

FBI makes admission on Bulger Confirms 'Whitey' was an informant

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ABSTRACT (ABSTRACT)

Faced with an ultimatum from a US District judge -- the result of maneuvers by defense lawyers -- the FBI revealed its relationship with fugitive crime boss James J. "Whitey" Bulger rather than jeopardize its case against several suspected crime bosses.

Besides the admission that Bulger had acted as an informant for "a substantial" period of time, the court papers also reveal that Bulger's longtime partner, Stephen J. "The Rifleman" Flemmi, was working with the FBI as well and that the agency tried to enlist reputed Mafia boss Francis P. "Cadillac Frank" Salemme as an informant in 1969.

At issue is whether FBI agents misinformed judges when they asked permission to bug the suspects -- even though they already were using informants to build their cases. If Wolf finds the men were working with the FBI at the time, the intercepted conversations could be blocked as evidence. That could damage, if not destroy, the government's case and have a spillover effect with earlier cases.

FULL TEXT

Shelley Murphy of the Globe staff contributed to this report.

What has long been suspected is now official: Fugitive crime boss James J. "Whitey" Bulger was an informant for the FBI.

Faced with an ultimatum from a US District judge -- the result of maneuvers by defense lawyers -- the FBI revealed its relationship with Bulger rather than jeopardize its case against several suspected crime bosses.

The FBI acknowledged Bulger's role during a closed hearing Tuesday before US District Judge Mark L. Wolf. An order stemming from that hearing was made public yesterday.

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Bulger's suspected relationship with the FBI was first revealed in a Globe Spotlight report in 1988.

Yesterday's revelations, along with the possibility that four other reputed organized crime figures were also working with the FBI, could jeopardize -- and perhaps jettison -- the last major prosecution of local organized crime leaders. And they could call into question earlier prosecutions, including the celebrated mob convictions of the

1980s.

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"If the government did not have an absolute need for electronic surveillance . . . the most invasive government effort with respect to personal privacy, and if the court was misled, then all of those orders were improperly authorized and all of that evidence was unlawfully obtained," said defense attorney Elliot Weinstein, who represented Francesco Angiulo, convicted along with his brother, Gennaro, and others of running La Cosa Nostra in Boston.

The Angiulos were convicted in 1986 in a case based largely on similarly recorded evidence from the FBI. Bulger was one of the informants the FBI used to bug Angiulo's North End headquarters, sources say.

In the Salemme case, the intercepted conversations include the legendary bugging of a Mafia induction ceremony in Medford in October 1989 that brought down the hierarchy of the Patriarca crime family. And that same evidence, in part, buttresses the extortion and racketeering cases now pending against Bulger, Flemmi, Salemme, and two associates, James M. Martorano and Robert DeLuca, in early 1995.

Bulger has been a fugitive since his indictment in January 1995. Just last week the FBI announced a stepped-up effort to find him, including a \$250,000 reward and a wanted poster – amid speculation that the agency was not aggressively pursuing Bulger because he was once an informant.

Yesterday, the FBI declined to comment on items in the court documents, including a January 1995 assertion by the Boston FBI's chief division counsel that agents handling Flemmi "had at least tacitly authorized his participation in {La Cosa Nostra} policymaking, as well as illegal gambling."

If the trial goes forward without the bugging evidence, the defendants could argue – perhaps successfully, Wolf suggests – that Bulger and Flemmi were actually government agents, not members of the criminal enterprise the government must prove in order to convict them.

Salemme's lawyers, Anthony Cardinale of Boston and John W. Mitchell of New York, suggested yesterday they may make that argument.

"The government brought this case knowing that two defendants {Bulger and Flemmi} had cooperated with the government for something like 30 years and had served as government agents, yet represented this was a bona fide {racketeering} enterprise," Mitchell said.

"We didn't know until just recently that apparently some part of this