congress to think that what has occurred over the last 30 years is the Federalization of the criminal laws. Many criminal statutes which were the province of the District Attorney and the State's Attorney and the Attorney General have been Federalized. They have been Federalized and the fund-

ing has been skewed to the Federal Government, with the idea that somehow the Federal Government can provide better answers.

I think in looking at this case, we see that federalism did not work, that federalism went astray, that the proper balance between State and local prosecutors and Federal prosecutors was unhinged, and the growing arrogance and power of the Federal Government's ability to prosecute denied State prosecutors the information they were entitled to because they had the primary jurisdiction to prosecute these cases.

In Boston, the war we started on organized crime went amuck. It is clear that major organized crime figures operating as informants or, better still, under the guise of informants, were permitted to engage in racketeering activities with a wink, if not the tactic approval, of Federal agents. Violent crimes, including murders by so-called informants, were ignored at the whim of law enforcement officers, and I think this is important, who were apparently accountable to no one in the name of intelligence gathering. I was a foreign military intelligence special agent and I understand this. State and local prosecutions of violent criminals were undermined and investigations were betrayed.

Many, and I have heard this argument, have ascribed this behavior to overzealous agents using informants in the mistaken belief that the end justified the means. In other words, they wanted convictions and tended to ignore exculpatory information. I would point out that this explanation defies the logic of what occurred in Boston, MA, and throughout New England. It oversimplifies a process where Federal officers betrayed the public trust out of more than overzealousness. Some of these people have already pled guilty to crimes involving corruption in their decisionmaking process.

Federal agents, while they were denying State and local requests for information, were providing information to former FBI agents who were employed by the very businesses that were under investigation. This is more incredible when one realizes that despite official requests by State and local officials, the same information provided to those agencies was denied to the agencies mandated by law to prosecute. I am going to give you examples of this.

The Connecticut Statewide Organized Crime Task Force, and I was the chief prosecutor from 1975 to 1978 and the assistant from 1973 to 1974, began in the fall of 1975 an investigation into the opening of a Bridgeport Jai Alai gambling facility or "fronton." We uncovered in our investigation meetings between major New York and New Jersey LCN figures and the President of Bridgeport Jai Alai. We determined that a loan from the Central State Teamsters Fund had funded the entire operation. We did not have the jurisdiction to investigate this case to the fullest. The meetings were occurring in New Jersey and New York; the loans were coming out of Chicago.

We initiated a grand jury and then we conducted a license revocation hearing. Bridgeport was supposed to open in a couple weeks. We revoked their license for connections to organized crime figures. We attempted to turn over that information to the Federal Government because frankly we thought the individuals involved were LCN, one of whom supposedly had been implicated in the

Hoffa murder, Tony Provenzano, we turned over that information and frankly we seemed to get no interest from the Federal Government whatsoever.

We then conducted an investigation and we could not understand why but in looking through the rearview mirror, why becomes clear. We then conducted an investigation regarding World Jai Alai. We were doing the licensing investigation to determine whether or not they were suitable. They were going to open in Hartford with its president, John B. Callahan, formerly of Boston, MA. We requested information about Callahan from Federal law enforcement agencies, official requests for a Statewide Organized Crime Task Force background investigation. We wanted derogatory information. We came up with a big zero. We had nothing on this gentleman, no derogatory information.

World Jai Alai had, and we met a number of ex-FBI agents engaged in security. One of them who has testified before this committee, was the head of security and formerly worked in Boston on organized crime involving the Winter Hill Gang. He was thoroughly familiar with this information. He had no derogatory information. It was Paul Rico.

Despite the lack of Federal help, literally on a whim we decided to do a surveillance of John B. Callahan when he left the meeting with us in Hartford. He said he was going to Miami. We followed him to Boston. He went to Clarks Turn of the Century Cafe. We watched him there. He said he was in Miami. We had no idea of the people with whom he was meeting. We couldn't identify any of these people. We knew one thing: Callahan told us he was in Miami. He called us the next day and said he was in Miami and he was actually in a motel room in Boston.

We couldn't figure out why, so I took a trip to Boston. With the assistance of the Suffolk County Organized Crime Prosecution Unit, Chief Prosecutor Tom Dwyer, when I brought up Callahan's name, he said, "organized crime connections, Winter Hill Gang." I almost fell on the floor since we had zero on this guy. He said, "we did surveillances. He was a character witness in a shooting involving one Brian Halloran. We surveilled him and he had meetings with the Winter Hill Gang, John Martorano, the Flemmis, Howie Winter, and so forth." He provided me with that information and I was somewhat puzzled how this information was not available to the FBI security people at World Jai Alai, who formerly worked in Boston and had access to this information. They were seemingly unable to develop this information until we scheduled a hearing for Callahan on May 3, 1976. At that time, shortly before the meeting, Callahan resigned because World Jai Alai's security officer was able to learn of our investigation.

Mr. DELAHUNT. Could you identify that security officer?

Mr. MCGUIGAN. That is H. Paul Rico.

Mr. DELAHUNT. The former FBI agent who took the fifth amendment a couple of weeks ago?

Mr. MCGUIGAN. That is correct. He then received the information, and I know not from whom. Someone told the World Jai Alai people. They had him resign before we could secure his testimony and before he was to attend our meeting. We had no interstate sub-

poena for him and were unable to secure his testimony. They replaced him with his former partner and these people were licensed.

A correction in my written statement, on page 4, the second line, it should read January 1976 not 1975. We did learn that the Federal Government was made aware that allegations concerning Callahan were made that he might be involved in loan sharking with the Winter Hill Gang and James Martorano. This information was provided to Mr. Rico who did not provide it to us. It was not provided to us and I do not know what Federal officials provided the information or what officials provided it to Rico. All I know is we were not given the information when we made official requests, while the information was provided to others.

Not only did they fail to learn this, when they did learn it, they didn't disclose it to us. Until we surveilled Callahan, this information was not available to us. When they realized we had him, he resigned.

We also learned that a Winter Hill Gang associate had been made the head of the food and beverage concession at World Jai Alai, Miami. The gentleman was identified by an FBI intelligence report from Boston, as a Winter Hill known associate by the name of Bryan McNeilly. How he got to be in this position given the fact that FBI agents in Boston were running the security is best left for somebody else to explain. We looked with sort of a jaundiced eye. They were given a situation of keeping organized crime out and from our perspective, organized crime in World Jai Alai were being made to feel at home.

After the resignation of Callahan, World Jai Alai opened and we started to conduct investigations involving player fixing in Jai Alai. These were first revealed by an investigative reporter for the Hartford Courant, Ted Driscoll. We followed up on this information. He was able to find this out. We had not been looking at it but we followed up and obtained a number of convictions in a game we had been assured was unfixable, absolutely unfixable. They all confessed to fixing it.

Our jurisdiction did not allow us to conduct an investigation on that outside our borders. To my knowledge, no national agency has ever conducted an investigation regarding that, despite the fact that the Winter Hill people who were attempting to infiltrate World Jai Alai were involved in a major horse race fixing scandal all over the northeast. Howie Winter and others were convicted of that. I believe John Martorano was in that case but fled.

In 1980, Roger Wheeler was the president of World Jai Alai. Roger Wheeler bought the company in 1978. Apparently he had been offered the company for sale by Mr. Callahan in mid-1976. This was strange since Callahan supposedly resigned in April 1976, but far be it for me to understand the connections between Mr. Callahan and who was really running World Jai Alai. Roger Wheeler bought it. He told our investigator, Inspector George Ryalls, that he felt confident that he was OK because he had numerous FBI agents who were there to ensure the integrity of the process.

He was licensed because there was absolutely no derogatory information about him and he seemed to be an outstanding businessman. He was killed in 1981 at the Southern Hills Country Club in Tulsa. We immediately decided to open an investigation to see if

there was a link between the allegations being made in the Courant of skimming in Jai Alai, the Winter Hill Gang and the killing of Mr. Wheeler. There were law enforcement rumors that the Winter Hill Gang had conducted this murder. We were unable to confirm it.

In May 1982, Mr. Brian Halloran, who comes back as the person involved in an assault where Callahan testified, was killed in south Boston. We learned he was killed after being denied Federal witness protection. Mr. Halloran, and I cannot understand his logic, had naively decided to provide firsthand information concerning the Wheeler killing to the FBI in Boston. I would have questioned his wisdom but I wasn't involved. He implicated John B. Callahan, John Martorano, Whitey Bulger and Steve Flemmi and other members of the Winter Hill Gang, and we have heard that he implicated possible law enforcement officers. I do not know that since I do not have the report. We were not given this information.

Not surprisingly, the Federal authorities in Boston having firsthand information corroborated by the guys connected to Callahan regarding these individuals, decided that Mr. Halloran's testimony or information was not credible. I believe the information has now borne out to be true. Mr. Halloran was killed and when he was being killed perhaps he was surprised his information wouldn't warrant witness protection. He was talking about the killing of the president of Telex. You would think that would warrant witness protection.

I must tell you we in Connecticut were not surprised he didn't get Federal witness protection. In fact, we firmly believed he had somehow been burned by the people with whom he was talking. That is what we believed.

Callahan was killed in Florida shortly thereafter. We had contacted the Dade County Strike Force to try to interview Callahan on August 3, 1982. We flew down there and when we arrived, they called us and told us his body had just been found at the Miami Airport.

These murders remain unsolved and it seemed the coverup had succeeded until a Winter Hill Gang member, Steve Flemmi, I believe, decided to claim that he had a free pass on the crime train because of his status as an FBI informant. He claimed essentially, they were allowing me to do this, so I get a free ride on the railroad.

Judge Wolf had the integrity and the perseverance to conduct prolonged hearings to unravel this tangled web but I must say for all he has done, the tangled web needs more unraveling, and I commend this committee for doing it. We dare not forget that the discovery of these massive crimes based on the tenacity of a few defense lawyers like Victor was more than somewhat fortuitous. No one could have predicted that Steve Flemmi would have claimed a free pass on the crime train. Had he been tipped off slightly earlier, he would have fled like Mr. Bulger and never made the claim.

Therefore, reforms must be instituted to stop the cozy arrangements between informants and agents. They must be subject to strict scrutiny and constant review. Contact between prior and current agents must be circumscribed, particularly when the agents are working in businesses that are under investigation. They pro-

vide a veneer of respectability for those businesses. When you are investigating, I can tell you that you do not receive a warm reception from present agents because they believe your thought process is wrong, having been guaranteed that all is well in the world of Jai Alai. All was not well in the world of Jai Alai.

Information regarding State and local crimes must be presumptively provided to local prosecutors unless there are documented reasons why such should not be done. I believe they should be submitted to a court, requiring the contrary conclusion on the basis of what crimes we permit people to commit in this country and have no one accountable for the decision to allow that to happen. In that regard, I have a quote from Justice Brandeis from a 1928 wiretapping case: "If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means, to declare that the Government may commit crimes in order to secure the conviction of a private criminal, would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face." I would echo those comments of Judge Brandeis. This Congress should resolutely set its face against that pernicious doctrine.

[The prepared statement of Mr. McGuigan follows:]

Statement of Austin J. McGuigan,

Chief Prosecutor, Connecticut Statewide Organized Crime Task Force, 1975-1978;

Chief State's Attorney, 1978 – 1985.

It's been nearly 35 years since the Report of the President's Commission on Law Enforcement and the Administration of Justice urged the public and law enforcement to make a full scale commitment to destroying the power of organized crime groups. Shortly after the report, new federal wiretapping statutes and, subsequent thereto, the R.I.C.O. Statute were passed.

Federal organized crime task forces were formed in major cities throughout the country and they launched a major initiative against La Cosa Nostra (LCN). In addition, many states passed legislation and, with federal financial assistance, local organized crime units were formed. There is no question that this effort resulted in many convictions, and a great deal of the mob's operative capacity declined precipitously.

At the outset of the war on organized crime, there were promises of cooperation between state and federal prosecutors and law enforcement agencies. The reality, however, did not match the promises, and tensions between state and local prosecutors and their federal counterparts were not uncommon.

These tensions were exacerbated over the years as federal law enforcement agencies took an increasingly larger role in what was traditionally local law enforcement matters.

There is no denying that, through funding and the enactment of additional laws, a dramatic federalization of criminal law occurred which subtly undermined the ability of states to deal with local crime.

This committee has a much narrower scope of review, and is taking testimony regarding a part of the war on organized crime that went amuck. In Boston, it is clear that major organized crime figures operating as informants were permitted to engage in racketeering activities with a wink from, if not the tacit approval of, federal agents. Violent crimes, including murders by so-called informants, were ignored at the whim of law enforcement agents who were, apparently, accountable to no one. In the name of intelligence gathering, state and local prosecutions of violent criminals were undermined, and investigations were betrayed.

Many have ascribed this behavior to overzealous agents using informants in the mistaken belief that the end justified the means. But this explanation defies the logic of what occurred in Boston and oversimplifies a process where federal officers betrayed the public's trust out of more than mere overzealousness. Some have already admitted this.

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. This is more incredible when one realizes that, despite official requests by state and local law enforcement officials, the same information was not provided to the agencies mandated by law to prosecute these cases.

The Connecticut Statewide Organized Crime Task Force and the Chief State's Attorney's Office experienced firsthand this kind of behavior in the 1970's and 1980's. In the fall of 1975, we first uncovered organized crime's infiltration of Jai Alai at the Bridgeport fronton. We uncovered meetings between major New York and New Jersey LCN figures and the President of Bridgeport Jai Alai. In 1975, we revoked the license of Bridgeport Jai Alai because of organized crime connections. We attempted to provide information to federal organized crime agencies; however, they displayed a singular lack of interest in pursuing the case and, to say the least, were uncooperative.

We then conducted an investigation regarding World Jai Alai and it's then President, John B. Callahan of Boston, Massachusetts. We requested information regarding Callahan from federal law enforcement agencies in Boston. We were told there was no derogatory information. World Jai Alai had a number of ex-FBI agents engaged in security, one of whom had formerly worked in Boston on organized crime and was thoroughly familiar with an organized crime group in Boston known as the Winter Hill Gang, however, it apparently had received no derogatory information.

Despite the lack of federal help, through surveillance and the assistance of the Suffolk County Organized Crime Prosecution Office and the Boston PD, we were able to determine that Callahan had regular meetings with members of the Winter Hill Gang. We planned to question Callahan at a hearing in Hartford on May 3; however, Callahan resigned shortly before the hearing because World Jai Alai, through a former FBI agent,

had become aware of our investigation. Seemingly unable to develop the same information prior to our investigation, World Jai Alai moved quickly to remove Callahan when it realized that we were about to require his testimony.

It is difficult to conceive or even remotely believe that Callahan's connections to the Winter Hill Gang were not readily discernable by the FBI in Boston. In January of 1975, the federal government was aware of allegations that Callahan might be involved in loan sharking with the Winter Hill Gang. This information was provided to a former FBI agent who was employed by World Jai Alai. Our request for information from the FBI was met with silence.

Not only did former FBI security personnel at World Jai Alai fail to learn that their company president met regularly with Winter Hill Gang members, but in 1975, a Winter Hill associate was hired as the head of food and beverage. From our perspective, organized crime was not being kept out of Jai Alai; it was made to feel at home.

From 1976 to 1980, after allegations of player fixing were published in an article by Ted Driscoll of the Hartford Courant, we investigated and obtained the first convictions for the fixing of Jai Alai games, a sport which we had been assured was "unfixable". However, our jurisdiction did not permit us to fully investigate the connection between organized crime and Jai Alai throughout the country. To our knowledge, no federal agency has investigated player fixing on a national level despite the fact that Winter Hill operatives associated with Callahan were convicted of horse race fixing.

In 1980, Roger Wheeler, who had purchased World Jai Alai in 1978, was murdered in Tulsa. We attempted to investigate the connections between the killing and organized crime and to assist the Tulsa authorities. We suspected that possible skimming involving Jai Alai was the motive behind a hit by the Winter Hill Gang. No one in Boston appeared to agree with this. However, in May of 1982, Brian Halloran, a Winter Hill Gang member, was killed in Boston, as we later learned, after being denied federal witness protection. Halloran had naively provided first hand information that John B. Callahan, John Matarano, and other members of the Winter Hill Gang were involved. Not surprisingly, his information was deemed not credible by Boston federal authorities, and he was turned out on the street to be gunned down shortly thereafter in South Boston.

Halloran may have been surprised that his information would not warrant witness protection. We, in Connecticut, were not. In fact, we firmly believed that his informant identity had been leaked by federal authorities to the very people he was fingering. Callahan was killed in Florida shortly after Halloran had been murdered. We planned with Florida authorities to interview Callahan in Florida, and arrived the day his body was discovered in August of 1982.

These murders remained unsolved, and it seemed that the cover up had succeeded, until a Winter Hill Gang member decided to claim that he had a free pass on the crime train because of his status as an FBI informant, and Judge Wolf had the integrity and perseverance to conduct prolonged hearings to unravel this tangled web.

We dare not forget that the discovery of these massive crimes, although based on the tenacity of a few defense lawyers, was more than somewhat fortuitous. Reforms, therefore, must be instituted to guarantee that this will not happen again. The cozy arrangements between informants and agents must be subject to strict scrutiny and constant review. Contact between retired and current agents must be circumscribed, and information regarding state and local crimes must be presumptively provided to local prosecutors unless there are compelling reasons to the contrary.

In that regard, the words of Justice Brandeis seem particularly poignant.

> If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means – to declare that the Government may commit crimes in order to secure the conviction of a private criminal – would bring terrible retribution. Against that pernicious doctrine this Court should resolutely set its face.

Olmstead v. United States, 277 U.S. 438, 485 (1928) (Brandeis, J. *dissenting*). I would echo Justice Brandeis – this Congress likewise should set its face against that pernicious doctrine.

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Mr. BURTON. We are going to do our best to do that. Let me ask you one question. That is, these documents you alluded to, do you believe they are in the control of the FBI at the present time?

Mr. MCGUIGAN. I am positive, they have to be.

Mr. BURTON. Those are documents we ought to see if we can get as well. We ought to send another subpoena over there and beat on that issue as well, which we will.

Mr. Duke and Mr. Lawrence, I am sorry to keep you waiting for your testimony. We have a vote on the floor. I would urge the Members to rush over there, vote and come right back because we want to get to questioning as quickly as possible. We will be back in about 10 or 15 minutes.

[Recess.]

Mr. BURTON. If we could get everybody reassembled, we will get back to the hearing. There will be Members coming back in. I appreciate your tolerance and waiting for so long while we have to run back and forth to vote. I do not think there will be any more interruptions.

OK, our next witness according to my schedule here would be Mr. Lawrence. Mr. Duke, we are saving the best for last. So, Mr. Lawrence, do you want to proceed.

STATEMENT OF FREDERICK M. LAWRENCE, ESQ., BOSTON UNIVERSITY LAW PROFESSOR

Mr. LAWRENCE. Thank you, Mr. Chairman. I am honored by the opportunity to appear before this committee and testify this morning. I will be submitting an expanded version of my remarks this morning and I would hope those could be incorporated into the record.

Mr. BURTON. They shall be.

Mr. LAWRENCE. Mr. Chairman, Federal civil rights enforcement and civil rights crimes, in particular, have been the key focus of my career. During my 14 years at Boston University, and I would be remiss if I did not briefly mention that we take Victor Garo as one of our most distinguished alumni, I cannot take any personal credit for this since Victor's time at BU was a little before my time, but——

Mr. BURTON. Excuse me, didn't Bob Cousey go to Boston?

Mr. LAWRENCE. I am a New York Knicks fan myself, Mr. Chairman.

Mr. BURTON. I know, but I just thought I would point that out. Mr. Garo, did you play basketball?

Mr. GARO. Yes, sir.

Mr. BURTON. Did you. Well, Cousey, I think, went to Boston University. He was one of my heroes because he was a shorter guy like me. But, anyhow, go ahead.

Mr. LAWRENCE. I think he was at Boston College, actually.

Mr. BURTON. Oh, he went to Boston College?

Mr. GARO. Holy Cross.

Mr. BURTON. Oh, he went to Holy Cross. Well, excuse my ignorance. Go ahead, Mr. Lawrence.

Mr. LAWRENCE. I hope all of this does not come out of my time, Mr. Chairman.

For centuries, Mr. Chairman, societies have asked the question first posed by the famous Roman writer Juvenal: "Who will guard us from the guardians? Who will guard the guardians themselves?" I say as a former assistant U.S. attorney and I believe as a former assistant U.S. attorney that the vast majority of people involved in law enforcement are decent, committed, hard-working, dedicated, and law-abiding public servants.

There is unfortunately, however, also no doubt that there are those cases in which the public trust placed in law enforcement officials is abused to a serious degree. Many of these cases can be handled or might be handled sufficiently as administrative matters within a law enforcement agency, although, as Mr. Garo mentioned earlier this morning, even the Department of Justice has had its limitations on what it can achieve administratively. But there are those cases that rise above the level that ought to be treated administratively and that constitute criminal violations of a victim's civil rights. Such cases call for the strongest possible response from the Federal criminal justice system and the imposition of serious criminal sanctions. It is these cases of criminal civil rights that I discuss in my testimony.

I discuss a number of interrelated issues. First, the key role that criminal sanctions have in fact played in Federal civil rights enforcement. Second, the particular problems that arise when criminal civil rights laws are applied to misconduct by law enforcement officials. A suggested solution to these problems, in part, is to focus on the mental state requirement for these civil rights crimes. And finally, some particular concerns surrounding statutes of limitations.

Criminal sanctions have, in fact, always played a key role in Federal civil rights enforcement. When we think about Federal civil rights statutes, it is typical today to think of the civil statutes primarily, sometimes exclusively, such as Section 1983 of Title 42. But, in fact, the Reconstruction Era statutes themselves were replete with criminal provisions, going back to the Civil Rights Act of 1866, the very first piece of legislation during the Reconstruction Era. In fact, in many ways, if you look at the 1866 and 1870 statutes, they were largely criminal statutes, in part because civil enforcement was not seen to be a very viable option for newly freed slaves or for Southern Unionists whose rights were being violated.

So, in fact, the criminal sanctions available in this area are of long-standing. The enforcement story is a sadder story, particularly in the period following 1873 or 1875, when the Federal Government largely lost interest in enforcing these laws and the Supreme Court indeed struck down many aspects of them. But the laws remained on the books and in the 20th century criminal enforcement of civil rights became much more current and much more used.

The application of these laws in the particular kind of area that we are discussing today, namely, misconduct by law enforcement officials, really did not start until the 1930's and 1940's. The celebrated, indeed notorious case of *Screws* v. *United States,* involving a case of Claude Screws, a sheriff from Newton, GA, and two of his colleagues, arrested and beat and left to die a man named Robert Hall who was what we would today call a civil rights activist. They would not necessarily have used that term at the time. But they

beat Bobby Hall and they left him there to die and he did indeed die. No action was taken in the State courts in Georgia, not so surprisingly, and a Federal criminal civil rights charge was brought against Screws and his two co-defendants and that case was tried to a jury and they were convicted. And if the story ended there, I would be on to the next topic on my outline. Unfortunately, the story did not end there.

The case went up to the Supreme Court and their convictions were struck down. Their convictions were struck down for a number of reasons, but the one I wish to focus on was that the court was concerned that the statute that would allow for punishment of civil rights violations, and read almost as broadly as that, Section 242, violation of rights under color of law, was potentially vague, did not specify what rights were involved. And that when you talked about a specific right, the right to serve on a jury, the right to vote, that was a specific right and there would be no vagueness problem in such a statute. But where the right was a civil right generally, indeed in *Screws* the rights were the rights that Mr. Garo talked about earlier, life, liberty, the right not to be beaten to death by law enforcement officers, one would not have thought that right had to be enumerated, but the Supreme Court of the United States said that indeed it did.

As a result, the court read the word "willfully" in that statute in a very powerful and indeed very troublesome way, to require that law enforcement officers to be criminally liable under Section 242 would have to have willfully violated a Constitutional right which actually required in a "mens rea"-like sense some specific Constitutional intent, some specific state of mind with respect to the Constitution. Lest this seemed too hyper-technical and not have an impact on the ground, the impact on the ground was felt immediately. Screws and his two colleagues, co-defendants were retired. They were acquitted.

The head of the Civil Rights Section, as it was then called, of the Department of Justice said afterwards, "The judges' charge, while proper under the *Screws* case, was clearly very damaging. In short, the burden that the Government now has under the general theme of the *Screws* case in providing the necessary, willful intent in such cases is going to continue to buildup very high hills to climb." And indeed it has. It has built up very high hills to climb.

As I suggest in greater length in my written testimony, what this committee ought to play a role in being involved in is to look to Congress, to the Judiciary Committee, to reconfigure the mental state requirement and to look to a kind of what I call Constitutional negligence, Constitutional negligence in the sense that a law enforcement officer has no business saying I did not realize that was a civil right violation. If the court finds he should have known, that ought to be sufficient.

Justice Wiley Rutledge said it in *Screws* better than I can. He said, "If law enforcement officers do not know the victim's basic civil rights, they should, for they assume that duty when they assume their office. They know or should know when they pass the limits of their authority. And when they enter such a domain in dealing with citizen's rights, they should do so at their peril." That

was good advice in 1945, it remains good advice in 2002. That is a solution that Congress could play a significant part in.

Finally, statutes of limitations on civil rights crimes committed by public officials must be interpreted in such a way that there is adequate time for these miscarriages of justice to be investigated and punished as Federal civil rights crimes violations. This is particularly true where the very gravamen of the crime involves withholding of documents, withholding of evidence, and a continued cover-up. There should never be a problem of a statute of limitations running out when the wrong-doer himself is responsible for the difficulty in bringing the charges.

The application of criminal civil rights sanctions to law enforcement officers is obviously a highly troublesome subject. Ordinarily, Mr. Chairman, we would wish to give law enforcement the widest possible berth in the performance of their vital functions. This is particularly true now in a time of threat from terrorism both abroad and as we found out so recently and so tragically here at home. But I would say it is not in spite of the current climate that law enforcement must be held to the highest standards, it is rather precisely because of the current climate that law enforcement must be held to these standards.

It was during World War II, certainly a time of threat abroad and at home, that Justice Douglas in his opinion for the court in *Screws* described it as, "This case involves a shocking and revolting episode in law enforcement." Could there be a better description, Mr. Chairman, of the events surrounding the false imprisonment of Joseph Salvati over three decades for a crime he did not commit? The crime of the way in which Mr. Salvati was treated is a shocking and revolting episode in law enforcement.

The means by which Mr. Salvati came to be falsely imprisoned and the surrounding events of the misconduct of law enforcement in Boston and indeed in New England over this period have been discussed by other witnesses and I know will continue to occupy this committee, and I commend the committee for its attention. The purpose of my testimony is to take this shocking and revolting episode in law enforcement as a point of departure to begin to provide an answer to Juvenal's question centuries ago. The guarding of the guardians must begin with vigorous enforcement of this Nation's criminal civil rights laws.

[The prepared statement of Mr. Lawrence follows:]

Summary of Statement by Frederick M. Lawrence
Law Alumni Scholar and Professor of Law
Boston University
before the
Committee on Government Reform
House of Representatives
Presented on
February 27, 2002

For centuries, societies have asked the question posed by Juvenal: "*Sed quis custodiet ipsos custodes*?" -- "But who will guard the guardians themselves?" (Juvenal, Satires, VI. 347-8). We are fortunate to live in a society and a time when the need for protection from our protectors is not a pervasive problem. There is no doubt that the vast majority of people involved in law enforcement are decent, committed, hard-working, dedicated and law-abiding public servants. There is, unfortunately, also no doubt, that there are those cases in which the public trust placed in law enforcement officials is abused to a serious degree. Many of these cases can be sufficiently handled as administrative matters within a law enforcement agency. But there are those cases that rise above this level and constitute a criminal violation of a victim's civil rights. Such cases call for the strongest possible response from the federal criminal justice system and the imposition of serious criminal sanctions. It is these cases of criminal civil rights violations that I discuss in this testimony.

In my testimony, I will discuss a number of inter-related issues: (i) the key role that criminal sanctions have played in federal civil rights enforcement, (ii) the particular problems raised when criminal civil rights laws are applied to the misconduct of law enforcement officers; (iii) the solution to these problems in part through a focus on mental state requirement for civil rights crimes committed by public officials, and (iv) the particular concern surrounding the statute of limitations of civil rights crimes committed by public officials.

Criminal sanctions have always played a key role in federal civil rights enforcement. The particular problems raised when criminal civil rights laws are applied to the misconduct of law enforcement officers may be addressed in large measure by re-conceptualizing the mental state requirement for civil rights crimes committed by public officials. Rather than requiring a showing that the defendant intended to violate the civil rights of the victim, it should be enough to prove that the defendant acted with sufficient intent to commit the underlying crime – assault in the case of police brutality; kidnapping or false imprisonment in the case of Joseph Salvati that brings us here today – and then further that the defendant acted with a kind of "constitutional negligence" concerning the violation of the victim's civil rights. As Justice Wiley Rutledge wrote in his opinion in the celebrated criminal civil rights case of *Screws v. United States*: "[i]f they do not [know the victim's basic civil rights], they should, for they assume that duty when they assume their office." "They know or should know when they pass the limits of their authority .... When they enter such a domain in dealing with the citizen's rights, they should do so at their peril...." Finally, the statute of limitations of civil rights crimes committed by public officials must be interpreted in such a way that this is adequate time for these miscarriages of justice to be investigated and punished as federal criminal civil rights violations.

The application of criminal civil rights sanctions to law enforcement officers is obviously a highly troublesome subject. Ordinarily, we would wish to give law enforcement the widest possible berth in the performance of their vital functions. This is particularly true now at a time of threat from terrorism both abroad and, as we saw so

tragically on September 11 in New York, and Washington, D.C., at home. But it is not in spite of the current climate that law enforcement must be held to the highest standards. Rather it is precisely because of the current climate and times such as these. When law enforcement needs and demands the greatest authority, it must be particularly aware of and respectful of the rights of the citizens it serves. It was during World War II that Justice William O. Douglas in his opinion for the Court in *Screws v. United States*, wrote "[t]his case involves a shocking and revolting episode in law enforcement." There could be no better description of the events surrounding the false imprisonment of Joseph Salvati over three decades for a crime that he did not commit: the case of Mr. Salvati involves a shocking and revolting episode in law enforcement.

The means by which Mr. Salvati came to be falsely imprisoned and the surrounding events of the misconduct of law enforcement in Boston over this period have been discussed by other witnesses and I know will continue to occupy this committee. My work today is to take this shocking and revolting episode in law enforcement as a point of departure to begin to provide an answer to Juvenal's question: the guarding of the guardians must begin with vigorous enforcement of this nation's criminal civil rights laws.

Statement of
Frederick M. Lawrence
Law Alumni Scholar and Professor of Law,
Boston University
before the
Committee on Government Reform
House of Representatives
Presented on
February 27, 2002

Mr. Chairman and Members of the Committee:

I am honored by the opportunity to testify today on the issue of criminal responses to civil rights violations. My name is Frederick M. Lawrence. I am Law Alumni Scholar and Professor of Law at Boston University School of Law where I have been a member of the faculty since 1988. Prior to joining the Boston University faculty I served for five years as an Assistant United States Attorney for the Southern District of New York. From 1986-88 I was the Chief of the Civil Rights Unit of that office. A key focus of my career has been Federal Civil Rights enforcement and civil rights crimes.

For centuries, societies have asked the question posed by Juvenal: "*Sed quis custodiet ipsos custodes*?" -- "But who will guard the guardians themselves?" (Juvenal, Satires, VI. 347-8). We are fortunate to live in a society and a time when the need for protection from our protectors is not a pervasive problem. There is no doubt that the vast majority of people involved in law enforcement are decent, committed, hard-working, dedicated and law-abiding public servants. There is, unfortunately, also no doubt, that there are those cases in which the public trust placed in law enforcement officials is abused to a serious degree. Many of these cases can be sufficiently handled as administrative matters within a law enforcement agency. But there are those cases that rise above this level and constitute a criminal violation of a victim's civil rights. Such cases call for the strongest possible response from the federal criminal justice system and the imposition of serious criminal sanctions. It is these cases of criminal civil rights violations that I discuss in this testimony.

In my testimony, I will discuss a number of inter-related issues: (i) the key role that criminal sanctions have played in federal civil rights enforcement, (ii) the particular problems raised when criminal civil rights laws are applied to the misconduct of law enforcement officers, (iii) the solution to these problems in part through a focus on the mental state requirement for civil rights crimes committed by public officials, and (iv) the particular concern surrounding the statute of limitations of civil rights crimes committed by public officials.

Federal Civil Rights Crimes

Although the prime focus of the study of civil rights enforcement has been on the various civil remedies providing in federal law, most notably section 1983,[1] the seven civil rights statutes enacted during the Reconstruction period[2] all plainly utilized criminal

[1] 42 U.S.C. §§ 1983. See also 42 U.S.C. §1981, 1982, and 1985(3), as well as laws enacted during the second reconstruction, *e.g.*, 42 U.S.C. §§ 1973-1973aa-2 (voting rights), 2000a (public accommodations), 2000d (federal assisted programs), 3000e (employment discrimination) 3601 (fair housing).
[2] See Civil Rights Act of 1875, Act of March 1, 1875, c. 114, 18 Stat. 335 (Vol III); Ku Klux Klan (Anti-lynching) Act, Act of April 20, 1871, c. 22, 17 Stat. 13; Enforcement Act of 1870, Act of May 31, 1870,c. 114, 16 Stat. 140, amended by, Act of February 28, 1871, c. 99, 16 Stat. 433; Slave Kidnapping Act, Act

sanctions as a critical element in the protection of civil rights.[3] The Civil Rights Act of 1866 was the first major legislation from this period.[4] According to its prime author and sponsor, Senate Judiciary Committee chair Lyman Trumbull, the law was to have broad application, applying to "white men as well as black men,"[5] protecting all persons in the United States in their civil rights, and furnishing the means of vindicating these rights.[6] The 1866 Act established citizenship for "all persons born in the United States" regardless of race or prior condition of servitude, required equal protection under state laws, and set up enforcement mechanisms. Primary among the enforcement mechanisms in the legislation was section 2 of the 1866 Act, the present day 18 U.S.C. §242, which established a federal crime for "[w]hoever, under color or law" deprives a person of "any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."[7]

Whereas the roots of section 242 were found in the Civil Rights Act of 1866,[8] the precursor to the present-day section 241 is found in section 6 of the Enforcement Act of 1870. Section 6 established a felony for two or more persons who conspire together or who

> go in disguise upon the public highway or upon the premises of another with intent to violate any provision of this act, or to injure oppress or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States....[9]

Moreover, section 7 of the Enforcement Act federalized all state law crimes that were committed in the course of any violation of sections 5 or 6 of the Enforcement Act.[10]

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of May 21 1866, c. 86, 14 Stat. 50; Peonage Abolition Act, Act of March 2, 1867, c, 187, 14 Stat. 546, 18 U.S.C. §444; Civil Rights Act/Enforcement Act of 1866 , Act of April 9, 1866, c. 31, 14 Stat. 27.

[3] *See* Maslow & Robinson, *Civil Rights Legislation and the Fight for Equality, 1862-1952*, 20 U. CHI. L. REV. 363, 370 (1953).

[4] Civil Rights Act of 1866, ch. 31, 14 Stat. 27 (1866). The provision of the Civil Rights Act of 1866 that is of primary contemporary interest is section 2, now codified at 18 U.S.C. §242.

[5] CONG. GLOBE, 39th Cong. 1st Sess. at 599.

[6] By "civil rights," Trumbull meant a broad panoply of rights that enable the citizen to function in civil society. These rights may be summarized as those that allow each citizen to be treated equally with others and to be treated fairly by his government. CONG. GLOBE, 39th Cong. 1st Sess. at 211.

[7] Section 2 of the 1866 Act contained the first version of what is now section 242 of Title 18, United States Code. 18 U.S.C. §242 (1988). The word "willfully", currently found in section 242, was not present in the Civil Rights Act of 1866 and was not added until 1909.

[8] The Enforcement Act of 1870 also re-enacted the Civil Rights Act of 1866. Section 16 and 17 of the 1870 Act re-enacted sections 1 and 2 of the 1866 Act, respectively, and section 18 explicitly articulated the re-enactment. The re-enacting of the Civil Rights Act of 1866 in the Enforcement Act of 1870 was largely done to avoid possible constitutional challenges to the Congressional authority to pass this legislation. The Enforcement Act was passed after the ratification of the Fourteenth Amendment. Whereas the 39th Congress' sole constitutional authority for passing the Civil Rights Act was the Thirteenth Amendment, the 41st Congress found its authority for the Enforcement Act in section 5 of the Fourteenth Amendment. *See, e.g.*, Cong. Globe, 41st Cong., 2nd Session, at 3568 (May 18, 1966)(Remarks of Sen. Sherman: "The Fourteenth Amendment . . . will not be enforced by the simple operation of their own force as amendments to the Constitution.)

Section 16 of the 1870 Act, re-enacting section 1 of the 1866 Act was held unconstitutional in Hodges v. United States, 203 U.S. 1 (1906), *overruled*, Jones v. Alfred Mayer, Inc., 392 U.S. 409 (1968).

[9] 16 Stat. 140, 141, c. 114, sec. 6.

[10] Section 7 of the Enforcement Act of 1870 provides that if:

> in the act of violating any provision in either [section 5 or 6] any other felony, crime, or misdeameanor [*sic*] shall be committed, the offender ... shall be punished for the same with such punishments as are attached to the said felonies, crimes and misdemeanors by the laws of the State in which the offence may be committed.

16 Stat. 140, 141, c. 114, sec. 7. Section 7 of the Enforcement Act was declared unconstitutional by the Supreme Court in United States v. Cruikshank, 92 U.S. 542 (1876).

In spite of the enactment of the Enforcement Act of 1870, the violence directed at blacks in the southern states continued and may even have increased.[11] In response Congress enacted the Ku Klux Klan (or sometimes "Anti-lynching") Act of 1871.[12] The Act, entitled "An Act to enforce the Provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes," is best known today for its primary civil enforcement mechanism, the creation of a common law cause of action for a violation of federal rights under color of law.[13] In 1871, however, the Ku Klux Klan Act was seen primarily as a federal criminal statute designed to create a federal role in suppressing violence in the southern states.[14] Much of the debate over the Ku Klux Klan Act concerned its criminal provisions. The legislation as originally proposed would have made federal crimes of a long litany of common law crimes such as murder, manslaughter, robbery, assault or arson.[15] The bill was seen as the most extreme shift of power from the states to the federal government of any of the Reconstruction Era constitutional amendments or statutes.[16] Moderate Republicans in Congress proposed the language of the Ku Klux Klan Act that was ultimately enacted into law. As amended, the legislation still provided criminal sanctions for numerous conspiracies but the grounds for federal criminal prosecution were narrowed to conspiracies to violate an enumerated set of civil rights, each of which implicated an explicitly federal issue.[17] In proposing the amendment, Representative Shellabarger succinctly stated the distinction between the original section 2 and section 2 as amended.

> The object of the amendment is ... to confine the authority of this law to the prevention of deprivation which shall attack the equality of rights of American citizens; that any violation of the right, the *animus* and effect of which is to strike down the citizen, to the end that he may not enjoy equality of rights as contrasted with his and other citizens' rights, shall be within the scope of the remedies of this section.[18]

The legislation as amended preserved the effort to apply criminal sanctions to the violence in the south but stepped back from the federalization of all or most crimes of violence in the southern states.

The final Civil Rights Act of the Reconstruction period -- and the last piece of major federal civil rights legislation for more than eighty years -- was the Civil Rights Act of 1875, "An act to protect all citizens in their civil and legal rights."[19] On its face, the

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[11] *See* ERIC FONER, RECONSTRUCTION: AMERICA'S UNFINISHED BUSINESS 454-55 (1988); Avins, *The Ku Klux Klan Act of 1871: Some Reflected Light on State Action and the Fourteenth Amendment*, 11 ST. LOUIS U. L. J. 331, 331-32 (1967); Gressman, *The Unhappy History of Civil Rights Legislation*, 30 MICH. L. REV. 1323, 1334 (1952). Congress was inundated with reports of violence from the South. *See, e.g.*, CONG. GLOBE, 42d Cong., 1st Sess. 154-66 (1871) (description of numerous allegations of Klan inspired violence in the southern states).

[12] 17 Stat. 13 (Apr. 20, 1871).

[13] Section 1 of the Ku Klux Klan Act is today codified as section 1983 of Title 42, United States Code. Section 2 of the Klan Act also enacted a civil remedy for violations of civil rights, codified at section 1985(3) of Title 42, United States Code.

[14] *See* E. FONER, RECONSTRUCTION, at 457 (with the enactment of the Ku Klux Klan Act, "the major burden of suppressing violence now fell to the federal government").

[15] See H.R. 320, 42d Cong., 1st Sess., *reprinted in* CONG. GLOBE, 42d Cong, 1st Sess. app. at 138 (1871).

[16] The central concern over the Ku Klux Klan Act was the criminalization of private conduct. The criminal provisions of the Civil Rights Act of 1866 and the Enforcement Act of 1870 had focused primarily on state conduct, that is criminal acts either committed by state officials or promoted by the state.

[17] *See* Section 2 of the Ku Klux Klan Act . 17 Stat. 13, sec. 2. Under the statute, such conspiracies were made felonies punishable by incarceration for a term of up to six years. These criminal provisions were struck down by the Supreme Court in United States v. Harris, 106 U.S. 629 (1883) and in Baldwin v. Franks 120 U.S. 678 (1887).

[18] CONG GLOBE, 42d Cong., 1st Sess., at 478 (remarks of Rep. Shellabarger)

[19] 18 Stat. 335 (Mar. 1, 1875).

statute was a broad, aggressive tool for enforcing federal civil rights. Passed largely as a memorial to Senator Charles Sumner, the tireless Radical Republican from Massachusetts, the statute was a fitting coda to this extraordinary period of federal legislation.[20] Although by the time the bill was enacted into law, administrative commitment to civil rights enforcement was already virtually non-existent, it is worth noting that the 1875 Act contained substantial criminal provisions. The main thrust of the Civil Rights Act of 1875 was the prohibition of discrimination based on race in public accommodations such as inns and theaters. The Act created both civil and criminal remedies.[21] By authorizing the use of federal criminal remedies for denial of access to public accommodations, the 1875 Civil Rights Act reached conduct unconnected with either crimes under color of law or crimes that interfered with rights of political or civil participation. Instead, it encompassed a much broader set of rights that would be protected by federal criminal civil rights law. For all of its apparent scope, in reality the criminal provisions of the Civil Rights Act of 1875 were more aspirational that substantive. By 1875, federal enforcement of criminal civil rights laws clearly was virtually moribund. The law's practical contemporary significance, if any, was for its civil provisions. These civil remedies were scarcely enforced as well because those whom the statute protected were ill-equipped to use the legal system to obtain those protections.[22] Nonetheless, even the barely enforced Civil Rights Act of 1875 makes the point that is clear throughout the Reconstruction Era statutes: criminal sanctions were deemed to be a key component of federal civil rights enforcement.

Law Enforcement Misconduct as a Federal Civil Rights Crime

In the early 1940's, a number of successful prosecutions were brought using section 242 as the means to punish cases of police brutality.[23] The theory under which these cases were brought represented a significantly broader view of the civil rights crimes statutes than cases of violations of narrowly delineated rights. Here, the "right" alleged to have been violated was basic deprivation of liberty (or life) without due process of law.[24]

The validity of this use of section 242 was first ruled upon by the Supreme Court in *Screws* v. *United States*.[25] The events that gave rise to *Screws* occurred in Newton, Georgia in Baker County, in January, 1943. The defendants were M. Claude Screws, sheriff of Baker County, special deputy sheriff Frank Edward Jones, and police officer

[20] The Civil Rights Bill might never have made it into law at all but for the Sumner's persistence. It was Sumner who introduced the legislation in March, 1871 and whose dying words three years later are said to have been about its enactment. *See* D. DONALD, CHARLES SUMNER AND THE RIGHTS OF MAN 586 (1970) (as he lay dying, Sumner said to a visitor that he should "take care of the civil rights bill" and not "let it fail").

[21] Section 1 of the Civil Rights Act of 1875 provided that "all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, ... public conveyances ... and other places of public amusement...." Section 2 of the Act established both civil and criminal remedies for all violations of section 1. 18 Stat. 335.

[22] *See* Franklin, *The Enforcement of the Civil Rights Act of 1875*, 6 PROLOGUE 225-35 (1974); E. FONER, RECONSTRUCTION, at 555-56.

[23] *See, e.g.*, Culp v. United States, 131 F. 2d 93 (8th Cir. 1943)(applying sections 241 and 242 to case of false arrest by law enforcement officers and attempt by these officers to extort money from victims in order to obtain their release). See also Riggins v. United States, 199 U.S. 547 (1905); Logan v. United States, 144 U.S. 263 (1892).

[24] The indictment of the defendants in *Screws* was actually based on numerous rights that were allegedly violated. None of these rights, however, was based on an explicit constitutional source. Rather, each of these rights was rooted in the due process clause.

[25] 325 U.S. 91 (1945).

Jim Bob Kelley. Screws, along with Jones and Kelly, sought to arrest Robert Hall, a thirty-year old African-American, on a warrant charging Hall with the theft of a tire. Screws had a grudge against Hall, undoubtedly due in no small part to Hall's reputation as an outspoken leader for Black causes.[26] Hall was handcuffed and taken by car to the court house. Upon arriving at the court house and leaving the car, Hall was severely beaten by the three men with fists and with a black jack that was about eight inches long and weighed about two pounds. Hall, handcuffed throughout the entire incident, was beaten for between a quarter and half an hour until he was rendered unconscious. He was then dragged feet first along the court house square, into the court house, to a jail cell, where he was left, already dying. Hall was subsequently taken to a hospital where he died in less than one hour, never having regained consciousness.

No such state charges were ever brought against Screws, Jones or Kelly. (Indeed, several years after the conclusion of the *Screws* case, Claude Screws was elected to the Georgia state senate.[27]) Four months after the killing of Robert Hall, with no local prosecutorial action having been taken, the Department of Justice brought the case to a federal grand jury in Georgia. The grand jury returned a three count indictment as to each of the three defendants. Each defendant was charged under what are now sections 241 and 242 and all three were indicted as well under the general federal criminal conspiracy statute. The indictments charged the defendants with acting under color of the laws of Georgia and willfully causing Robert Hall to be deprived of his rights under the Fourteenth Amendment. A jury convicted each defendant on each count and each defendant was fined $1,000 and sentenced to three years in prison.[28] The convictions of the *Screws* defendants were affirmed by a divided panel of the Fifth Circuit.[29]

The theory underpinning the *Screws* prosecution represented an expansion of federal civil rights crimes prosecutorial authority. The Court in *Screws* thus was forced to confront two sets of issues, one concerning the expansion of federal authority over state functions and the other concerning the potential vagueness problem of a crime for violating a non-enumerated, unspecified constitutional right.

The parties in *Screws* focused on the limits of federalism.[30] Federalizing the punishment of misconduct by state officials -- whether or not that misconduct was authorized by state law -- had been well established by the time of *Screws*.[31] The scope of

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[26] *See* L. MILLER, THE PETITIONERS: THE STORY OF THE SUPREME COURT OF THE UNITED STATES AND THE NEGRO 283-84 (1966). During the investigation of the *Screws* case, Screws told an agent of the Federal Bureau of Investigation that he had known Hall all of Hall's life, that he had had "considerable trouble" with Hall for the two years prior to Hall's death, that Hall was a "biggety negro" who "considered himself a leader among the colored people in the community." Transcript of Record at 64, 177, *Screws*.

[27] *See* MILLER, THE PETITIONERS, at 286. Screws, along with his fellow defendants, was acquitted at his re-trial for the federal charges arising out of the death of Robert Hall.

[28] Immediately following the return of the guilty verdicts, on October 7, 1943, Judge Deaver imposed identical sentences upon each defendant. For violation of section 242 (Count 2 of the indictment), each defendant was sentenced to one year in prison and a fine of $1000.00. For violation of the federal conspiracy statute, (Count 3 of the indictment), each defendant was sentenced to serve two years in prison to run consecutively with the sentence imposed on the section 242 count. Transcript of Record at 10-15, *Screws*.

[29] Screws v. United States, 140 F. 2d 662 (5th Cir. 1944).

[30] The *Screws* defendants focused strictly on the federalism problem in their written arguments to the Supreme Court. Brief for the Petitioners at 6-16, *Screws*. The Government similarly focused on the federalism issues raised by the case and only briefly discussed the vagueness problem. Brief for the United States at 52-54.

[31] Even the most restrictive judicial interpretations of the federal civil rights statutes always assumed federal constitutional authority to prosecute officially sanctioned violations of federal rights. *See* Civil Rights Cases, 109 U.S. 3, 13 (1883) ("the prohibitions of the [fourteenth] amendment are against state laws and acts done under state authority). The punishment of unauthorized misconduct of state officials was accepted by the court as early as Home Telephone and Telegraph Co. v. Los Angeles, 227 U.S. 278, 288 (1913)("the [fourteenth] amendment ... conceiving, which was more normally to be contemplated [than authorized misconduct], that state powers might be abused by those who possessed them and as a result

misconduct that might be federalized, of course, was restricted to violations of *federal* law. So long as the basis of civil rights crimes was a specific and enumerated constitutional or statutory federal right, this issue of scope presented no conceptual difficulties. The very significance of *Screws* lies in the fact that it did not involve an enumerated federal right. Rather, *Screws* concerned a non-enumerated constitutional right to be "free from police brutality" that is derivative from the enumerated rights protected by the Fourteenth Amendment. Once the creation and expansion of a federal criminal law through the vehicle of the criminal civil rights statutes left the safe port of expressly stated federal predicates, it was not self-evident where the limits of federal criminal jurisdiction would be set. *Screws* placed precisely this issue before the Supreme Court. Indeed, the dissent of Justices Frankfurter, Roberts and Jackson concluded that the federalism problem posed by section 242 was unsolvable and that the statute was therefore unconstitutional.[32] The plurality of the Court concluded, however, that, as section 242 itself expressly applies only to conduct "under color of law," this civil rights crimes statute could not federalize all state criminal law but rather only those crimes that occurred under "color of law" and that result in the violation of a federally protected right.[33] The Court held that a state official might still be acting under "color of" state law even if his conduct itself violated state law. Justice Douglas coined the term "under 'pretense' of state law" to mean actions taking under authority granted by the state albeit in contravention of state mandate.[34] He distinguished acts committed by state officials under "pretense" of law from the "act of officers in the ambit of their personal pursuits.[35] "Acts of officers who undertake to perform their official duties are included whether they hew to the line of their authority or overstep it."[36]

The vagueness problem, as noted above, stems from the conflict between the well-established requirement that criminal statutes provide clear ascertainable standards of guilt for the crimes they proscribe and the potentially amorphous boundaries of a statute designed to protect federal rights generally. Rather than a specific and enumerated constitutional right, *Screws*, presented a non-enumerated constitutional right to be free from police brutality.

Justice Douglas' opinion for a plurality of four justices began by acknowledging the potential constitutional issues raised by the vagueness problem and then sought a interpretation of section 242 that would avoid problems of constitutionality. His search led him to focus on the word "willfully" in section 242. There was no willfulness requirement in the antecedent to section 242 enacted in 1866 nor was such a requirement added when the provision was reenacted in 1870 as part of the Enforcement Act of 1870. Willfulness, as an element of section 242, was first introduced in 1909 as part of the revisions in the criminal code enacted that year.[37] Justice Douglas concluded that, whereas prior to 1909, section 242 might well have imposed strict liability, the insertion

might be used as the instrument for doing wrongs, provided against all and every such possible contingency").

[32] 325 U.S. at 144-45 (citation omitted).

[33] *See Screws*, 325 U.S. at 108-09 ("[section 242] should be construed so as to respect the proper balance between the States and the federal government in law enforcement.... Congress ... did not undertake to make all torts of state officials federal crimes.").

[34] 325 U.S. at 111.

[35] *Id.*

[36] *Id.*.

[37] The 1909 revision of the federal criminal code first added the word "willfully" to the statute although the reason for doing so is less apparent than might be assumed. The proposed revisions to the criminal code are enumerated and explained in the Conference Committee Report, but there is no mention of the addition of "willfully" whatsoever in this report. Rather, the revisions to the Civil Rights sections discussed in the Report focus either on minor grammatical changes or changes in the punishment and fines. The insertion of "willfully" into, section 5510, the predecessor statute to section 242, was accomplished by a floor amendment offered in the House of Representatives to which the Senate later agreed. *See* S. DOC. NO. 741, 60th Cong., 2nd Sess. (1909) and H. R. REP. 2270, 60th Cong., 2nd Sess. (1909).

of a willfulness requirement into section 242 required a specific state of mind on the part of the accused. This requirement, in turn, provided a solution to the vagueness problem.

The solution to the vagueness problem, according to Justice Douglas, lay in the fact that section 242 required a showing of "bad purpose" or "evil intent." Accordingly, the accused could not justifiably complain that the statute under which he was charged had failed to provide fair warning that his conduct would transgress the provision. Douglas observed that a general bad purpose requirement would not be sufficient to give this warning. Rather, it was "a requirement of a specific intent to deprive a person of a federal right made definite by decision or other rule of law [that] saves the Act from any charge of unconstitutionality on the grounds of vagueness."[38]

The flaws in Douglas' approach emerge because the specific intent standard that he proposes cannot withstand analysis. First, the connection between solving the vagueness problem and requiring specific intent is far more complicated than Douglas assumes. The specific intent to commit a crime is usually limited to the defendant's state of mind with respect to his conduct, the results of his conduct, and/or the attendant circumstances.[39] Under ordinary circumstances, knowledge of the fact that the intended conduct or results constitutes an offense is not an element of the crime.[40] An utterly vague criminal statute will be just as vague if its offender consciously sought to perform the conduct or achieve the results that, albeit vaguely, the state proscribes. Suppose, for example, that a vagrancy statute proscribes "wandering about the streets at late hours without any visible or lawful business and not giving a good account of oneself."[41] An insomniac might very well purposely walk on the streets at night for no lawful "business." Yet charged with vagrancy, the insomniac could object that the statute failed to provide adequate warning that she was committing a crime by taking her walk. The conscious offender can justifiably complain that she did not receive fair notice. A requirement of specific intent, without more, cannot adequately address the vagueness problem.

The only manner in which specific intent might begin to address the vagueness problem is if the content of that intent is quite broad. But there is no solution to the vagueness problem to be found here. In fact, this analysis illustrates that there is a second and even more fundamental weakness in the Douglas approach. The broad specific intent is defined by Justice Douglas as follows:

> ... it was not sufficient that petitioners had a generally bad purpose. To convict it was necessary for [the jury] to find that petitioners had the purpose to deprive the prisoner of a constitutional right, e.g. the right to be tried by a court rather than by ordeal.[42]

Certainly, if the *Screws* defendants had the explicit purpose in mind to deprive Robert Hall of his right to be tried by a court or some other specific constitutional or statutory right, they could not then complain of a lack of notice that their conduct violated that

[38] 325 U.S. at 103.

[39] Under the Model Penal Code, what was known at common law as "specific intent" was broken down into the "purpose" and "knowing" categories of culpability. See MODEL PENAL CODE §§2.02(2)(a), (b).

[40] *See* MODEL PENAL CODE §2.02(9)("[n]either knowledge nor recklessness or negligence as to whether conduct constitutes an offense or as to the existence, meaning or application of the law determining the elements of an offense is an element of such offense, unless the definition of the offense ... so provides"). Under limited circumstances, the defendant's mistake of law will exculpate. *See* MODEL PENAL CODE §2.04(3)(permitting mistake of law defense where statute was not reasonably made available or where mistake resulted from reasonable reliance upon a statute, judicial decision, administrative order, or official interpretation of the official legally charged with the interpretation, administration or enforcement of the law.

[41] *See* Ricks v. District of Columbia, 414 F. 2d 1097 (D.C. Cir. 1968)(striking down District of Columbia vagrancy statute on vagueness grounds).

[42] 325 U.S. at 107.

same right. But to state this proposition is to see its practical flaw: it is virtually inconceivable that an actor, about to commit a civil rights crime, would ever think in such explicitly constitutional terms. Not only would be it quite difficult to prove this intent if it existed, it is extremely unlikely that it would indeed exist. Justice Douglas himself was well aware of this problem. Elsewhere in his opinion, he offered the following alternative formulation of his *mens rea* standard:

> The fact that the defendants may not have been thinking in constitutional terms is not material where *their aim was not to enforce local law but to deprive a citizen of a right* and that *right was protected by the Constitution.* When they so act they at least act in *reckless disregard* of constitutional prohibitions or guarantees.[43]

In this formulation, Douglas appears willing to settle for a much weaker form of *mens rea* than the "*purpose* to deprive the victim of a constitutional right." This weaker form of *mens rea* is in fact not strictly speaking "intentional" at all. It does not require the prosecution in *Screws* to prove that the defendants consciously intended to inflict a trial by ordeal upon Hall and thus deny him the right to a trial by court. The prosecution need only show (i) that the defendants intended to harm Hall; (ii) that this harm deprived Hall of a "right which has been made specific either by the express terms of the Constitution or laws of the United States or by decisions interpreting them."[44] If the right is sufficiently specific, the accused, whether or not he was "thinking in constitutional terms," would be acting "in reckless disregard of constitutional prohibitions or guarantees." This formulation of the *mens rea* requirement, presumes recklessness from the intent to harm and the clearly established constitutional right. But now Douglas has traveled a great distance from the constitutional specific intent standard with which he began. In the course of reformulating the standard, Douglas slides all the way from specific intent to something akin to negligence.[45]

This alternative formulation of Douglas' standard, although far more practically realistic than the constitutional specific intent standard, fails to solve the vagueness problem. Whereas the defendant who consciously intended to deprive Robert Hall of a constitutional right could not justly object that he lacked knowledge of that constitutional right, the same cannot be said of the defendant who neither thought in constitutional terms nor even *consciously* disregarded any constitutional rights of his victim. This defendant could complain that, although he had fair warning that his conduct violated state law, he had no similar warning that his conduct violated constitutional rights and thus federal law.

The alternative formulations set out in the Douglas opinion result from his ambiguous use of "willful." If "willfulness" applies to the intent to violate the victim's rights, then there is a specific constitutional intent. If "willfulness" applies to the intent to harm the victim, then there need only be a negligence standard with respect to constitutional rights. Douglas does not resolve this ambiguity because his attempt to address the vagueness problem requires him to have it both ways: either formulation on its own is flawed. Either he embraces a very narrow concept of specific constitutional intent that will solve the vagueness problem theoretically but is so extreme that it cannot

[43] *Id.* at 106 (emphasis added).
[44] *Id.* at 104.
[45] Under the definitions of mental states that have developed under the Model Penal Code, it is quite clear that, to meet Justice Douglas' standard, the accused need not have acted "recklessly." Reckless conduct, under the Model Penal Code, is that which is taken with a *conscious* disregard of the likelihood of the harm. MODEL PENAL CODE at §2.02(2)(c)(emphasis added). The hypothetical suspect who is truly unaware that his conduct will deprive someone of a constitutional right could not be said to have consciously disregarded the likelihood of the constitutional violation. Thus Justice Douglas' use of the term reckless correlates more closely with a concept of gross negligence under the Model Penal Code. *See* MODEL PENAL CODE § 2.02(2)(d).

reach the problem practically, or he accepts a concept of criminal negligence that will not solve the vagueness problem. Rather than resolving this dilemma, Justice Douglas creates confusion through an ambiguous use of "willfulness."

From the point of view of civil rights enforcement policy, there is an additional flaw in the approach articulated by the plurality in *Screws*. In spite of the attempt by some to put a good face on it, *Screws* greatly reduced the ability of the Civil Rights Section of the Department of Justice to prosecute civil rights crimes.[46] Perhaps the most immediate proof of this assertion is also the most dramatic. On retrial, the *Screws* defendants were acquitted. Although numerous factors could plausibly explain the different outcome from the first to the second trial, the attorney who tried the second *Screws* case believed that the prosecution had been "handicapped by the necessity of proving 'willfulness.'"[47] The jury, charged with respect to constitutional willfulness, focused on the personal nature of the quarrel between Screws and Robert Hall. The government was thus unable to persuade the jury that the defendants had willfully violated Hall's *constitutional* rights.[48]

Douglas' dilemma was not lost on the other justices on the *Screws* court. Not all agreed, however, on a single lesson to be learned from the dilemma. Justices Rutledge (concurring) and Murphy (dissenting) rejected the plurality's solution to the vagueness problem as unnecessarily limiting the reach of the civil rights crimes statutes. Justices Roberts, Frankfurter and Jackson, in their dissenting opinion, rejected Douglas' approach as insufficiently dealing with an unsolvable vagueness problem in these statutes.

Justice Rutledge, in his concurring opinion, denied the practical likelihood that the vagueness problem would ever truly present itself. To a certain extent, therefore, Rutledge's solution to Douglas' dilemma -- how to treat the officer who sincerely did not know that his conduct would violate a federal right of the victim and thus cannot be said to have acted in any manner *consciously* to violate such rights -- was to deny the existence of such an officer. Justice Murphy shared Rutledge's empirical denial of the vagueness problem.[49] Justice Rutledge, however, went well beyond this empirical attack of the severity of the vagueness problem. Rutledge posited a state official who genuinely did not know that his conduct, however egregious, was a federal wrong, and who thus lacked a conscious purpose to violate federal rights or even a conscious disregard that his conduct would likely violate federal law. If such an officer did exist, Rutledge was prepared to find him guilty. Rutledge asserted that "[g]enerally state officials know something of the individual's basic legal rights" but then added that "[i]f they do not, they should, for they assume that duty when they assume their office."[50]

> If their knowledge is not comprehensive, state officials know or should know when they pass the limits of their authority... When they enter such a domain in dealing with the citizen's rights, they should do so at their peril....[51]

Rutledge's standard of "culpability" therefore, could be seen as one of strict liability. As he did note that criminal sanctions would be inappropriate for state officials who made

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[46] *See, e.g.,* ROBERT K. CARR, FEDERAL PROTECTION OF CIVIL RIGHTS 113-15 (1947); J. WOODFORD HOWARD, JR., MR. JUSTICE MURPHY: A POLITICAL BIOGRAPHY 364-66 (1968); Cohen, *The* Screws *Case: Federal Protection of Negro Rights,* 46 COL. L. REV. 94 (1946); Carr, *Screws v. United States: The Georgia Police Brutality Case,* 31 CORN. L. Q. 48 (1945).

[47] CARR, FEDERAL PROTECTION OF CIVIL RIGHTS, at 114.

[48] As described by the Chief of the Civil Rights Section:

> the judge's charge, while ...proper under the *Screws* case, was clearly very damaging... In short, the burden that the Government now has under the general theme of the *Screws* case in proving the necessary willful intent in such cases is going to continue to build up very high hills to climb.

Id. at 115.

[49] *Id.* at 135-36.

[50] 325 U.S. at 129 (Rutledge, J., concurring)

[51] *Id.*

only an "error in judgment, made in honest effort at once to apply and to follow the law," Rutledge's approach may be better understood as a form of constitutional negligence.[52]

Justice Rutledge failed to develop a theory for civil rights crimes, however, and in fact, even failed to state the basis for such a theory. He was thus vulnerable to a straight-forward attack from the dissenters. The invocation of constitutional negligence theory requires justification; Rutledge offered none. It is to the development of just such a justification that I shall now turn.

The Mens Rea Requirement for criminal cases of official misconduct by law enforcement

A coherent theory of federal civil rights crimes requires a solution to the federalism and vagueness problems discussed above. This solution begins to emerge from a deeper understanding of the nature of these crimes and this understanding, in turn, derives from consideration of the state of mind of one who commits a civil rights crime. This analysis would apply to each of the three categories of civil rights crimes: bias-motivated crimes sometimes called "hate crimes," rights-interference crimes, and finally crimes of official misconduct, what I will sometimes call "official crimes".[53] My focus in this testimony will be on the particular context of criminal misconduct by law enforcement, the context of *Screws*, and the context of the Salvati matter.

Inherent in the very idea of a civil rights crime is the concept of two tiers. Every civil rights crime contains within it a "parallel" crime against person or property. In *Screws* for example, the parallel crime of murder exists along side the civil rights crime. In the case of Joseph Salvati, the parallel crime would be false imprisonment or kidnapping. Perhaps it is better to conceive of the parallel crime as existing "within" the civil rights crime, analogous to a lesser included offense. The civil rights crime is comprised of a parallel crime with the addition of bias motivation, rights interference, or official misconduct. The conduct of the accused is identical in the parallel crime and the civil rights crime. Each of the following, for example, would present the identical conduct by a defendant in a parallel crime of assault: (i) the bias crime of a racially-motivated assault, (ii) a rights interference crime of an assault to prevent a witness from testifying before a federal jury, or (iii) an official crime of an unjustified and excessive use of force by police officers.

It is tempting to find the distinction between parallel crimes and civil rights crimes in the result of the criminal act. The result of the simple assault is physical and perhaps psychological harm to the victim. This may be sharply contrasted with the results of the civil rights crimes in our example. Nonetheless, the most compelling basis for the distinction between civil rights crimes and parallel crimes resides in the mental state of the actor.

Professor George Fletcher has proposed a distinction that addresses the importance of resulting harm in certain instances and its irrelevance in others which is extremely helpful to the analysis of civil rights crimes. According to Fletcher, resulting harm accounts for crime in the pattern of "manifest criminality" whereas it cannot explain crimes in the pattern of "subjective criminality." Manifest criminality is the pattern of criminal liability in such crimes as assault, murder or robbery, in which the commission of the crime is "objectively discernible" at the moment that crime occurs. Subjective criminality is a contrasting pattern of liability in such crimes as larceny, in which the essence of the crime is the "intention to violate a legally protected interest." In manifest criminality crimes, harm will be the critical factor and the actor's intent will be of

[52] Id. at 130.

[53] See generally, Frederick M. Lawrence, *Civil Rights and Criminal Wrongs: The Mens Rea of Federal Civil Rights Crimes*, 67 TULANE LAW REVIEW 2113 (1993).

subsidiary import. In subjective criminality crimes, intent is vital and harm is largely irrelevant.[54]

This insight may now be brought to bear on civil rights crimes and the examples of the racially-motivated assault, the assault to deter the witness' testimony, and the excessive use of force by a police officer. The common parallel crime for each of these civil rights crimes is assault. It is as to the second tier that the crimes differ. The second tier for the racially-motivated assault and the assault on the witness is of the pattern of subjective criminality for which the role of culpability is primary and that of resulting harm is secondary. Official misconduct, however, is not of the pattern of subjective criminality. Rather police brutality and other forms of official criminal misconduct is discernible at the time that it occurs and may be recognized without reference to the intent of the actor. It is not the police officer's state of mind that distinguishes him from the private person committing an assault. It is his status as a police officer acting under color of law. The second tier for crimes of official misconduct by law enforcement, unlike that of the other categories of civil rights crimes, will not focus primarily on state of mind, and will therefore raise very different issues as to mens rea.

The defendant's state of mind continues to play a role in the analysis of official misconduct by law enforcement but only as to first-tier *mens rea*. There must be proof of his *mens rea* with respect to the parallel crime which will in most instances be, at minimum, recklessness. Under my view of crimes of official misconduct by law enforcement, no further culpability need be shown, or at most, only "constitutional negligence."

Second-tier strict liability draws heavily upon Justice Rutledge's concurring opinion in *Screws*. It is thus worth reviewing Rutledge's response to the Douglas dilemma: the officer who honestly did not know that his use of excessive force violated the constitutional rights of his victim. Rutledge held all state officers responsible for knowing the "individual's basic legal rights;" "[i]f they do not, they should, for they assume that duty when they assume their office."[55] Rutledge concluded that law enforcement officials "know or should know when they pass the limits of their authority .... When they enter such a domain in dealing with the citizen's rights, they should do so at their peril...."[56]

The use of strict liability or negligence in criminal enforcement must overcome the heavy presumption against punishment without conscious wrong-doing. The essential concern with the imposition of strict liability is that of punishing innocent or merely careless people whose guilt is due to accident and not wrong-doing.[57] This concern is inapposite to second-tier "official crimes" *mens rea*. The accused must have the requisite *mens rea* for first-tier culpability which will entail at least recklessness. There is thus no concern with punishing an *innocent* defendant. Rather, the strongest claim that the accused could make as to innocence is the unappealing argument asserted by the defendants in *Screws* that they may well have murdered Robert Hall, but they did not intentionally violate federal law. Because of the first-tier *mens rea* requirement, there will never be a concern that a truly innocent defendant will be convicted of an "official crime."[58]

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[54] *See* GEORGE P. FLETCHER, RETHINKING CRIMINAL LAW 115-19, 476-81 (1978).

[55] 325 U.S. at 129 (Rutledge, J., concurring).

[56] *Id.*

[57] *See, e.g.*, Sayre, *Public Welfare Offenses*, 33 COLUM. L. REV. 55, 56 (1933) ("[t]o inflict substantial punishment upon one who is morally entirely innocent, who caused injury through reasonable mistake or pure accident, would so outrage the feelings of the community as to nullify its own enforcement); Note, *Criminal Liability Without Fault: A philosophical Perspective*, 75 COLUM. L. REV. 1517 (1975). *See also* Wasserstrom, *Strict Liability in the Criminal Law*, 12 STAN. L. REV. 731, 734-36 (1960) (reviewing arguments against strict liability).

[58] In this manner, second-tier strict liability is similar to those doctrines of the criminal law in which the culpability for one crime supports strict liability for a resulting crime. The *mens rea* for the crime of assaulting a federal officer, 18 U.S.C. §111, for example, is the intent to commit an assault on a victim who

In addition, the official who is the subject of Justice Douglas' dilemma cannot even be said to be innocent as to the second-tier of the "official crime." He is blameworthy in the sense that, as a police officer, for example, he has failed to know the basic rights of the citizenry he serves. Justice Rutledge thus concluded that officers may be charged with the knowledge of "individual's basic legal rights."[59] His failure to have such knowledge is an instance of "constitutional negligence."

When the strict liability or "constitutional negligence" second-tier for official crimes is applied specifically to the federal civil rights crimes statutes, it represents a rejection of the plurality view in *Screws* in favor of the position advanced by Justice Rutledge. This approach provides a more satisfactory answer to the vagueness and federalism questions, so crucial to the *Screws* court, than those provided by the plurality.[60] As to vagueness, the combination of first-tier specific intent and the violation of a right deemed to be one of which the accused should have been aware is sufficient to resolve any claims of lack of notice. For the same reason that the officer charged should have known the rights he was violating, he should have been on notice that his conduct was unlawful. Five years after his plurality opinion in *Screws*, Justice Douglas upheld a conviction under section 242 with a culpability of no more than negligence. He found that the right violated by the defendants was so plain as to meet any concerns of vagueness:

> where the police take matters into their own hands, seize victims, beat and pound them until they confess, there cannot be the slightest doubt that the police have deprived the victim of a right under the Constitution... Section [242] would be denied the high service for which it was designed if rights so palpably plain were denied its protection. Only casuistry could make vague and nebulous what our constitutional scheme makes so clear and specific.[61]

The federalism problem raises no serious difficulties for a number of reasons. Federal criminal jurisdiction would be limited to criminal acts committed by state officials who act with first-tier *mens rea*. This is a circumscribed body of cases so as to avoid the concern that federal criminal enforcement will be imposed in all matters of state law. Federal policy calls for deference to state prosecutions in all such instances.[62]

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is a federal officer. The defendant need not know or even have been able to know the victim's status. The status of the federal officer is deemed to be an attendant circumstances as to which there is strict liability. *See* United States v. Feola, 420 U.S. 671, 676-86 (1975); United States v. Hohman, 825 F. 2d 1363, 1364-65 (9th Cir. 1987); United States v. Plummer, 789 F. 2d 435, 437-38 (6th Cir. 1986).

[59] 325 U.S. at 129 (Rutledge, J., concurring)(if officers do not know the "individual's basic legal rights," "they should, for they assume that duty when they assume their office").

[60] The strict liability approach, when applied to the federal statutes themselves, must confront the fact that the word "willfully" in these laws. It was the presence of "willfully" that, in large measure, drove the plurality opinion in *Screws*. For several reasons, this text is not inconsistent with the interpretation that I have presented. First, the legislative history surrounding the inclusion of "willfully" in 1909 is hardly clear as to any precise meaning that the word was to hold. Second, the plurality's own reading of "willfully" was sufficiently ambiguous as to allow for a culpability of purpose, knowing, reckless or even negligence. Justice Douglas, the author of the plurality opinion, a few years after *Screws* gave further weight to an interpretation of section 241 that required only negligence as a *mens rea*. *See* Williams v. United States, 341 U.S. 97 (1951)(upholding conviction under section 242 for unjustifiable use of force by police in order to obtain confessions; police conduct is so plain a violation of the constitution that specific intent to violate the right need not be proven). Finally, "willfully" is not deprived of all meaning by an approach that requires at least recklessness as a first-tier *mens rea*. "Willfully" may be read to refer to the act that itself is determined to violate a protected right, and not to the violation of the right. *See* United States v. Feola, 420 U.S. at 676-686.

[61] Williams v. United States, 341 U.S. 97, 101-02 (1951).

[62] The Department of Justice has a long-standing policy know as the "Petite Policy" under which, *inter alia*, federal prosecution of civil rights crimes is deferred until completion of state investigation and prosecution, and federal prosecution following a state trial is restricted to instances in which there remain "substantial federal interests demonstrably unvindicated" by the state procedures. *See* 9 UNITED STATES ATTORNEYS MANUAL 21-25 (1985).

Moreover, these are precisely the cases in which federal enforcement will be most required. The reluctance of state law enforcement to investigate and prosecute state officials is one of the prime justifications for federal criminal civil rights jurisdiction.

Statute of limitations for Federal Civil Rights Crimes

One of the hindrances to criminal prosecution under 18 U.S.C. §§ 241 and 242 is the five-year statute of limitations.[63] According to the Human Rights Watch, the Justice Department cited the statute of limitations as the reason for declining prosecution under 18 U.S.C. §§ 241 and 242 105 times in 1994 and 22 times in 1995.[64] These statistics are likely under-inclusive with respect to official misconduct crimes as most prosecutions under 18 U.S.C. §§ 241 and 242 are for physical abuse cases. It is thus difficult to know how often these statutes are used to combat other types of police misconduct, i.e. false imprisonment or malicious prosecution.[65] However, it is clear that the short statute of limitations period presents an obstacle to successful prosecution.

Federal criminal law recognizes continuing conspiracies. The events surrounding the false imprisonment of Joseph Salvati could well be seen as a continuing criminal civil rights conspiracy. If it were, the statute of limitations would not start running until his conviction was recognized as unlawful. Nonetheless, Congress could remove this doubt, and make clear that in cases of official criminal misconduct, the five year statute of limitations does not begin to run until such time as the victim actually did discover that his civil rights had been violated and until his wrongful conviction is formally invalidated. This is particularly so where the officials committing acts of misconduct have continued to cover-up the misconduct.

All federal crimes do not share the same statute of limitations period. Congress has enlarged the limitations period for some offenses. For example: the statute of limitations period does not end until a child victim reaches the age of 25 years in the case of child abuse.[66] Similar action is required in the context of crimes of official misconduct by law enforcement officers.

Conclusion

The application of criminal civil rights sanctions to law enforcement officers is obviously a highly troublesome subject. Ordinarily, we would wish to give law enforcement the widest possible berth in the performance of their vital functions. This is particularly true now at a time of threat from terrorism both abroad and, as we saw so tragically on September 11 in New York, and Washington, D.C., at home. But it is not in spite of the current climate that law enforcement must be held to the highest standards.

[63] There is no statute of limitations under these statutes if death results or if the crime includes kidnapping or an attempt to kidnap, aggravated sexual abuse or attempt, or an attempt to kill. See 18 U.S.C. §§ 241 and 242. In this context, the crime is deemed a "capital" offense because it is punishable by death. Thus, there is no statute of limitations under the federal criminal code. See 18 U.S.C. § 3281-82.

[64] See http://www.hrw.org/reports98/police/uspo143.htm, visited on October 13, 2001. A total of 3,361 and 2,810 reasons for declining prosecution were cited in 1994 and 1995, respectively. Id. "Weak or insufficient admissible evidence" was cited as a reason for declining prosecution 904 times in 1994 and 778 times in 1995.

[65] Last Fall, the author submitted a Freedom of Information Request in an effort to obtain updated data but I have not yet received the requested information.

[66] See 18 U.S.C. § 3283.

Rather it is precisely because of the current climate and times such as these. When law enforcement needs and demands the greatest authority, it must be particularly aware of and respectful of the rights of the citizens it serves. It was during World War II that Justice Douglas in his opinion for the Court in *Screws v. United States*, wrote "[t]his case involves a shocking and revolting episode in law enforcement."[67] There could be no better description of the events surrounding the false imprisonment of Joseph Salvati over three decades for a crime that he did not commit: the case of Mr. Salvati involves a shocking and revolting episode in law enforcement.

The ways in which Mr. Salvati came to be falsely imprisoned and the surrounding events of the misconduct of law enforcement in Boston over this period have been discussed by other witnesses and I know will continue to occupy this committee. The purpose of this testimony has been to take this shocking and revolting episode in law enforcement as a point of departure to begin to provide an answer to Juvenal's question: the guarding of the guardians must begin with vigorous enforcement of this nation's criminal civil rights laws.

It has long been recognized that the purpose of federal civil rights enforcement is to create both a sword and a shield: a sword for national government action against the perpetrators of serious social wrongs and a shield to protect the victims.[68] This proposed framework provides a means for strengthening the shield and sharpening the sword.

[67] *Id.* at 92.
[68] CARR, FEDERAL PROTECTION OF CIVIL RIGHTS, 1-5, quoting Pollock v. Williams, 322 U.S. 4, 8 (1944).

Mr. BURTON. Thank you very much. I certainly appreciate that and we will try to take all of your recommendations and keep them in mind when we draft legislation to try to correct these inequities.

Mr. Duke.

STATEMENT OF STEVEN DUKE, ESQ., YALE UNIVERSITY LAW PROFESSOR

Mr. DUKE. Thank you, Mr. Chairman. I am tempted to use all of my allotted time praising the committee and the work it is doing. But rather than do that, I would just call your attention to some extensive praise in my written remarks, and I would incorporate Mr. Garo's earlier remarks, and simply say that I am very honored to have a small part in your deliberations.

Before I go to my specific recommendations, I would like to respond briefly to your concern, Mr. Chairman, and the concern of others about how extensive this kind of misconduct is, that is, withholding of exculpatory evidence and allowing witnesses to testify falsely when the FBI knew that they were testifying falsely and failing to turn that over. I do not know, to use Mr. Delahunt's expression, that there is a culture of concealment in the FBI. But I do know, as I have indicated in my prepared remarks, that two decades after the Boston thing the same thing happened in New Jersey. The New Jersey FBI had a report which indicated who the murderers were and it allowed its witnesses to testify to implicate people that its own report said were innocent. And it continues to conceal that fact.

As I am sure the committee has received many complaints from strangers——

Mr. BURTON. Excuse me, Mr. Duke. I do not want to interrupt your testimony, but I want to make sure that we know all the specifics about that case in New Jersey because we will be sending an additional subpoena over to Justice to make sure that we get those documents as well. So if there is anything that we do not have, be sure to talk to Mr. Wilson at the conclusion of the hearing so we get that information.

Mr. DUKE. Absolutely. Thank you very much.

With respect to my specific recommendations, we need to do something to confine and regulate our bribery and extortion of prosecution witnesses. At the present time, there appears to be no legal limitation whatsoever on the deals that can be cut between prosecutors and potential witnesses. We have the Joe Barboza case where he essentially gets immunity from 20 or 30 murders. We have Sammy Gravano, more recently, where he got immunity from 19 murders. We turn these people loose, we give them new identities, we give them phony Social Security numbers, and so forth, and set them loose on the unsuspecting public. It seems to me we need to take a hard look at whether we need to do that. Do we need to turn serial killers loose on the public. Should there not be some legislative limits on the kinds of deals that can be cut with witnesses of this type.

I am first to confess I do not know exactly what the content of such legislation should be. But there must be some room for legislation. As it now stands, the matter is totally lawless. The Tenth Circuit Court of Appeals a couple of years ago said the prohibition

against bribery of witnesses does not apply to the Federal Government. The statute prohibits bribery by whoever does it. The Tenth Circuit said "whoever" does not include agents of the U.S. Government.

I think we also need to require corroboration from witnesses like Joe Barboza. As of now there is no corroboration requirement under Federal law. Anybody can get the death penalty on the testimony of Joe Barboza uncorroborated or anyone else.

I think, second, we need to make it a crime for a prosecutor to willfully suppress evidence of innocence or evidence that contradicts the testimony of a witness offered by that prosecutor. The criminal statute should make clear that is a continuous obligation; the obligation to disclose exculpatory evidence does not end with the prosecution, it is ongoing and forever. And a criminal statute should make that clear.

Mr. Garo suggested that we extend the time limit on prosecuting miscarriages of justice, and I endorse that. I think we also should take a look at the Anti-Terrorism and Effective Death Penalty Act of 1996 insofar as it imposes very strict time limits on collateral attacks by people who have been convicted of crimes. The ability of law enforcement and prosecutors to suppress and conceal evidence is a very powerful one, and as long as that remains in place, as long as we have not effectively remedied that, there will be cases in which the evidence of innocence comes long after the conviction. And that statute imposes some rather harsh limitations.

I think we should also create an independent review commission, such as they have in Great Britain, that reviews claims of innocence by prisoners whose appeals have been exhausted. The commission has subpoena power and it has access to law enforcement files. It has been a very successful venture in Great Britain.

Finally, I think we should eliminate absolute immunity of prosecutors. Under current law, a prosecutor can suborn perjury, can fabricate evidence, can lie to the court and cannot be sued by the victim of his dishonesty. He has absolute immunity. I do not think that is defensible. I think that should be changed to a qualified immunity.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Duke follows:]

TESTIMONY BEFORE THE COMMITTEE ON GOVERNMENT REFORM

BY STEVEN DUKE

DATE: February 27, 2002

INTRODUCTION

Mr. Chairman, members of the committee. I am grateful for the opportunity to appear before you and present some suggestions for your deliberations.

I would first like to commend you for both the wisdom and the political courage you have demonstrated in investigating the misconduct of the FBI and others in the Deegan murder case and in the handling of informants in the Boston area.

Virtually from its inception, the FBI enjoyed a reputation for competence and integrity. That reputation has been undermined and besmirched by many other events of the last decade as well as those relating to the Deegan murder case that began more than three decades ago.

The apparent deterioration in the competency and integrity of the FBI is likely due to the absence of effective supervision by the Congress, the courts, or even the Justice Department. The FBI has relied almost entirely on internal, self-regulation and that has not been sufficient to do the job.

The FBI has been almost immune from external scrutiny not merely because of its deserved reputation, at least through the 1960s, for competence, dedication and honesty; but it has also enjoyed the deference shown to any organization engaged in "war" on behalf of the people of the nation. In this case, it is a "War on Crime." It

is to harness deference and reduce scrutiny that the "war" metaphor has been so often applied by our Presidents and other leaders to the activities of their favored enterprise. Yet such deference has costs that are becoming more and more evident.

The FBI is not the only federal law enforcement agency that has enjoyed -- and ultimately suffered from -- the absence of external scrutiny. The Drug Enforcement Administration is even more lawless and immune from regulation than the FBI. I recently discovered, for example, that the DEA routinely smuggles multi-kilo quantities of heroin in the passenger compartments of commercial air carriers in diplomatic pouches. This is done without the knowledge and consent of the air carriers which, in the case of foreign air carriers at least, would not be obtained were there disclosure. This practice is not only illegal, it is a serious threat to airline safety, not only because it is an invitation to armed robbery but for other reasons as well. When I called this to the attention of the national authorities concerned with airline safety, I was told that it was none of their concern. Nor have I succeeded in getting any journalist to look into it. Whatever the DEA wants to do, it seems, it does.[1]

This Committee's investigation of the FBI's use and misuse of informants in the Boston area is a step in the direction of shaping these law enforcement agencies into responsible servants of the people, subject, like other agencies, to the values of the people, and to the constraints of the Constitution.

The public is interested in investigating and correcting FBI mismanagement

1. More details on this DEA lawlessness appear in Exhibit A hereto.

that produces and protects an FBI mole like Robert Hanson,[2] but it is rare that the public gets behind the sort of investigation that you are conducting -- of the FBI's role in framing innocent people.[3]

Mr. Chairman, you mentioned in your previous remarks your concern that there might be other cases like the Deegan case where the FBI was complicit in the conviction of innocent people and in the coverup of such criminal activities. Since my name was released on your witness list a few weeks ago, I have received several communications from strangers who assert that they too were victimized by the FBI and FBI informants in much the same manner as Joe Salvati. No doubt the Committee has received many more.

I have personal knowledge of at least one other case that closely parallels the Deegan case, in method if not in ultimate result. It is a case involving a client of mine, Martin Taccetta, who resides in New Jersey State prison where he has been for about a decade.

In 1984, there was a brutal murder in New Jersey, similar to the Deegan murder. There were eyewitnesses, and, as in the Deegan case, informants. The FBI and the State police wanted to pin that murder on Martin Taccetta and others. There was, however, a problem. Two eyewitnesses who had seen the murderers did not

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2. See David A. Vise, The Bureau and the Mole (2002).

3. Nor is the press very interested in the subject. A prominent exception is the ten-part newspaper series "Win at All Costs" in 1998, detailing systematic FBI and prosecutorial violations of the law that went unaddressed. See, Bill Moushey, Failing to Police Their Own: Justice's Oversight Office Called Ineffective, Unresponsive, Pittsburgh Post-Gazette, December 13, 1998.

identify Mr. Taccetta from photographs.

As with Barboza, the FBI turned to their informants, mob turncoats whose lives were in Government hands. Those informants, two hoodlums named Leonetti and D'Arco, couldn't claim to have been witnesses to the murder, but they could provide second best: they claimed to have overheard incriminating statements by Taccetta, in which he allegedly bragged that he and another man had committed the murder. These two witnesses then testified at trial and implicated Taccetta in the killing. They also testified to being present at meetings where other incriminating statements were made.

The FBI and the State of New Jersey offered and relied upon such testimony despite an FBI report in their files that exonerated Taccetta in the murder. As in the Deegan case, that report was suppressed.

While the FBI did not succeed in getting Taccetta convicted of the murder that it knew he was innocent of, it got him convicted of extortion by violence (the murder) which produced for Taccetta the same sentence he would have gotten for the murder -- the same sentence Joe Salvati received: life.

Through a fortunate act of FBI incompetence, I came into possession of the exculpatory FBI report only last spring. I have demanded an unredacted version of the report (which is attached) and an explanation for why it was suppressed. Unlike this committee, I have no subpoena power and have been ignored. I have asked your staff to look into this matter and hopefully they will have better luck than I.[4]

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4. More details on the Taccetta case are contained in Exhibit B hereto.

RECOMMENDATIONS FOR REFORM

1. Confine and regulate the bribery of witnesses.

Federal law enforcement agencies are in many respects lawless. In the course of their duties, they routinely engage in conduct that fits the definitions of numerous felonies, e.g., mail and wire fraud, selling stolen property, selling or possessing contraband, extortion, assault. Whether these literal crimes are justified is rarely litigated or formally considered; it is assumed that the ends justify the means. It should not be a surprise that this has a corrosive effect on agents' respect for prohibitions against obstructing justice and perjury. Prosecutors are also free to make virtually any deal with a criminal for his testimony, as long as they do not explicitly request or condone perjury. A federal statute, 18 U.S. C. §201(c)(2), defines the crime of bribery as covering "whoever gives, offers or promises anything of value to any person for or because of the testimony" of that person in a federal proceeding. The Court of Appeals for the Tenth Circuit recently held, however, that the statute does not apply to federal agents or prosecutors, who are not included in the term "whoever."[5]

Thus, there is no prohibition against bribery of federal witnesses so long as it is done by federal agents. This should be changed. While making deals with criminals to catch other criminals has been productive and is well-established in our law enforcement culture, it is difficult to justify the Government's immunizing serial killers like Joe Barboza and Sammy Gravano, arming them with phony names, social

5. United States v. Singleton, 165 F.3d 1297 (10th Cir. 1999) (en banc).

security numbers and work histories, then turning them loose on the unsuspecting public.[6] A sex offender cannot reenter society in many states without his history accompanying him like a scarlet letter, but a serial killer can do so, provided he buys that freedom with highly valued testimony against others. Federal prosecutors commonly tell such criminals (or, to insulate themselves, the criminal's attorney), as part of the bargaining for their testimony, what they want or need from the potential witness. If the witness can provide helpful incriminating testimony against a specified individual, that is worth X; if he can provide such testimony against another specified individual, that is worth 3X, and so forth. It is generally understood by the criminals who sell their testimony in this way that what the prosecutors want is whatever will get convictions, while they declare that all they want is "the truth." In this dirty world, "the truth" has become nearly synonymous with what will get the job done for the prosecution. This shameless bargaining for testimony would land anyone other than a federal prosecutor in prison, but only its targets go to prison, while the witnesses receive immunity for mass murder, millions of dollars, and new

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6. Murderer of at least nineteen people, Sammy "The Bull" Gravano cut a deal with federal authorities that got him a five year prison term and a $50 fine for all his crimes in exchange for testimony against John Gotti and many others. He was allowed to keep his illegally acquired millions, got a new identity and protection for himself and his family. He moved to Arizona under that false identity and soon started up a large illegal drug distribution ring that involved his wife and son. See Larry McShane, Once Again, Sammy the Bull Betrays Friends, The Record (Bergen County, NJ, June 3, 2001). Gravano's criminal activities after his release apparently included a plot to murder a lawyer who was suing him for murdering several people. See Andy Geller, Sammy "Bull" Plotted Hit on Lawyer: Ariz. Official, The New York Post, June 22, 2000. The similarities to the serial killer of the sixties, Joe Barboza, are remarkable.

identities. The prosecutors and the agents in charge win awards and advancements for their successful prosecutions. This process inevitably convicts innocent people. It is virtually unregulated.[7]

I do not propose that all deals with prosecution witnesses be prohibited nor am I even prepared to urge legislation that would flatly forbid such bargains with serial killers. But, at a minimum, all negotiations with important witnesses and their attorneys should be tape-recorded, reduced to writing and made available to the defense.[8] And if murderers are permitted to buy their freedom with testimony, that testimony should not be sufficient to convict anyone of anything without corroboration. Under present federal law, no corroboration is generally required of anyone's testimony. A person can be given the death penalty on the uncorroborated testimony of a single individual, even a Joe Barboza or a Sammy Gravano.

2. Criminalize the suppression of exculpatory evidence.

In many cases, like the Deegan murder case and the Taccetta case to which I alluded earlier, there are FBI or other law enforcement agents' reports that demonstrate that the testimony of prosecution witnesses is false or perjurious. Those

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7. Although such informant-witnesses often commit perjury and the perjury is sometimes exposed, they are never prosecuted for the perjury if it was elicited to help convict a criminal defendant. Prospective witnesses are aware of this de facto immunity for perjury.

8. For other critiques and proposals, see Hollis, An Offer You Can't Resist? United States v. Singleton and the Effects of Witness/Prosecutorial Agreements, 9 B.U. Pub. Int. L.J. 433 (2000); Schreiber, Dealing with the Devil: An Examination of the FBI's Troubled Relationship with its Confidential Informants, 34 Columb. J. L. & Soc. Probs. 301 (2001).

reports are sometimes concealed and never made available to the defense (it is impossible to know how common such concealments are). Prosecutors justify such derelictions with a range of excuses, e.g., I was unaware of the report; I was unaware of the report until after the trial; I thought the report was erroneous; I did not believe that the report, if turned over to the defense, would result in an acquittal, hence, it was "immaterial." A statute should be enacted that eliminates such excuses. It should be a criminal obstruction of justice for a prosecutor to fail to disclose evidence in his files or available to him that contradicts testimony elicited by the prosecutor in a criminal trial. The obligation to make such disclosure should be perpetual, not ended by the termination of the prosecution. If such a statute were in force during the past thirty years -- and complied with -- the FBI report that recently came to light in Joe Salvati's case would have been disclosed decades ago. Had such a statute been in force -- and complied with -- the report that recently came to light in Martin Taccetta's case would have been disclosed prior to his trial and would probably hav precluded the offering of perjury against him by the prosecution's purchased witnesses. There is currently an ethical obligation of prosecutors to disclose such evidence, even if discovered after the trial,[9] but ethical rules are rarely enforced against prosecutors. A criminal statute would provide considerable heft to the obligation.

It should also be an obstruction of justice for a law enforcement agent who

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9. United States v. Sheehan, 442 F.Supp. 1003 (D. Mass. 1977) (continuing "constitutional obligation"); Smith v. Roberts, 115 F.3d 818, 820 (10th Cir. 1997).

knows of exculpatory evidence to allow it to be suppressed by his superiors or the prosecution. He should be required to bring such evidence to the attention of his superiors and request that they disclose it to the defense. If they refuse, he should disclose it. That obligation could be strengthened by whistleblower protection against reprisals.

3. Extend the time limitation on prosecutions.

The current statute of limitations on most federal criminal offenses is five years.[10] Any crimes committed by FBI agents, police or prosecutors against Joe Salvati or the other defendants in the Deegan case are immune from prosecution as a result of the passage of time. The Committee should consider removing this incentive to coverup obstructions of justice by proposing a special tolling period for crimes committed against criminal defendants by their prosecutors or law enforcement investigators. Perhaps the statute of limitations should not begin to run until a prosecutable case of subornation of perjury or obstruction of justice is disclosed to or otherwise known to the defendant victims.

4. Reduce the harsh time limits on collateral attacks.

Courts are reluctant to intervene in aging criminal cases, for myriad reasons. The older the conviction, the less reliable any evidence is that it was either valid or invalid; the passage of time degrades the quality of a case not only before prosecution but after. The human psyche resists reconsidering decisions once made. Courts are overworked and overloaded with current cases. Prosecutors and police dislike

10. 18 U.S.C. §3282.

responding to allegations of improprieties on their part, especially if the allegations relate to cases long since closed out. Moreover, the Antiterrorism and Effective Death Penalty Act of 1996 substantially precludes courts from reopening or reconsidering cases after the passage of the periods specified in the Act, which are often frightfully short. Consideration should be given to amending that Act to take a more generous account of the problem of suppression of evidence.[11]

5. Create an independent innocence review commission

It would be salutary if the subpoena power to investigate and resolve claims of innocence were shared with some institution other than the courts, who are notoriously reluctant to employ it in post-conviction proceedings. In Great Britain, an independent review commission exists to consider claims of innocence by prisoners whose appeals have been exhausted. This commission has subpoena power and right of access to all police, prosecutorial and court records. Such a commission has been recommended for adoption here, especially in light of the recent exoneration of thirteen death row inmates in Illinois.[12] There mere existence of such a review commission would have a deterrent effect on the misconduct demonstrated in the Deegan murder case.

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11. See generally, Woolley, Constitutional Interpretations of the Antiterrorism Act's Habeas Corpus Provisions, 66 Geo. Wash. L. Rev. 414 (1998); Sessions, Swift Justice? Imposing a Statute of Limitations on the Federal Habeas Corpus Petitions of State Prisoners, 70 S. Cal. L. Rev. 1513 (1997).

12. See David Horan, The Innocence Commission: An Independent Review Board for Wrongful Convictions, 20 Northern Ill. L. Rev. 91 (2000).

6. Eliminate absolute prosecutorial immunity.

The Committee should also consider altering the current immunity of prosecutors for their wrongful acts against criminal defendants. Under current doctrine, a prosecutor has absolute immunity against a civil action for anything he did in connection with his duties as a prosecutor. He can suborn perjury, fabricate evidence, and lie to the court without having to answer to the defendant who goes to prison as a result of his misconduct.[13] While I think a good faith defense, or qualified privilege, should apply, I do not believe the traditional justifications for prosecutorial immunity are broad enough to include willful perjury or its equivalent. If a prosecutor willfully participates in the presentation of false evidence, he should go to jail and/ or pay damages to his victims, like any other willful wrongdoer.

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13. Imbler v. Pachtman, 424 U.S. 409 (1976). The Supreme Court recently reaffirmed that immunity but limited it to acts as prosecutor and not as investigator, where the immunity is not absolute. Kalina v. Fletcher, 522 U.S. 118 (1997).

Mr. BURTON. Thank you, Mr. Duke.

We will start our questioning now. We have looked at this Boston problem over a 35 year period and I am sure you all agree that it is proper for us to focus on this. I would like for each one of you to tell us, and I think you may have covered this, some of you, in your testimony, what specific things you think we ought to do as a Congress to correct these horrible atrocities that have taken place. I think Mr. Garo said we should increase the statute of limitations on perjury. The thing I am after and I hope that we are able to glean from you are the things that you feel are most important for us to do legislatively to make sure that our law enforcement agencies are stopped from doing this in the future.

Mr. GARO. Sure. The problem that I have always seen, Mr. Chairman, in my over 37 years as an attorney is that there has always been a culture of hiding exculpatory evidence. And the playing field has never been level between the criminal defense bar and prosecution. I agree with Mr. LaTourette as he said that many prosecutors do the right thing and it is a tough business and it is a tough job, and I agree with that. But there are some out there that are just completely dishonest.

With increasing the statute of limitation time and, I had been speaking, when I came here I had done my homework, I had spoken with an assistant U.S. attorney and others and I asked him, I said can you tell me, I told him what I was going to suggest, do you think those are good suggestions. He said absolutely. He said, and this was so key, Mr. Chairman, listen to his words, he said to me, "Victor, there is no incentive for the prosecutor to give over these documents because they are never accountable for their actions."

Mr. BURTON. So you think there should be a reasonable statute of limitations, No. 1. And No. 2, if they knowingly withhold exculpatory evidence, there ought to be some criminal——

Mr. GARO. There should be a mandatory minimum jail sentence, minimum mandatory jail sentence.

Mr. BURTON. What kind of a sentence? How much?

Mr. GARO. Two ways, in my opinion. It could either be for the crime for which the statute is, if it is a 10-year felony, then if the cases are thrown out or overturned, he gets 10 years, or given the same penalty that the defendant received. That is both for the prosecutor and the law enforcement agencies that deal the same way.

Mr. BURTON. OK. What about the period of time you are talking about, the statute of limitations on this.

Mr. GARO. My opinion? I do not think there should be any statute of limitations, defense, whatsoever for anybody who is involved in the intentional withholding of exculpatory evidence, especially in first degree murder cases.

Mr. BURTON. OK. Any of the rest of you have a comment on that?

Mr. DUKE. My proposal is that there be a tolling of the statute until the disclosure is made. So the statute——

Mr. BURTON. Explain to me what you mean by tolling.

Mr. DUKE. Well, in other words, the statute does not begin to run until the revelation or the discovery of the exculpatory evidence.

That is, once you find that the crime has occurred, then the criminal statute of 5 years begins to run.

Mr. BURTON. Oh, I see. So you are saying if there is exculpatory evidence that they have withheld, once it has been discovered then there is a 5-year statute of limitations.

Mr. DUKE. Yes.

Mr. BURTON. Instead of having it open-ended.

Mr. DUKE. Yes.

Mr. BURTON. Mr. McGuigan.

Mr. MCGUIGAN. I do not quite understand who is discovering it. I do not understand. Are you saying that the prosecution has discovered it? I do not understand the concept because who is discovering the evidence. If the prosecutors are discovering the evidence 10 years after the case is closed, are you suggesting that the statute begins to run at that point?

Mr. DUKE. It begins to run when the victim of the disclosure has the evidence. In Mr. Salvati's case, that would have been a year or two ago. Until that point, the statute would not run.

Mr. LAWRENCE. Mr. Chairman, the criminal law could profitably borrow from the civil rights law in this respect. In a civil rights claim under Section 1983 for malicious prosecution, the cause of action is not deemed to accrue until the wrongful conviction is invalidated. Not just the evidence is discovered, but the wrongful conviction is in fact invalidated.

Mr. DUKE. Right.

Mr. LAWRENCE. The criminal law could very profitably borrow that and start the 5-year Federal statute of limitations running from the time that a wrongful conviction is invalidated and not before.

Mr. BURTON. The Judiciary Committee, I am just kind of thinking, and maybe you could comment on this, Mr. Delahunt, I think to have an open-ended statute of limitations they might frown upon that. But if you are talking about from the point of discovery by the defense counsel, in this case Mr. Garo, 5 years running after that, that might be OK. We would have to define that very clearly.

Mr. Shays, do you have——

Mr. SHAYS. I do not mind if you want to make them a 10-minute series of questions.

Mr. BURTON. OK. If a Federal prosecutor encourages witnesses to lie, as in the case with Mr. Barboza where he was encouraged to lie in exchange, or he himself commits perjury or withholds evidence, should that be considered a major failing, and what should be done about it?

Mr. GARO. In the sub——

Mr. BURTON. In other words, we have an FBI agent, i.e., the ones we have had before our committee, and they encourage false testimony and we are able to find out about that, what kind of penalty should be applied and what should be done?

Mr. GARO. In my opinion, mandatory minimum jail sentence either equal to what the punishment is that was given for the case that was overturned, or for what the punishment is for that statute.

Mr. LAWRENCE. Mr. Chairman, just to quibble a bit, I think if we focus too much on the length of the sentence, we are going to be

focusing on what turns out not to be the key piece here. The hard thing in the Federal criminal civil rights area has not been what exposure the defendant has, it is getting convictions because of various kinds of traps that are laid for unwary prosecutors. And I would be concerned with just focusing on the sentence and then having a mandatory minimum sentence that never gets put in place because of all sorts of traps that fall in the way.

What I have in mind is that traditionally "willfully" in this area has been thought of in a very strict term that makes it very hard to convict law enforcement officials who say "I was trying to put a case together but I did not 'willfully' in that sense try to violate anyone's civil rights" and I can imagine "I did not 'willfully' suborn perjury. I was just trying to put a case together and work with a witness." So I think we are going to have to be very careful as to how——

Mr. BURTON. And how would you do it?

Mr. LAWRENCE. I would say that the "willful" part refers only to the underlying conduct, what would be a crime if it were not a public official. That is to say, anyone who tells someone else to lie, not a matter of putting the case together, someone tells Barboza go ahead and say that: that is perjury.

Mr. BURTON. Commit perjury.

Mr. LAWRENCE. That is perjury. And the only piece on top of that for a public official is that he knew or should have known that this was a violation of his duty, not that he willfully did that, that he willfully violated someone's rights or he was thinking in Constitutional terms.

Mr. BURTON. And what kind of penalty would you impose?

Mr. LAWRENCE. I think the truth is the penalties that exist under 241 and 242 today are adequate, because my experience in prosecuting——

Mr. BURTON. What are those penalties? I am not conversant with that.

Mr. LAWRENCE. Where death results, and it is an intriguing question here, if the death penalty were put in place because of some prosecutor's misconduct, then up to life imprisonment or death, otherwise 10 years.

Mr. BURTON. Otherwise 10 years.

Mr. LAWRENCE. Yes.

Mr. DUKE. Mr. Chairman, I think a major problem we have overlooked in this discussion is who is going to prosecute the prosecutor. That is the major problem. You can call these things crimes all you want; they do not prosecute themselves. How many prosecutors have been prosecuted for suborning perjury in this country in the last decade? I can tell you none federally, and probably not in the last 30 years.

Mr. BURTON. What would you suggest be created to deal with that problem?

Mr. DUKE. Maybe it is a dirty word, but I think we ought to think about creating an independent prosecutor.

Mr. BURTON. Independent counsel.

Mr. DUKE. Independent counsel.

Mr. BURTON. Well I was not for doing away with the independent counsel statute in the first place, so I would support that.

Let me go to Mr. Delahunt. Mr. Delahunt, do you have some questions?

Mr. DELAHUNT. Thank you, Mr. Chairman. This has been very edifying testimony. And I think we are at the beginning stage of really what should be a thoughtful, deliberative examination of what we want to do in terms of addressing the obvious problem. But let me address this to Mr. McGuigan. I think we have achieved considerable progress in diagnosing the problem. And the consequences impact, as I said earlier, both the innocent defendant but also the community is put at risk because information is not forthcoming so that law enforcement other than, in this case, the FBI can do its job. In other words, you have a situation where Joe Salvati's attorney at trial did not receive exculpatory information, information that would have exonerated him, hopefully information that never would have been presented even to a grand jury. In the case that Mr. McGuigan speaks to, the case of Jai Alai, Mr. McGuigan, as a State prosecutor, wanted to proceed, investigate, and put bad people in jail out of the community.

So I guess what I see as the essence of the problem is how do we encourage or compel disclosure in information sharing by, again in this specific case, the FBI. Mr. McGuigan, you know that I served in a similar role as you did in Massachusetts. I can tell you of a case involving a homicide in my jurisdiction, and I am going to ask the chairman to send an appropriate request for information to my old office, where an individual was murdered, it is reported to me subsequently, years later, that the FBI had information in its possession prior to the homicide that the individual was at-risk, was a target for what turned out to be a homicide. Subsequent to the homicide itself, this particular informant of the FBI had information relative to who committed the homicide, the perpetrators. It was never brought to our attention. Very similar, obviously with different players, different facts, but it was an organized crime hit, by the way.

Mr. MCGUIGAN. I have no doubt.

Mr. DELAHUNT. And you never had that information, neither did I ever have that information. I just want to stress I think we understand that what we are doing here, in addition to protecting the innocent, is protecting the public. Mr. McGuigan, do you see the problem as one of compelling the Department of Justice and, specifically, the FBI to sharing information with Federal and State law enforcement and incorporating mechanisms so that this information is just not disseminated in an irresponsible way, but in an appropriate, responsible way to the Federal and State prosecutor and other Federal agencies, by the way, that ought to know this information to protect the American people and the people of the neighborhoods whom you and I represented?

Mr. MCGUIGAN. Absolutely. That is absolutely correct. I said presumptively there has to be a law that mandates disclosure in the absence of them providing an independent review board compelling reasons why the information should not be disclosed. If you look at the Salvati case, had they turned over the exculpatory information in that case, they would have known that Mr. Barboza was a liar, he would have never been in witness protection, other people would be alive, his testimony would have never been believed, and that

would have been the end of the matter. People are dead because they refused to turn over the information.

Mr. DELAHUNT. Can you just imagine in your role as a former chief prosecutor in the State of Connecticut putting an individual in a Witness Protection Program, sending them across the country knowing of the background, being aware that this particular individual was responsible for 20-plus homicides, without communicating that information to the local public safety officials?

Mr. MCGUIGAN. Absolutely incredible.

Mr. DELAHUNT. Unconscionable.

Mr. MCGUIGAN. Unconscionable. And it is the arrogance of Federal power which is accountable to no one and has received Federal law after Federal law which has put them in a position where they keep encroaching on State and local prosecutors and have no respect for the true function of the State's attorney, the district attorney who is to prosecute those crimes and protect the people within his jurisdiction.

Mr. DELAHUNT. Are you familiar with a recent report within the last 2 years that was authored by a commission chaired by the former Attorney General of the United States Edward Meese?

Mr. MCGUIGAN. I believe I am familiar with it.

Mr. DELAHUNT. And what it dealt with was the issue of Federalization of crimes that are traditionally prosecuted at the local and State level.

Mr. MCGUIGAN. I am. I am a member of the American Prosecutors Research Institute.

Mr. DELAHUNT. Then you know exactly what I am speaking to. And I think it is a fair statement to say that Mr. Meese would concur with what dialog we are having here today.

Mr. MCGUIGAN. In principle, he clearly agrees. Because this process has gone on for 30 years now, and it has gone on to the demise of the citizens who are supposed to be protected by the local district attorney.

Mr. DELAHUNT. Right. I just had staff circulate to you a memorandum to an individual by the name of Mr. DeLoach, it is dated November 15, 1968, and it is from a J.H. Gale. If you could just peruse it for a moment and as I describe it. It is an FBI internal memorandum, dated, like I said, November 15, 1968. You were speaking earlier about the concept of task forces.

Mr. MCGUIGAN. Correct.

Mr. DELAHUNT. I think this is so apropos because I would suggest that one aspect of the problem is articulated in this memorandum in terms of the reluctance to share information with other law enforcement agencies.

Mr. MCGUIGAN. Absolutely.

Mr. DELAHUNT. And let me read this into the record. This is 1968. We wonder how we got here. How did we get here? Because this senior level, I believe that Mr. DeLoach was the deputy directly reporting to Mr. Hoover, the Deputy Director of the FBI, and I think the most pertinent sentence in this memorandum is, "Another principal objection 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."

We have been in the business a long time, Mr. McGuigan. But does this say it all? Let's just really put it right out on the table.

Mr. MCGUIGAN. This describes exactly what the relationship is with the FBI and the Federal Government in the investigation and prosecution of cases in State and local government.

Mr. DELAHUNT. And that was the case in the 1960's, in the 1970's, in 1980's——

Mr. MCGUIGAN. Never changes.

Mr. DELAHUNT. And possibly led to the miscarriage of justice not just of Joseph Salvati, OK, but in the case of World Jai Alai.

Mr. MCGUIGAN. Absolutely. And quite frankly, as I said before, the cozy relationship between agents and former agents, they have a stronger affinity and affiliation with former agents and industries under investigation than they do with the State people who are investigating the industry. You turn around and see the people whom we are investigating, because they are retired Federal officers, getting the information we cannot get. Apparently, they trust them but they do not trust us.

Mr. DELAHUNT. I will pose this question to the panel and anyone is welcome to participate. But I would suspect that there are statutes, Federal statutes today that would prohibit and make it a violation of the U.S. Criminal Code the dissemination of investigative material to anyone outside of that agency. And yet we hear Mr. McGuigan say, and I think that his statement is certainly credible, that after an agent retires and goes and does security work somewhere he has access to information that he or she has no right to access.

Mr. Lawrence, are you familiar with any of the statutes that would apply to the dissemination of information coming from the FBI or any other Federal investigatory agency?

Mr. LAWRENCE. At the very least, it would run afoul of Department of Justice internal regulations. But I believe as well it would violate Federal statutes. I think one of the concerns, and Professor Duke alluded to this earlier, is we have to think not only in terms of what laws are out there, but, systemically, who is going to enforce them. If the enforcement is going to come from the same people who are involved in the conduct, it is pretty obvious to see that the foxes are not going to be prosecuting themselves.

One of the suggestions for using other statutes, the civil rights area is only one, is that you have prosecutors with a particular mandate outside of the mainstream. That is the theory of that approach.

Mr. DELAHUNT. Could I just have one more question as a follow-up?

Mr. BURTON. Sure.

Mr. DELAHUNT. Given that scenario that there possibly does exist applicable Federal criminal statutes or that clearly department policy would prohibit that dissemination, can any of you point to a particular instance of investigation or prosecution or some sort of civil action or administrative action that would punish either a current agent for sending or a retired agent from receiving confidential information regarding investigations or prosecutions?

Mr. LAWRENCE. I know of no such case.

Mr. DELAHUNT. Professor Duke.

Mr. DUKE. No.

Mr. DELAHUNT. I think this goes to support your premise.

Mr. BURTON. Yes. That is one of the things that I think you and I and others on the committee ought to take a hard look at as far as legislation. And I am glad you are on the Judiciary Committee, you can help us over there.

Mr. Shays.

Mr. SHAYS. I am going to be here till the end and Mr. LaTourette has another meeting, so I am happy to yield.

Mr. BURTON. The gentleman from Ohio.

Mr. LATOURETTE. Thank you, Mr. Chairman. I will not take a tremendous amount of time because I have to do some Transportation and Infrastructure business. I appreciate Mr. Shays courtesy.

Mr. BURTON. Well do not forget Indiana.

Mr. LATOURETTE. Indiana is next to Ohio, so I am sure we will take care of it.

Mr. McGuigan, I was interested in your observations. There is a lot of criticism being levelled at Federal agents and Federal prosecutors. But I think the Congress is to blame for a lot of this Federalization. There was a push in the 1960's to go get organized crime. When I was prosecuting cases we had a war on drugs. So a lot of us sit up here and we Federalize crimes that were historically under the venue of the local district attorney or prosecuting agency. My own experience was that you would have the DEA swoop into town and they would be interested in the big fish, the guy from Colombia or down somewhere in the Caribbean, but did not really care if he was selling rocks of crack cocaine to the kids in your jurisdiction. And you have experienced the same sort of thing. So while we rush to try and come up with more Federal legislation to deal with the problem of a few bad apples, I think we need to take a look in the mirror and maybe quit Federalizing so many crimes and leave law enforcement to local authorities where it historically belongs.

When Mr. Delahunt talked to you about that memorandum, I can remember I had one pretty high profile case and DEA, FBI, ATF, they were all involved and they could not put their jackets on fast enough when the TV cameras showed up. So you not only have the tension between local and Federal, you have a budgetary tension between the ATF, the DEA, and the FBI. Does that agree with your experience?

Mr. MCGUIGAN. There is no question about that, the Federalization of the criminal laws. You look at something like the Economic Espionage Act and you really have to ask yourself, what was somebody thinking when they decided to pass this. And they Federalized one more. They have had about 30 prosecutions in 5 years and they devoted an incredible amount of resources. It does not seem to bear logic. Expansions into gang crimes that were well-handled by State prosecutors occurred and, quite frankly, cherry picking the few cases that they want, leaving the local DA to prosecute all the rest of the cases and undermining his funding abilities to get the sufficient resources to handle it.

I think that we have come a long way from Henry Hyde's remark that Federal criminal jurisdiction is interstitial. It is now plenary

in the sense that Congress over the last 30 years has expanded it. Even when the courts cut down on the scope of the mail fraud statute, we turned right around and expanded it all over again.

Mr. LATOURETTE. Right. I thank you for that. The other area that I want to explore, and again sometimes when we Federalize things we sort of rush to judgment, and from Professor Duke and Professor Lawrence, Mr. Garo, and I think the chairman, I heard mens rea standards that caused me some concern. I heard "knowingly," I heard "willfully," I heard "negligence." Again, my observation and experience is most of the men and women who engage in this work are good people. It is also my observation and experience that although you have tragedies like the Salvati case, you also have criminal defendants who play the system time and time and time again. And I would hate to give them another arrow in their quiver. I wish there was a way we could separate, either through mens rea or something—I sort of put criminal defendants in two categories. You have some where they are dead-bang losers and they deserve whatever punishment they get, and then you have some other cases where there are some questions, be it questionable eye witness testimony, be it scientific testimony, it could be a confession that was coerced if that is a claim. But just one quick story.

I had a guy that stood up in court 1 day, he was accused of and convicted of killing five people, he is on Ohio's death row, he stood up during the sentencing phase and he said, "I killed these five people. I have been commanded to kill ten thousand. So if you let me out, I am going to kill nine thousand, nine hundred and ninety-five more." Twelve years later he is still going through the habeas corpus system. In my view, he should have been taken out to the apple tree and hung years and years and years ago.

And so I think before we enhance their rights and punish prosecutors, and I am really not in favor of this negligence thing because I think that really opens up—I do not disagree with you that if they have set the bar on "willfully" so high that is too high a bar to get over. But negligence I think really gives the criminal defendant, the dishonest criminal defendant a club over prosecution. I do not know that we want to go there.

But I wish we could winnow out some of these cases and, sort of like when they separate the wheat from the chaff, the no-brainers go over here, and the ones where DNA may clear it up 10 years from now or we may have a Salvati case 35 years that they go over in this particular direction. I think they are not pretty simple but I think we could separate them, and I wish that we would.

But Professor Lawrence, maybe you could just spend a couple minutes talking about the mens rea of this because, I understood how you are using negligence, but it concerns me just a little bit that we create a level that makes me a little uneasy.

Mr. LAWRENCE. I appreciate the question, Congressman. You should always be careful asking a criminal law scholar to talk about mens rea because we could spend the rest of the day on that. I will be brief, but I think it is an important question.

In my view, what makes civil rights crimes different from other crimes is that you can think of them as two tier crimes. There is an aspect of the crime which would be criminal if any private per-

son were engaged in it. In the case of police brutality, let's say, the first-tier crime would be that of assault. In the case of suborning perjury in putting the case together for a prosecutor, it would be any other kind of subornation of perjury. What makes it a civil rights crime and creates Federal jurisdiction and also creates the extra penalties that go with a civil rights crime then is the additional element of being done under color of law.

My suggestion is that all of the protections that mens rea properly gives to a case in terms of restricting punishment to people who are consciously, willfully, knowingly violating the law should apply to the first tier. Where I would not apply that is in the second tier, and that is precisely where the problems have come. So I think in many ways you can get the best of both worlds by viewing them as two tier crimes.

Mr. LATOURETTE. I thank you very much.

Mr. Chairman, I yield back.

Mr. SHAYS [presiding]. I thank the gentleman. It is my turn to ask some questions. I would like to say that eventually, Mr. Duke, I am going to get to your eight recommendations, or whatever number they were, go through them and ask each of our witnesses what they think, and then see what we would add to it.

But I would like to first start with Mr. McGuigan. Mr. McGuigan, my recollection during the time that you worked for the State and I was a State legislator and the interaction we had, your job when you were on the Crime Task Force was to validate whether these new gaming facilities that were being set up, the dog tracks and the Jai Alai frontons, that they were free of organized crime. Is that correct?

Mr. MCGUIGAN. That was the mandate given to me by Governor Grasso after they had already been cleared to open. But I opened an organized crime investigation based on a parallel case. In other words, the Task Force received the mandate after it had already uncovered organized crime connections.

Mr. SHAYS. So, bottom line, these facilities and the owners were allowed to move forward. You had reason to believe that they were connected with organized crime. And, obviously, we in the State of Connecticut wanted to be protected from a gaming facility connected to organized crime.

Mr. MCGUIGAN. We had a public hearing on it. And the finding of the commission was they were connected to Buster Ardito, who was a capo in the Genovese crime family. They had meetings with him and Tony Provenzano, who was a capo in the DiCalvacanti crime family in New Jersey. So we had meetings with organized crime figures, including conversations with organized crime figures in Bridgeport, and they revoked the license.

Mr. SHAYS. It was clear to you that the gaming facilities were very much connected with organized crime and you were in the process of looking at each one of these facilities, correct?

Mr. MCGUIGAN. Bridgeport was and we closed it before it opened. It was ready to open in a week and a half. There were not that many people in Connecticut who were dancing at the fact that their grand opening seemed to disappear. There were not kudos, if you want to know, for what happened.

Mr. SHAYS. How did you determine that there was organized crime involved in the Bridgeport——

Mr. MCGUIGAN. I was doing an ancillary case in Bridgeport and someone mentioned Kasue Street and I said let's followup on the lead. I did a couple of interviews and then said something is wrong. We demanded to see their books. They had loans from Central States Teamsters Pension Fund. I decided to fly out there to see what it was all about. I then went down to New York and met with city of New York and OCTA force people and convinced them that we were on a legitimate investigation, and they gave me surveillance reports with Ardito and Provenzano.

Mr. SHAYS. Would you be working with the FBI out of New York or out of Boston?

Mr. MCGUIGAN. We had received nothing from the FBI. I did not initiate. They were done by Mort Dinistein. I had never received anything from the FBI.

Mr. SHAYS. Now why did you go down to Fort Lauderdale?

Mr. MCGUIGAN. Because I suspected the gentleman.

Mr. SHAYS. And who was that you suspected?

Mr. MCGUIGAN. It was just a hunch.

Mr. SHAYS. OK. You went down there. And what did you find?

Mr. MCGUIGAN. I found that he told me—he had to have his books ready and that when I got there——

Mr. SHAYS. Got where, in New York or Fort Lauderdale?

Mr. MCGUIGAN. Fort Lauderdale. I went to Fort Lauderdale and he had no books. And when I analyzed his books, I realized that he had $250,000 in cash collections on April 4th and he had a dispersement of the money with nothing to indicate to whom the money had gone. Which convinced me that all was not right in the Land of Oz.

Mr. SHAYS. Right. And did you see him with any organized crime figures?

Mr. MCGUIGAN. Well, I actually went to a place called the Gold Coast, which was Meyer Lansky's hang-out, because I heard from a Florida detective that he was associated with him. I met him there with two organized crime figures, I believe it was Tuna Boy Arcardo out of Chicago and Johnny Roselli. He was having dinner with them and was somewhat surprised to see me drop in for dinner.

Mr. SHAYS. I do not think I would have wanted to fly back with you from Fort Lauderdale back to New York.

Mr. MCGUIGAN. That was a hunch. It worked out and we closed them down. We had public hearings, actually we were on television all day in the State, and we closed them down.

Mr. SHAYS. Now this is a little off the picture but I would like it just for the public record. If you have someone who owns the facilities involved in organized crime, why do we make an assumption that when they transfer the license they are going to transfer it to someone who is not involved in organized crime?

Mr. MCGUIGAN. You should not make the assumption. You should investigate equally, if not triply so, more diligently, because it is highly unlikely that they just left the connection. This was not a warm political environment. They were planning to spend the

revenue from opening these facilities and the facilities were not opening.

Mr. SHAYS. OK. Courtesy of you. We had both Mr. and Mrs. Salvati here a number of months ago at which time they told their unbelievable story. And we also had a person who sat in the front row two seats over named Paul Rico. And I tried to listen and watch him at the same time to see how he would react. And when he took the stand, and this time he did not take the fifth, he showed no regret or concern. Now I made a comment to someone that having listened to it he clearly knows now that Mr. Salvati was innocent and he showed no remorse at all, almost contempt that we would even suggest that he should show remorse.

How often did you interact with Mr. Rico, and what kinds of conversations would you have had with him?

Mr. MCGUIGAN. I only met him probably three times.

Mr. SHAYS. What was his position at the time?

Mr. MCGUIGAN. He was the Director of Security for World Jai Alai. I presume his mandated function was to keep organized crime out.

Mr. SHAYS. So he had retired from the FBI?

Mr. MCGUIGAN. Retired FBI, Boston Organized Crime Strike Force, Winter Hill Gang investigator, moved to Florida, and then became the Director of Security at World Jai Alai. I presume part of his duties were to ensure that organized crime was kept out.

Mr. SHAYS. So you obviously began to have some suspicion about him when he started to work for the Jai Alai fronton?

Mr. MCGUIGAN. I had none. I had no derogatory information on Mr. Callahan and had no reason to believe that Mr. Rico was not as he was represented to me, a prominent organized crime investigator in Boston. Why would I doubt his word at all?

Mr. SHAYS. OK. But when did you start to have some suspicions?

Mr. MCGUIGAN. I only became suspicious of Callahan and decided to follow him. Not any particular good reasons.

Mr. SHAYS. So once, as you testified earlier, you learned from Boston law enforcement people that this man was clearly involved in organized crime, it was obvious to anyone who——

Mr. MCGUIGAN. That was by accident. I went to meet Tom Dwyer, the head of the Suffolk County investigation project. We had come up empty on Callahan and we had been in Boston on March 1st and did not know who was at Clarks Turn of the Century and I mentioned John Callahan, and he said he is connected to the Winter Hill gang and I have got surveillances on him. That was an accident.

Mr. SHAYS. So did you make the assumption that they were doing their job and the FBI just was not aware of it, or did you begin to suspect the FBI?

Mr. MCGUIGAN. Well, I then learned that Brian McNeely was the head of beverage concessions at World Jai Alai that John Callahan was a known associate of Winter Hill Gang members John Martorano, I believe Stevie Flemmi, Whitey Bulger, Howie Winter, Ron Costello, Brian Halloran. He had a collection where he was a known associate. So I was a little concerned as to how he got to be president of the company when the person in charge of the security is someone who worked on these people. It seemed to me to

be a confusing situation. I could not figure it out. I guess he was not up to snuff with what was going on at Boston.

Mr. SHAYS. I just want to be clear as to who "he" is. "He" is Rico?

Mr. MCGUIGAN. Well, Mr. Rico was the head of security. I do not know whether he——

Mr. SHAYS. I just want to know, when you were mentioning "he" you were referring to Mr. Rico? So now you begin to have obvious suspicions about someone who worked for the FBI in the past. So would you at this moment have said this guy was in the FBI, it is kind of weird, strange, and you have suspicions about him, do you then proceed to have suspicions about the FBI? You had suspicions about Rico. Then I want you to just tell me where did you go from there. When did you begin to suspect that more FBI people were involved?

Mr. MCGUIGAN. I realized that Mr. Rico had been given information regarding a potential loan-sharking transaction in January 1976. I sort of wondered why I did not have it. Since I was trying to clear this guy for a parimutuel license, I thought maybe we ought to have that. So I could not quite understand that either. So I said, well, now if he knew that information, why did he not show me that information and why did nobody else tell me that information? And then when I was going to have a hearing on Callahan—now Callahan resigned because Rico, and I do not know how he learned that we were doing an investigation—we were planning to ambush Callahan at a hearing in Hartford where his organized crime connections would come up unbeknownst to him and see what we could uncover. Callahan resigned. And as a commission might put it, all was not well in the Land of Oz, let's go on with the licensing.

Mr. SHAYS. What I want to know though is, I want to know something that, you are telling me something that I need to know and I am following you to this point, but what I want to know is you are in charge of law enforcement for the State of Connecticut——

Mr. MCGUIGAN. At the time I was not. At that time I was the chief prosecutor for the State Organized Crime Task Force. Later on I became the chief prosecutor.

Mr. SHAYS. OK. But at that time you had a very important statewide function dealing with organized crime and you are suspecting a former FBI agent, clearly suspecting, you believe somehow he is connected in protecting an organized crime figure. Did you at that moment, listen to the question, did you at that moment believe that other FBI agents were involved, or just a former retiree?

Mr. MCGUIGAN. I did not know the logic of how this information was not acted on. We were suspicious as to why it was not acted on.

Mr. SHAYS. So you began to be suspicious that other FBI agents should have been—well it seems obvious to you, but I am trying to develop a record here and so that is why I am going through it like I am going through it. I want to understand. In your mind, this was just staring everybody in the face and it was so obvious to you that a former FBI agent is protecting an organized crime figure that you began to, what, suspect the New England branch of the FBI?

Mr. MCGUIGAN. No. I would say that I began to suspect that people were not working as hard as they should be in Miami World Jai Alai. They seemed not to have been able to uncover this and I was wondering what was going wrong. They were maybe having a bad hair day, I don't know. I do not know what it was but it was troubling. Troubling is a good word. I was troubled.

Mr. SHAYS. OK. I just want to make sure you are not speaking like Alan Greenspan where there is more meaning to the word troubled. That is why I need to make sure that you are being——

Mr. MCGUIGAN. I admire the comparison, Mr. Chairman.

Mr. SHAYS. But it is our job to make sure you speak not in tongues. So I want to be clear. Did you feel you could go to the head of the FBI in New England and say this is crazy, you have a former FBI agent who is basically shielding an organized crime figure and I want to know what you guys are doing about it? Did you feel you could do that? And did you do it?

Mr. MCGUIGAN. See, Callahan was gone from the company. Callahan was gone from the company, at least what we were told, and we had no jurisdiction. They sold the company to somebody else. I was unaware that Callahan had approached the new buyer so he actually was not out of the company. And Callahan's partner became the president of the company. And I was assured that he——

Mr. SHAYS. And that was Roger Wheeler?

Mr. MCGUIGAN. It was Richard Donovan who I was assured was a Boy Scout.

Mr. SHAYS. Of course, you knew that not to be the case.

Mr. MCGUIGAN. Well, he is a Boy Scout. Just ask anybody in law enforcement.

Mr. SHAYS. OK. So ultimately you do not license him, correct?

Mr. MCGUIGAN. He was licensed. I do not license anybody. The Commission on Special Revenue decided to license Mr. Donovan.

Mr. SHAYS. OK. And he lasted for how long?

Mr. MCGUIGAN. He was licensed for I think 6 or 7 years. Then Roger Wheeler bought the company in 1978.

Mr. SHAYS. OK. By then you are the chief State's attorney?

Mr. MCGUIGAN. Well, probably just as he was buying I became chief State's attorney.

Mr. SHAYS. OK. So we do not have anyone killed yet. None of your witnesses are killed.

Mr. MCGUIGAN. No. And we had a background investigation on Wheeler, who assured my inspector, George Ryalls, that he was safe because he had all these retired FBI agents in World Jai Alai who were going to protect him from the mob and he did not have any problems.

Mr. SHAYS. And by all, how many? One? Two? Three?

Mr. MCGUIGAN. I could not give you a count. There is a count somewhere, but there were a number of them.

Mr. SHAYS. So it was Rico and a number of others?

Mr. MCGUIGAN. Yes. There were a number of retired agents who were very experienced in this area.

Mr. SHAYS. But being candid and not like Alan Greenspan——

Mr. MCGUIGAN. Oh, he told my inspector that he was safe.

Mr. SHAYS. But by then though you did not know if he was safe or not?

Mr. MCGUIGAN. The operation essentially was in Florida. If anybody wanted to do this case, they could have done the case. The operation was in Florida. We were doing a Jai Alai player fixing case in three frontons. He was in Florida, he felt safe. What am I to say? But we then began a skimming investigation involving World Jai Alai and the other Jai Alai frontons.

Mr. SHAYS. Let me just say to the gentleman, I am going to be yielding you time but I am going to go about 5 more minutes.

But Mr. Wheeler ends up killed, assassinated really, at a golf course. They did not pick a dark alley or when he came out of his house. They went to a public place and he got murdered.

Mr. MCGUIGAN. Southern Hills. I understand they play the PGA there and the U.S. Open. It is a very nice place. I have not been there.

Mr. SHAYS. That is a pretty dramatic way to kill someone. It was a high profile, it was probably sensational. What was your reaction when you heard he was killed?

Mr. MCGUIGAN. I figured they were sending him a message, sending everybody else a message. That is what I figured. It looked to me like they were whacking him. So, you know.

Mr. SHAYS. But he was not a witness for you or anything else. But did you start to get interested in the Jai Alai——

Mr. MCGUIGAN. I believe he called George Ryalls on the day before he was killed or the day he was killed.

Mr. SHAYS. George who?

Mr. MCGUIGAN. My inspector who had cleared his license. He wanted to talk to him about how Jai Alai was running.

Mr. SHAYS. How what?

Mr. MCGUIGAN. How it was running and what was going on.

Mr. SHAYS. OK. And by then are you back into thoroughly investigating this fronton?

Mr. MCGUIGAN. Well, again, we have limited jurisdiction in Connecticut. So we assisted Tulsa and we certainly tried to get——

Mr. SHAYS. Did it raise an interest in who was going to run the new facility and did you start to begin to wonder more?

Mr. MCGUIGAN. Absolutely. We found out that they were planning to sell the fronton before Wheeler to one Jack B. Cooper who was a known associate of Meyer Lansky and apparently the security people had no problem with that. That might be troubling, but what do I know? The next thing that happened is that they sold the Hartford Jai Alai fronton, which meant that they did not have to deal with me anymore.

Mr. SHAYS. OK. I am just trying to establish when you began to have real questions about the FBI in Boston and when you began to think that your witnesses were being killed before your very eyes.

Mr. MCGUIGAN. Well, you know, whether they are my witnesses. I think that Brian Halloran was a witness. He was not killed before my eyes, but he was killed before somebody's eyes.

Mr. SHAYS. Was he someone that you were using as a witness?

Mr. MCGUIGAN. I knew Brian Halloran because he was actually the guy who was tried in Boston in 1974 by Tom Dwyer for shooting an MTA guard. And Callahan was surveilled because he was a defense witness. That was the first connection made to the Win-

ter Hill Gang and to Callahan. So I knew who Halloran was because he had a rap sheet and he was a Winter Hill operator. I did not know he had gone into a Federal safe house and had fingered Callahan, Bulger, Flemmi, and John Martorano, who was a fugitive in Florida, for the hit. I have heard that he fingered other people. I do not know. We heard that from an informant, not from them because they never told us.

Mr. SHAYS. Now Callahan was someone who was also killed eventually, correct?

Mr. MCGUIGAN. Halloran was killed in May, and Callahan was killed in August. Callahan was the last link to the case, at least the last what we call non-mob link.

Mr. SHAYS. OK. Now you are referring to a case. What is that case?

Mr. MCGUIGAN. Pardon?

Mr. SHAYS. What was the case? You said the last one linked to the case.

Mr. MCGUIGAN. Well, the Wheeler case. Halloran tied to the Wheeler case. Halloran is dead. He implicated Callahan in the conspiracy. OK? Callahan was the only non-mob guy implicated in the conspiracy. So if you were picking what is going to happen, you would say the next thing they are going to do is they are going to—I do not want to use the term but I will use it because it is easy—they are going to whack Callahan, that is what is going to happen.

Mr. SHAYS. Where did they kill him, and where were you?

Mr. MCGUIGAN. They killed him on August 2. I landed in Florida on August 3. Our mission was that we would try to find Callahan and interview him.

Mr. SHAYS. So the day before you were to fly there he was killed.

Mr. MCGUIGAN. He was found in a trunk in Miami Airport.

Mr. SHAYS. Where you landed.

Mr. MCGUIGAN. We landed in Miami Airport. They put him in a trunk. They shot him in Fort Lauderdale and brought him over to Miami.

Mr. SHAYS. Before giving the floor to Mr. Delahunt, I need to be clear, and I want to say the record right now is not clear, as to when you began to be uneasy about the New England FBI.

Mr. MCGUIGAN. Well, uneasy? I will tell you, when we heard from an informant——

Mr. SHAYS. Let me ask you the question this way.

Mr. MCGUIGAN. When we heard from an informant that Halloran had been——

Mr. SHAYS. Let me ask you the question this way. Did you trust the FBI in a way that you could give them information and share information and did you feel they would keep the information confidential, and did you feel they would cooperate with you? If the answer is no, when did you begin to feel no was the answer?

Mr. MCGUIGAN. Well, I want to say this. I deal with the FBI in Connecticut on a constant basis. The agents who I deal with—I have total confidence in them. I have had cooperating witnesses in numerous cases where they have treated these people with nothing but respect and conducted themselves in a totally honorable manner. So when I am talking about the FBI, it is not true that this is a systemic problem. I deal with these people every day and I con-

sider them close friends and honorable people who do the right thing above all else. But, talking about this case and the people involved in this case, I would not give them any information.

Mr. SHAYS. Would you have called the Boston FBI and given them any information?

Mr. MCGUIGAN. For what?

Mr. SHAYS. Ask their cooperation.

Mr. MCGUIGAN. Mr. Halloran called the Boston FBI.

Mr. SHAYS. Yes?

Mr. MCGUIGAN. Well he ended up dead. That is, you know, I am not calling.

Mr. SHAYS. And you think there is a connection? I just want the record to show that.

Mr. MCGUIGAN. Well, he did. He called the FBI, he ended up in a safe house, and the next thing you know he ended up on a street gunned down. I do not know what happened. Maybe they can figure out what happened.

Mr. SHAYS. OK. I am going to ask one last question. I am sorry, Mr. Delahunt.

Mr. MCGUIGAN. Somehow they must have found out about him.

Mr. SHAYS. Mr. Delahunt.

Mr. DELAHUNT. Let me just go for a few more minutes. Let me see if I can rephrase. I think what Mr. Shays is looking for is some context. Were you surprised when you initiated your efforts in terms of the licensing investigation that you heard nothing from the FBI but at some point in time heard from the Suffolk County District Attorney's Office that there was a problem with Callahan?

Mr. MCGUIGAN. Absolutely. This was shocking.

Mr. DELAHUNT. But this was the first indication that maybe, just maybe some folks in the Boston office of the FBI were not being fully forthcoming?

Mr. MCGUIGAN. Yes. I attributed it at the time to not being fully forthcoming or perhaps not reading their reports.

Mr. DELAHUNT. Right. It was an oversight.

Mr. MCGUIGAN. When I found out that they had handed over reports—I do not know who handed them over to the retired agent—but reports out of their office were handed over to a retired agent that I did not get, that got a little more than they just did read them then.

Mr. DELAHUNT. You were annoyed at that point?

Mr. MCGUIGAN. That is annoying. That is annoying.

Mr. DELAHUNT. That was annoying.

Mr. MCGUIGAN. Yes. You begin to think that maybe they are not really on your team.

Mr. DELAHUNT. You get a feel.

Mr. MCGUIGAN. Yes.

Mr. DELAHUNT. But then after those reports ended up—presumably the retired FBI agent was Mr. Rico?

Mr. MCGUIGAN. I believe that is so, yes.

Mr. DELAHUNT. Then you went from annoyed presumably to either really surprised or disturbed when in the course of your investigation as to whether a license should issue or not Callahan resigns.

Mr. MCGUIGAN. They tanked our investigation.

Mr. DELAHUNT. Did you smell something at that point in time?

Mr. MCGUIGAN. Well, I realized that our investigation had been tanked. Who tanked it? I do not know.

Mr. DELAHUNT. You do not know who tanked it.

Mr. MCGUIGAN. I do not know.

Mr. DELAHUNT. But it did not pass the smell test, so to speak?

Mr. MCGUIGAN. No. It was disturbing. It did not look like everybody was playing on the same team. I do not know.

Mr. DELAHUNT. OK. And then later on, after the license is issued to fronton, you develop information that someone is skimming.

Mr. MCGUIGAN. Actually, Ted Driscol originally developed that and I started to look at it.

Mr. DELAHUNT. So then as a result of the efforts of an investigative reporter from the Hartford Courant, Mr. Driscol, you, in your role as State's attorney in charge of organized crime or State's attorney period, say, hey, I better take a look at this. And that is when you run across Callahan again.

Mr. MCGUIGAN. Callahan, player fixing, which came into that. We moved forward on player fixing for quite a while and then started to wonder if they were fixing the games, and if they were fixing them in Connecticut, were they fixing them everywhere?

Mr. DELAHUNT. Right. But the time that had lapsed from when the license had issued to when you initiated your skimming investigation was what, 6 months, 2 years, 4 years?

Mr. MCGUIGAN. Probably about 3 years. It took about 4 years.

Mr. DELAHUNT. It took about 3 to 4 years.

Mr. MCGUIGAN. Yes.

Mr. DELAHUNT. Let me ask this. Were you surprised that as a result of your investigation and your desire to interview Mr. Callahan, and your conversation I guess a day or two prior to that or at least a representative of your office with Mr. Wheeler, it must have been profoundly disturbing when you go to Miami and hear that Mr. Callahan has been whacked out.

Mr. MCGUIGAN. Yes. I was thinking that Miami was not the town I wanted to be in.

Mr. DELAHUNT. Right. You did not want to establish deep roots there.

Mr. MCGUIGAN. Yes. The District Attorney that was with me said let's hit the silk and go home.

Mr. DELAHUNT. But at that point in time, and again this is pursuing what Mr. Shays was, did you really start to wonder what was going on? Did the smell become more putrid at that point in time?

Mr. MCGUIGAN. Yes. I mean, it was troubling.

Mr. DELAHUNT. It was troubling.

Mr. MCGUIGAN. It was troubling.

Mr. DELAHUNT. Were you surprised later on, and this is recent, to learn that Mr. Flemmi, who was an informant for Mr. Rico, had put the contract out on Mr. Wheeler and that contract was executed, no pun intended, executed by Mr. Martorano? That has surfaced as a result of a case involved——

Mr. MCGUIGAN. I think Martorano pled to that, I am not sure.

Mr. DELAHUNT. He did. Right.

Mr. MCGUIGAN. I was not surprised at all because we were told by some informant that is what Halloran said. Of course, for some reason the Organized Crime Strike Force in Boston and the FBI found Halloran's testimony to be incredible and they found him not deserving to be in witness protection. And I must say, to me, it is amazing Joe Barboza deserves to be in witness protection and a guy who is fingering someone who murdered the president of the Telex Corp.—a distinguished gentleman with no criminal connections whatsoever, a wonderful family man, living in Tulsa, a pillar of his community—is killed, and in a State where he bought a gambling facility where there were all kinds of allegations of skimming and player-fixing, in this case we do not want to believe somebody who says I am a first-hand witness. We kick him out of witness protection and he gets whacked in south Boston. And Joe Barboza, well, let's set him up in the Napa Valley.

Mr. DELAHUNT. And teach him how to be a cook.

Mr. MCGUIGAN. Yes, teach him how to be a cook.

Mr. DELAHUNT. Right. Let me ask you this. The decision to place an individual, if you know, Mr. McGuigan, in the Witness Protection Program, let's be specific, to the best of your knowledge in the instant case of Brian Halloran, what Federal officials would be involved in making that decision?

Mr. MCGUIGAN. I would think the FBI would be the principal people. I do not know if the Strike Force prosecutor has any input or not, I do not know.

Mr. DELAHUNT. OK. Do you know, if you do know, who the FBI officials would have been at that point in time?

Mr. MCGUIGAN. No, I do not know who they were. They did not tell us they had him. They did not tell Tulsa, apparently, who had a murder that they have got a first-hand witness.

Mr. DELAHUNT. Do you know who was the chief prosecutor at that point in time?

Mr. MCGUIGAN. For the Organized Crime Strike Force?

Mr. DELAHUNT. For the Organized Crime Strike Force.

Mr. MCGUIGAN. I think it was Jeremiah O'Sullivan. I am not really sure.

Mr. DELAHUNT. OK. That was an attorney by the name of Jeremiah O'Sullivan who would have been the head of the Organized Crime Strike Force.

Mr. MCGUIGAN. Yes, I think it was.

Mr. DELAHUNT. What would be interesting I think, Mr. Chairman, is to ask Mr. O'Sullivan what his understanding was of the rejection of Mr. Halloran.

You mentioned Tulsa. Now you said that you proffered whatever assistance that you had at your disposal to Tulsa.

Mr. MCGUIGAN. Oh, absolutely. Absolutely.

Mr. DELAHUNT. Were they grateful for that?

Mr. MCGUIGAN. I believe that my inspector, George Ryalls, had an excellent relationship with Mr. Huff, who was struggling mightily for many years. I do not think he ever gave up on this case. He deserves a lot of credit because he never gave up on this case. And all the doors were closed, or most of them were closed.

Mr. DELAHUNT. Did you or your inspector ever hear from anyone from Tulsa relative to the cooperation they were receiving, or lack thereof, from the Boston office of the FBI?

Mr. MCGUIGAN. I know that—but I really better not say what George Ryalls told me because you are testing my memory. I do not have notes or anything. George was friendly with Mr. Huff, but Mr. Huff did not seem like, you best ask him, he did not seem like they were exactly leaning over backward to give him the information.

Mr. DELAHUNT. Like he really was not happy?

Mr. MCGUIGAN. Yes. That was my impression from Mr. Ryalls. Mr. Ryalls has passed away. He passed away about a year and a half ago. But he certainly felt that when this started to uncover and given Judge Wolf's hearings, he was a very happy investigator because he had spent many years frustrated by what happened.

Mr. BURTON [presiding]. I want to yield to Mr. Shays, and if you have more questions we will come back to you real quickly. But I just wanted to ask one question. How far do you think Congress should go with this investigation of FBI complicity in putting innocent people in jail? We know about Mr. Salvati, and we know about some other people that went to jail with Mr. Salvati, we know about a case I believe in New Jersey, and there is one I think in Rhode Island. How far do you think Congress should go with this investigation? I am asking all of you now.

Mr. MCGUIGAN. I think it is important that the record be clear as to what occurred if abuses are going to be ended and we are going to have a change. I think the agency today is not the agency it was 5 years ago. I think there are tremendous changes. I know that people I work with in Connecticut for the last 10 years, and I am a private defense attorney now, are wonderful people. I have no doubts.

Mr. BURTON. So you think the corruption level has decreased dramatically in the last 5 years?

Mr. MCGUIGAN. Yes. But apparently from everything I read in Boston it was a long fight. In other words, when people, one of the problems—I did corruption cases mostly when I was a prosecutor, that is really what I did. Corruption cases, by their very nature, when you involve people in one corrupt act you own them forever. You own them. And you can get them to do what you want again once they commit the first corrupt act. That is why corruption has to be rooted out.

Mr. BURTON. Mr. Shays.

Mr. SHAYS. I am not an attorney, so I do not always know the answer to my question. I am going to ask the others of you a question later. But Mr. McGuigan, I still have some questions for you. The interesting thing about this relationship is that, given you are a witness, I get to ask the questions. It is the first time I have ever gotten to ask you so many questions, Mr. McGuigan. But what I am having trouble reckoning with is how you deal as a very powerful law enforcement official with another law enforcement agency when someone like Mr. Salvati or Mr. Garo does not have that same kind of clout.

In my simple mind, and I want you to tell me why my simple mind just goes off the track here, if I was a U.S. attorney or ran an organized crime task force and I began to see FBI agent retirees

that are working for organized crime in my State, not thinking that the Connecticut people are, but I would have wanted to go to the Director in Boston and say do you know what the hell is going on? Your people retire and then they work for organized crime. Now there is a reason you either did it or you did not. And if you did, I want to know. And if you did not do it, I want to know why because that will tell me a lot about how you were thinking this through. So if you would respond to that question.

Mr. MCGUIGAN. I do not quite——

Mr. SHAYS. Do you want me to repeat the question?

Mr. MCGUIGAN. I do not understand the question.

Mr. SHAYS. Let me repeat again because I want you to understand.

Mr. MCGUIGAN. No. I think I heard it, I just do not understand.

Mr. SHAYS. No. I am going to repeat it again. And the reason I am going to repeat it is it is not that difficult, frankly, unless you are Alan Greenspan. What I am asking is you began to believe correctly that the retired FBI agents were working for organized crime. That is true. You believed that.

Mr. MCGUIGAN. No. I did not say that. What I said is that they were ignoring criminal connections or unexplainably not finding criminal connections of employees, which was troubling.

Mr. SHAYS. Which was very troubling. That is an understatement, troubling. It is alarming. It is outrageous. It is all of those things.

Mr. MCGUIGAN. Those are your terms. They were troubling to me.

Mr. SHAYS. OK. And troubling to a point where you would feel inclined to tell the Director in Boston or whatever his title is that you have got a problem in Hartford and I have got a concern? Or, troubling that—let's take the Callahan circumstance. You basically had the FBI in Boston not sharing with you information that everybody else seemed to know. Either they were idiots or they were covering up. Those are your only two logical conclusions. And so I am interested to know whether you went to the FBI Director in Boston and said you have got a cover-up here or you have got a bunch of idiots who do not know what everybody else in Boston seems to know, that Callahan is involved in organized crime. I want to know if you did that?

Mr. MCGUIGAN. No. And I do not think it would have been of any avail whatsoever.

Mr. SHAYS. Why?

Mr. MCGUIGAN. Because it is just not the nature of the agency. The agency offered no explanation to me, and I do not need to compel one as to why they provided information to other people and not to us. The agency was negative on our case. We originally gave them information regarding organized crime figures in Bridgeport Jai Alai. They seemed to have no interest in that. And, quite frankly, they apparently did not think that there was infiltration of organized crime into Jai Alai, or they were not interested in it.

Mr. SHAYS. So I am going to conclude from that you basically believed it would have been pointless.

Mr. MCGUIGAN. It was pointless. And history has borne me out on that. It was pointless.

Mr. SHAYS. Well, it was pointless for a different reason. They were corrupt.

Mr. MCGUIGAN. That is what I said, it was pointless.

Mr. SHAYS. That is how Alan Greenspan would have said it. Ted Driscol was a reporter working for the Hartford Courant. Are you aware of any efforts by any present or former FBI agents to cast doubt on Driscol's reporting?

Mr. MCGUIGAN. To what?

Mr. SHAYS. Ted Driscol was a reporter for the Hartford Courant writing about some of these stories, a very fine reporter. Are you aware of any efforts to cast doubt on Driscol's reporting by any present FBI agent or any former FBI agent?

Mr. MCGUIGAN. I believe former FBI agents. But I think the committee will need to develop that.

Mr. SHAYS. And who are the former FBI agents?

Mr. MCGUIGAN. Our understanding is that some of the former agents or one of the former agents may have said that Mr. Driscol was a possible suspect in the Wheeler homicide—him being an investigative reporter—rather than the people he was associated with. I am sure that is who would have done it, an investigative reporter.

Mr. SHAYS. OK. Mr. Chairman, may I just——

Mr. MCGUIGAN. I do not know. I have never seen the report that says that is true.

Mr. SHAYS. OK. Fair enough.

Gentlemen, you have all been very willing to listen to my questions. Mr. McGuigan, did you have something else you wanted to say?

Mr. MCGUIGAN. Mr. Chairman, I have a 4:30 flight. I have a meeting in Miami. May I be excused. I have been grilled by Brother Delahunt, Congressman Delahunt, Congressman Shays, and I would hope that the other members of the panel would understand.

Mr. BURTON. I think that we are about to wrap up.

Mr. SHAYS. I have about five more questions. But he is free to go.

Mr. BURTON. Do you have any more questions of Mr. McGuigan?

Mr. DELAHUNT. I have none other than be careful of that Miami Airport, Mr. McGuigan.

Mr. BURTON. Do you have any more questions of Mr. McGuigan?

Mr. SHAYS. Let me go quickly through these. Mr. Duke was very helpful in providing a number of recommendations.

Mr. BURTON. We will get you out of here in the next 5 or 10 minutes, is that all right? I will get you to the airport, promise. Do not worry.

Mr. SHAYS. Mr. Duke, the first one was confine and regulate—these are recommendations for reform. I just would like yes or no or quick qualifications. The first one was confine and regulate the bribery of witnesses. I think we are all agreed on that, correct?

The second was criminalize the suppression of exculpatory evidence. I think we have addressed that. But that has to be dealt with, you all agree?

Mr. GARO. Yes.

Mr. LAWRENCE. Yes.

Mr. SHAYS. Mr. Lawrence, do you want to qualify anything?

Mr. LAWRENCE. No.

Mr. SHAYS. OK. The third one was extend the time limitations on prosecutions. I think you all agree on that, is that correct?

Mr. GARO. Agreed.

Mr. SHAYS. OK. Thank you. On four, reduce the harsh time limits on collateral attacks. I am not quite sure what that means. Mr. Duke, real quick?

Mr. DUKE. The limitation is a prisoner cannot attack a conviction after the time periods permitted under the Anti-Terrorism Act have expired. And I suggested that you might want to take a look at that and adjust those severe limitations.

Mr. SHAYS. Mr. McGuigan, do you agree with that? Do you agree with that recommendation?

Mr. MCGUIGAN. No response.

Mr. SHAYS. Your mind is somewhere else here. Mr. Garo.

Mr. GARO. I do not have enough information about that, Congressman, so I really cannot answer that.

Mr. SHAYS. OK. Mr. Lawrence.

Mr. LAWRENCE. I really do not have an opinion on that, Congressman.

Mr. SHAYS. Pardon me?

Mr. LAWRENCE. I do not have an opinion on that, Congressman.

Mr. SHAYS. OK. Create an independent innocence review commission?

Mr. GARO. I think that is an interesting proposal. And the reason for that is, I agree with Mr. McGuigan, who is going to prosecute the prosecutors if they should be subjected to criminal prosecution?

Mr. BURTON. OK. But I think what we will do is if there is a commission, and we will be looking at that, if there is a commission appointed, one of the things we will ask them to make a possible recommendation on is how you prosecute prosecutors who are corrupt.

And the last question?

Mr. SHAYS. Yes. Eliminate the absolute prosecutorial immunity, is that what you are suggesting, Mr. Duke?

Mr. DUKE. Yes. That is the civil immunity for tort actions by victims of prosecutors. It is now absolute and I suggest that it be changed to a qualified immunity.

Mr. SHAYS. Mr. Garo.

Mr. GARO. I think the Salvati case speaks reams of why that should happen.

Mr. SHAYS. Mr. Lawrence.

Mr. LAWRENCE. I could support a movement to a qualified immunity.

Mr. SHAYS. And then just this last question. Is there any one issue that you would recommend on top of this list? Mr. Lawrence.

Mr. LAWRENCE. I would not support an immediate change in the immunity of the prosecutor—as a former prosecutor, I am concerned; I think it really has to be thought through. There would be a spate of new suits against prosecutors which we are not going to be able to dispose on motion and which are going to tie up huge amounts of time.

Mr. BURTON. That is why we said that what we are thinking about is possibly having some kind of a commission look into all

of this and make a recommendation. I am sure that would be one of the things they would discuss.

Anything else, Mr. Shays?

Mr. SHAYS. No. I just wanted to make sure that there is not one key issue that you would add to this list. Mr. Lawrence.

Mr. LAWRENCE. No, I do not think so, Congressman.

Mr. SHAYS. Mr. Garo.

Mr. GARO. No.

Mr. SHAYS. Mr. McGuigan.

Mr. MCGUIGAN. No.

Mr. SHAYS. Mr. Duke. Thank you all very much. I thank the tolerance of the committee.

Mr. BURTON. Thank you, Mr. Shays. You have been very patient, fellows, and I want to tell you you have really helped us a great deal. Hopefully, we will get this thing resolved and things will be better.

Do you need somebody to get you to the airport? Do you have a way out there?

Mr. MCGUIGAN. I will get a cab.

Mr. BURTON. OK. You sure you are going to be all right?

Mr. MCGUIGAN. I will be all right. Thank you.

Mr. BURTON. All right. Thank you all very much.

Did you have any more questions?

Mr. DELAHUNT. Yes, but I can just make it a conversation. There is no need——

Mr. BURTON. Well, why don't we excuse Mr. McGuigan.

Mr. DELAHUNT. Yes, whoever has to go. Mr. McGuigan, good luck and I hope to see you in Boston.

Mr. MCGUIGAN. Thank you, Congressman. Nice seeing you. I will see you in Boston.

Mr. DELAHUNT. Good to see you, Austin.

Mr. BURTON. Do you have some more questions real quickly?

Mr. DELAHUNT. Yes. I think it was Mr. Duke who raised I think, a problem that I do not know how to address. And that is, when an informant is developed, what is an appropriate bargain, if you will?

We need, we, meaning the Government, the prosecutor, need on occasion informant information and sometimes informant testimony. But, for example, in the case of Salvati, with Barboza as a witness, this is the bargain, he puts four innocent people in jail because of perjured testimony. His second case is a case against an alleged ring leader or head of organized crime in Boston by the name of Angiulo. He loses that case with his testimony. In the third case three individuals are convicted and, as the chairman indicated, one being the head of organized crime in New England area. He gets 2½ years. Then he is relocated. Then the Federal Government intervenes to secure a parole in a non-Federal case, a State prosecution. It is as if there is a continuing obligation.

In the case that I referenced earlier in my own experience, here I am a State prosecutor, I am investigating a murder case, and the information that would have been critical to solving that particular homicide was not disclosed to me because the FBI informant was being protected because he was providing information to the FBI on a ring that was receiving stolen property.

There has to be some sort of balance, some sort of consultation with law enforcement, not just the district attorney's office necessarily, but with an agency, one that probably already exists, about whether the informant should receive what kind of a benefit. How do you go about the measurement of an appropriate benefit?

You know, I always remember a major in the State Police telling me that if all of the informants in Massachusetts, informants of Federal, State, and local agencies, were arrested, we would see a decline in the crime rate of approximately 90 percent if we just went out and arrested our own informants. I am beginning to believe that was understated.

But there has to be some, and I would ask for you to reflect on, what is the mechanism to determine whether it is an appropriate benefit to the people, whether it be the people of a State, or the people of the United States, in terms of the arrangements with an informant. I believe, and I would be interested again in any observations or comments that you have, we, and I mean all of law enforcement, tend to rely too heavily on informants. They are not, in my judgment, as necessary to the successful investigation and prosecution of those who would commit crimes against society as we have concluded.

I think that could be a premise that has to be examined. We can use immunity. We can use other investigative techniques. When we sit down with these informants we can say, listen, you are going to go to jail for 10 years rather than 15 years. Not that we are going to put you out in Santa Rosa, not inform the community there that you have killed 20-some-odd people, and teach you how to be a cook.

What is the mechanism of how we achieve an appropriate, ethical bargain when we do rely on the informants? Do any of you have any ideas? And if you do not, I would ask that you reflect on it.

Mr. GARO. Congressman, I am going to say something that I do not think yet has been stated in all of our hearings and in all our testimony and everything that has gone on for the past year in the Salvati case and in the Deegan murder case. It is my opinion from all of the evidence that I know, and I know a lot more than has been brought out here, that Joe Barboza was extorting the FBI on a regular basis. You heard Mr. McGuigan say that once that you have committed an illegality, you have got them for life. Joe Barboza was cunning enough to know that. And in my opinion, he had them wrapped around his little finger. He got what he wanted because they did not want him to recant his testimony.

Second of all, is that I think that what the Deegan murder case and your entire investigation that you worked so hard and diligently on for over a year shows the following: That there are no shortcuts to the truth. I believe that you will find out if you were to investigate, like I have, that the FBI's handling of investigations is to go get an informant or a rat, do not go and have to do the laborious investigations that your office had to conduct, that Mr. LaTourette's office had to conduct, and what Mr. McGuigan's office had to conduct. Because if we have informants, we cut down the time.

Third, that the maximum sentences, minimum/maximum sentences that have been given, let's say, for drug offenses, that has

created a whole new world of rats and informants. And in my opinion, it does the opposite of what it is supposed to do. In other words, it makes people say I will say anything you want so that I do not get a maximum/minimum penalty. And to try to get the punishment to say that we are going to keep increasing the punishment, all it is going to do, and I agree with you, is it is just going to proliferate the fact of informants getting more and more deals.

And finally, I do not care what anybody says, when you make a deal with the devil, an informant mostly is, most of the time they are devils. When you make that deal, it is etched in stone. So that, you have a break on this one because you are informing. If you break the law, you are going down. No second chances. No protecting them from murders. No protecting them from life imprisonments. You are going down. If they enforce that type, Mr. Congressman, I think that we will have a better system of enforcing the truth from informants.

Mr. DELAHUNT. Professor Duke.

Mr. DUKE. Yes. I think, ironically, one of the problems of our use of informants is that informants have more to offer in the bargain if they want to help convict innocent people. Because if you have got a case against somebody, you do not need the informant. If you do not have a case, you need the informant. That is an inherent problem in the use of informants.

I think we should probably consider making the reward to the informant proportionate to his own criminality. I said earlier today I was not sure that I would want to prohibit absolutely deals with Barbozas and Gravanos. But I am inclined to think that probably I would. If you let somebody go who has committed multiple dozens of murders, what kind of a message are you sending to criminals? What you are saying to them is it does not matter what crime you commit, the worst possible crime imaginable, if we catch you, all you have to do is flip and give us valuable testimony and you will get away with your crime. That is the hole we have dug for ourselves.

I think if we had a corroboration requirement, one that had real meat to it, real heft to it, we would make it less easy for informants to fabricate cases in order to cut a favorable deal because their testimony would not be that worthwhile.

But I agree with you, it is an enormously difficult problem. I do not know of a more difficult problem in the criminal justice system.

Mr. DELAHUNT. Mr. Lawrence.

Mr. LAWRENCE. Congressman, I think I would just add a small cautionary note on this. I think when we talk about informants that the watchword ought to be vigilance but not over-kill. There is a proper use for informants in certain kinds of cases. There are certain cases that arguably could not be made without informants. So your suggestion that it be reconsidered is certainly I think a productive idea. And the suggestions that Professor Duke and Mr. Garo have made with respect to a corroboration rule I think I would share, and certainly that there ought to be no future-looking immunity. You know, Steven Flemmi had this idea of a free pass on the crime train. Immunity with respect to past deals is one thing; forward looking is certainly outrageous.

That said, within the context of informants and plea bargains as well, vigilance but not over-kill.

Mr. DELAHUNT. Can I have another question, Mr. Chairman?

Mr. BURTON. Certainly.

Mr. DELAHUNT. I do not know if you have had a chance to review the guidelines that were promulgated by the Department of Justice in the initial aftermath of the Boston-Flemmi-Bulger situation. And this goes to the issue of mechanisms to ensure compliance, enforcement, if you will. There is a lot of good concepts in terms of what ought to happen and how the issues that we have been discussing now for a year ought to be addressed. But nowhere in those guidelines is there a mechanism to ensure compliance by prosecutors or by FBI or Federal agents. None whatsoever.

I dare say that if we went back and examined the policies that were in effect at the time, whether they were Justice Department or FBI policies, they were simply ignored and there was no compliance whatsoever and no consequences if you ignored them.

Now the Office of Professional Responsibility is talked about in the course of your testimony. Myself and the former Chair of the Judiciary Committee, Henry Hyde, requested and the GAO study, I think that you referred to, Professor Duke, was the end product. You know, it gets so confusing even for those of us who are experienced in the justice system as to whether there is an Office of Professional Responsibility for the FBI, is there an Office of Professional Responsibility for the DEA, is there an Inspector General for the Department of Justice. To understand the system you need a degree in engineering from MIT. It just gets so convoluted.

To be perfectly honest with you, even though there has been some efforts made in terms of enhancing the authority and encouraging the Office of Professional Responsibility to monitor conduct and to enforce the standards and practices and polices of all of the Justice agencies, I do not think they even come close. It appears to me it is a recipe for disaster if we believe the answer is doing something with the Office of Professional Responsibility.

It is my own sense, and I am just giving you my opinions without a lot of reflection, but the problem is so profound that we need radical surgery here. We have to come up with a new mechanism. I do not know what it is. Your suggestion, Professor Duke, about an Office of Independent Prosecutor, even though it makes me a little nervous, but if it was only within the agency itself and maybe if it reported only to the Attorney General. I do not know the answer. But if you have any suggestions, I would like to hear them. And, again, I ask for your reflection and consideration. You can communicate with the committee if you have any specific ideas.

Mr. DUKE. Well, I just agree entirely with your perception of the role of the Office of Professional Responsibility. It seems to me, at least in my experience with them, that their function is to paper over and insulate further these agencies from criticism. And that is all they do as far as I can tell. They create the appearance of independent review when, in fact, it is anything but independent, and in most cases it is not even review.

Mr. BURTON. Any other comments, gentlemen?

I think that is one of the things that you and I and other members ought to take a look at and try to come up with some, maybe

with some input from these gentlemen and others, come up with some kind of a recommendation that we can turn into legislation. But I am looking forward to working with you because you know what the heck is going on.

Mr. DELAHUNT. Yes, sir.

Mr. BURTON. Mr. Shays, anything else?

Mr. SHAYS. Nothing further.

Mr. BURTON. Gentlemen, thank you very much for your patience. We appreciate your being here.

We stand adjourned.

[Whereupon, at 2:10 p.m., the committee was adjourned, to reconvene at the call of the Chair.]

[The prepared statement of Hon. Wm. Lacy Clay and additional information submitted for the hearing record follows:]

Statement of the Honorable William Lacy Clay
Before the
Government Reform Committee
February 27, 2002

"Justice Department Misconduct in Boston: Are Legislative Solutions Required?"

Mr. Chairman, I appreciate the opportunity to address this committee regarding my concerns of possible legislative remedies to the serious problem of misconduct not only in the Boston office of the FBI but throughout the Justice Department.

During this series of hearings this Committee has:

- ✓ Encountered and confronted the Executive Branch's interference of Congressional oversight authority,
- ✓ Experienced the Justice Department's refusal to provide requested documentation regarding important information relating to charges of corruption in the Boston office of the FBI,
- ✓ Concluded that after a two-year investigation federal agents and prosecutors "lied, hid evidence, distorted facts, and engaged in cover-ups,

- ✓ Listened to horrific stories of sanctioned murder,
- ✓ Had to reflect on the miscarriage of justice regarding the incarceration of innocent individuals.

For these reasons I support a review of existing law, and would call for the appointment of a special counsel to investigate wrongdoing as it relates to violations of prosecutorial misconduct.

The American people deserve our law enforcement agencies to be trustworthy and accountable. We have a charge today to give real meaning to the Brady provision that highlights the obstruction of justice statute.

Finally, Mr. Chairman there needs to be a removal / suspension of the five-year provision of the statute of limitations clause against federal agents, and prosecutors engaged in misconduct from criminal-liability regarding a non-capital criminal offense.

Mr. Chairman, I ask unanimous consent to place my statement into the record.

OPTIONAL FORM NO. 10
MAY 1962 EDITION
GSA GEN. REG. NO. 27
5010-104

UNITED STATES GOVERNMENT

Memorandum

Tolson
DeLoach
Mohr
Bishop
Casper
Callahan
Conrad
Felt
Gale
Rosen
Sullivan
Tavel
Trotter
Tele. Room
Holmes
Gandy

TO : Mr. DeLoach

DATE: November 15, 1968

FROM : J. H. Gale

SUBJECT: DEPARTMENT OF JUSTICE TASK FORCE CONCEPT ON ORGANIZED CRIME

CRIMINAL INTELLIGENCE PROGRAM - GENERAL

SYNOPSIS: This memorandum is written to set forth the FBI's views with reference to the Department of Justice "Task Force" (also called "Strike Force" concept on organized crime. This involves formation of groups consisting of Department attorneys and investigators from different Federal agencies concentrating combined prosecutive and investigative functions in selected areas.

The basic objectionable aspects of the Task Force concept consist the following: (1) Combining of investigative and prosecutive functions to the detraction of desirable impartiality; (2) loss of economy and efficiency by supe imposing a new group in areas where regular prosecutive and investigative agencies exist; (3) absence of specific responsibility because of diverse organi zations and assignments of personnel; (4) added peril to personnel in dangerou situations encountered; (5) difficulty in maintaining security of confidential informants. Another principal objection 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.

Proponents of Task Force operation stress ability to concentrate o an objective without diversion caused by multiplicity of investigative matters. Regularly constituted investigative agencies, however, can concentrate and specialize its personnel, and United States Attorneys' offices can be strengthe by changes and additions of competent attorneys where needed. Current accom plishments of existing Department of Justice Task Forces are dwarfed by accomplishments of the FBI in areas where prosecutions are handled by a regular staff of United States Attorneys and initiated by the FBI.

ACTION: For information, as an outline of the FBI views regarding the Task Force, or Strike Force, concept.

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1 - Mr. DeLoach
1 - Mr. Bishop
1 - Mr. Gale
1 - Mr. Staffeld
1 - Mr. Green

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DETAILS - PAGE 2

Memorandum to Mr. DeLoach
Re: Department of Justice
Task Force Concept on
Organized Crime

DETAILS

Department of Justice Task Force

The Task Force idea began with a visit to Bureau officials on October 27, 1966, by representatives of the Department's Criminal Division. They announced that they were suggesting a group be formed in the Department of Justice consisting of attorneys and representatives from the Treasury Department, Labor Department, Bureau of Narcotics, the Internal Revenue Service, and the FBI who could sit down and review in the Department of Justice all available information gathered by the various agencies concerning the activities and criminal personalities involved in organized crime in the Buffalo, New York, area. Investigations would then be conducted by the various personnel in the Buffalo area. They pointed out that the FBI reduces its investigations to reports, which is not the case with some of the other agencies, but that these other agencies have a great wealth of information which has never been made available because it had not been reported.

The Director said that he would never agree to this and that the Department should take steps to correct the procedures of the other agencies and not muddy the procedures of the FBI. The recommendation that we not participate in the "Task Force" was approved by the Director, and the Department was notified of the Bureau's decision on November 7, 1966. It was stated and reiterated to the Department that the FBI would continue to vigorously conduct investigations in organized crime cases and continue to submit to the Department our detailed reports of the results of these investigations. They were also told that the FBI desired to have reported to it any alleged violations of law within its jurisdiction which might be discovered by the "Task Force," and such alleged violations would be promptly, completely, and vigorously investigated. On later contacts with the Special Agent in Charge in Buffalo, members of the "Task Force" were similarly advised of the Bureau's desires in this regard. Liaison has been maintained with the "Task Force" and the United States Attorney's office continuously by the Buffalo FBI Office.

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On their contact with Bureau officials, Department representatives said that the Buffalo, New York, area had been selected for the pilot operations of the Task Force idea. They indicated that Buffalo had a very active La Cosa Nostra family which had been determined by the Department based on examination of regularly submitted FBI intelligence reports on organized crime by its investigations over a period of several years. It was formed and began operations in the Buffalo area in the beginning of 1967. Additional Task Forces have been formed and are presently in existence. They are at Detroit, Philadelphia, and the Eastern District of New York (Brooklyn). The Buffalo Task Force was disbanding its personnel and operation during October, 1968. Assigned to the Department of Justice "Task Force" in the Buffalo area were the following:

Five Department attorneys, headquartered at Washington, D. C.

An Alcohol and Tobacco Tax Division investigator headquartered at Washington, D. C.

Two Internal Revenue Service agents, one headquartered at Los Angeles, California, and the other at Pittsburgh, Pennsylvania.

One Immigration and Naturalization Service investigator headquartered at Washington, D. C.

One U. S. Customs Service investigator headquartered at Washington, D. C.

One Federal Bureau of Narcotics investigator headquartered at Baltimore, Maryland.

Claimed Accomplishments of "Task Force" in Buffalo area.

In a speech by the Attorney General and in a press article inspired by the Department, it was claimed that the "Task Force" produced indictments of 31 persons in the Buffalo area including suspected members of La Cosa Nostra.

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We do not have specific knowledge of the indictments mentioned. However, undoubtedly the statements include indictments charging Anti-Racketeering - Conspiracy under the provisions of the Hobbs Act and another one charging conspiracy to rob a bank in Buffalo. None of the criminal acts forming the basis for these indictments were ever actually perpetrated. The indictments in the Hobbs Act - Conspiracy concerned two local robberies which were allegedly planned for Los Angeles, California. Included in the indictment was a count charging conspiracy to violate the Interstate Transportation of Stolen Property statute. This Task Force case involved Fred G. Randaccio, Pasquale A. Natarelli, and three other associates.

Randaccio and Natarelli were important figures in the organized crime picture in Buffalo--both being members of the Steve Magaddino family of La Cosa Nostra in that area and Randaccio holding the high-ranking position of underboss to Magaddino. In United States District Court in Buffalo, all defendants were convicted on November 21, 1967. Randaccio, Natarelli, and defendant Stephen A. Cino were each sentenced to 20 years in prison. The other two defendants, Charles Caci and Louis Sorgi, each received sentences of 10 years. These convictions have been affirmed by the United States Court of Appeals, Second Circuit, and petition for certiorari has been filed with the United States Supreme Court.

In the indictment charging conspiracy to rob a bank in Buffalo, four individuals were charged, but only one, Salvatore Pieri, could be considered as an organized crime figure in the area. Pieri is an important La Cosa Nostra member in Buffalo. At the conclusion of a trial of the four in United States District Court in Buffalo, Pieri was acquitted, and the jury disagreed on the other three who were convicted in a subsequent trial.

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As a basis for comparison, examples of prosecutive achievement against organized crime are those involved in FBI investigations in Boston and the Southern District of New York in New York City. In Boston in a case investigated by our Boston office and prosecuted by the U. S. Attorney, Raymond L. S. Patriarca, "boss" of the New England family of La Cosa Nostra and one of the most important organized crime figures in the United States, together with two of his high-ranking associates, Henry Tameleo and Ronald Cassesso, they were convicted in U. S. District Court on June 20, 1967, on charges of Interstate Transportation in Aid of Racketeering - Gambling, and each was sentenced to five years imprisonment and fined $10,000.

Also, as 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 Grieco were all sentenced to death while two confederates were given life sentences.

Also based on FBI investigation, Raymond Patriarca has been indicted by the State of Rhode Island for the 1965 conspiracy to murder Willie Marfeo. This charge is based on substance to the same set of facts involved in the ITAR - Gambling prosecution of Patriarca, Tameleo, and Cassessa.

The key factor in the foregoing prosecutive achievements in the New England area was the development as a cooperative witness of Joseph Baron, commonly known as Barboza, who was an important crime figure in his own right and performed as a hired killer for La Cosa Nostra leaders. Conceivably, a "Task Force" could have had the initial contact with Baron and developed some of the same prosecutive achievements. However, in such an event, it would have been the additional unnecessary expenditure of personnel and money in having this operation handled by a group superimposed on the regular prosecutive and investigative establishments in the area.

Similarly, in the Southern District of New York, the FBI developed an important witness against organized crime figures in the person of Herbert Itkin. This was a significant factor in the ensuing prosecution handled by the U. S. Attorney, Southern District of New York, which resulted in the conviction of important La Cosa Nostra figures Antonio Corallo, James L. Marcus, former Commissioner of Water, Gas, and Electricity for the City of New York, and three other defendants. These convictions which occurred on June 19, 1968, involved violations of the Interstate Transportation in Aid of Racketeering - Bribery statute. Additional prosecutions are expected as a result of information furnished by Itkin. Conceivably also, a "Task Force" could have handled this or a similar case, but it would have been a superimposed superflous group considering that the regular investigative and prosecutive establishments were in existence ready, willing, and able to perform their functions.

BASIC OBJECTIONAL ASPECTS OF "TASK FORCE" CONCEPT

Combining of Investigative and Prosecutive Functions

Over the years, the FBI has adhered to the policy of a separation of the investigative and prosecutive functions pertaining to alleged violations of the laws of the United States, which are the responsibility of the FBI to investigate. This policy and practice of separating the two functions provides an investigative, fact-finding agency of trained career personnel. Because of the career status of the investigative personnel, the person charged with developing the true facts is entirely disinterested since he has nothing to gain personally through a conviction of a defendant. On the other hand, prosecutors in some instances are political appointees who have further political ambitions and who are often subject to community pressures.

As an added protection, even though the investigator has reason to be disinterested, he is not in a position to decide whether or not a defendant is to be prosecuted; and there exists the additional safeguard of placing the decision to prosecute in another person who will make his decision based on a completed investigation.

Loss of Economy and Efficiency

By having investigative functions solely in the province of a regularly established investigative agency with a permanent office in the area, we have the utmost economy of effort and resulting economy of money expenditures. The office in the area has personnel with geographical familiarity, necessary equipment, established sources of information, channels of communication, confidential informants, and all other facilities available for economical operation.

In addition, each field office is part of a nationwide organization with field offices covering all areas. The investigative personnel have a common training, reporting system, and jurisdiction which enables it to request investigation in other parts of the country which can be handled immediately and most economically. By this coordination of a nationwide organization of field offices, there are no unnecessary travel costs and incidental costs, such as per diem, to the investigator.

An example of the Department of Justice "Task Force" at Buffalo, New York, and the personnel assigned to it shows expense to the Government which could be avoided by having the investigation conducted by investigative agencies regularly assigned in that area, and prosecution handled by the personnel of the United States Attorney's office there. The initial personnel assigned to the Buffalo "Task Force" included five Department of Justice attorneys from Washington, D. C., four investigators from various Federal investigative agencies from Washington, D. C one Federal investigator from Baltimore, Maryland, one Federal investigator from Pittsburgh, Pennsylvania, and one Federal investigator from

Los Angeles, California. The travel and per diem expense incurred by these 12 members of the "Task Force" could have been avoided by having the regularly established investigative personnel in the area conduct those investigations of alleged violations coming within their respective jurisdictions, and the necessary legal problem and prosecutive efforts could have been handled by the office of the United States Attorney. In the event any supervisory advice was needed by the United States Attorney or by any of the investigative agencies involved at the headquarters level, this could have been obtained by written correspondence or by telephone, where necessary.

Absence of Specific Responsibility

The FBI has always held the position that jurisdiction should be jealously guarded. This attitude occasionally brings forth critical comments from the uniformed. However, it is believed this attitude is necessary in order that those agencies charged by law with specific areas of responsibility should not seek to avoid them and should always be held strictly accountable for those shortcomings in discharging its responsibilities. On the other hand, the public and the Congress should be in the position to determine whether an agency is efficiently discharging its responsibilities. There is also an added protection to the citizen in having jurisdiction specifically fixed so that there will be no "crusading fishing expeditions."

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Added Peril to Personnel
in Dangerous Situations

In "Task Force" type operations, with investigators from different agencies who have been given different types of training and subjected to different administrative disciplines, there always exists the problem of cohesive, unified efforts involving dangerous situations, such as raids and arrests. There is obviously less danger to participating personnel when they all belong to the same organization. Although nothing untoward happened in the arrests in June, 1967, of five defendants in a case investigated by the Buffalo "Task Force," it is noted that participating were representatives from the Treasury Department investigative agencies, local and state police, and members of the United States Marshal's forces. Some of the five defendants arrested had extensive criminal backgrounds. We were invited to participate in those arrests and declined, one of the reasons being the number of different law enforcement agencies participating.

Possible Exposure of Informants

One of the most necessary tools of a law enforcement agency is the use of confidential informants. The identity of a good confidential informant must always be protected because of danger to his safety, even his life, if members of the underworld learned of his cooperation with law enforcement. In addition to being a valuable adjunct to law enforcement, the confidential informant's cooperation is usually developed only by long, careful, and persistent contact. The traveling "Task Force" is not usually equipped to develop such informants. Investigators would obviously endanger their informants by making contact and reporting in a group made up of men from several different agencies. It would be difficult to conceal the informant's identity in the absence of established protective administrative practices in reporting and physical facilities designed for adequate security.

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SUMMARY

In conclusion, and as a result of our analysis of the Department's Task Force concept, it is firmly recommended that we continue our present policy that we not place our personnel at the disposal of any of the Department's Task Forces. We will, however, continue to provide them with copies of our investigative reports pertaining to organized crime matters and continue to maintain daily liaison with the Task Forces in order that we will be able to protect the interest of the FBI. Our reasons for recommending against participation in the Task Force concept are briefly restated as follows:

1. The Task Force concept combines the investigative and prosecutive functions eliminating the added protection of impartiality by having an investigative function separated from the prosecutive function.

2. The Task Force concept being a "superstructure" imposed on the regularly established investigative and prosecutive (U. S. Attorneys) agencies causes a loss of economy and efficiency in law enforcement operations.

3. The Task Force concept creating a group comprised of personnel from several different agencies establishes a situation in which specific responsibility cannot be assigned properly as to jurisdiction of violations of laws.

4. Detaching FBI personnel from their regular assignments to place them with a Task Force would lessen the FBI's ability to discharge its responsibilities in the broad areas of jurisdiction.

5. In the investigation of violations of law, there will exist many dangerous situations involving raids, arrests and other contacts with persons of criminal background. Having such situations handled by attorneys and officers of varying disciplines and training obviously adds to the dangers when compared with handling of the same situations by investigators of one organization.

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6. The FBI has clearly indicated to the Department of Justice that we will handle any investigation which the Department of Justice desires us to conduct which falls within our investigative jurisdiction. Our only reservation is that the supervision of these investigations will remain exclusively with the FBI and that we will direct the activities and the assignment of our personnel so that maximum utilization of available personnel can be achieved at all times. This is necessitated by our continuing and mounting investigative responsibilities which demand the most careful deployment of our personnel so that maximum, efficient utilization of our people can be had at all times.

7. One of the principal objections to a Task Force superimposed on the existing prosecutive machinery in the form of United States Attorneys' offices and the existing offices of the various Federal investigative agencies is the fact that the FBI's accomplishments would be submerged in the claiming of credit by the Task Force beyond its actual contribution.

The FBI's program embodies the separation of the investigative and prosecutive aspects of the drive against organized crime. Historically, we have found it to be true that greater efficiency results and responsibilities are clearly established when investigators investigate and prosecutors prosecute. Under this system, supervisory direction and assignment of personnel are left where they properly belong--in the hands of professionals charged with the responsibility of conducting extremely sensitive investigations in a most complex field of activity.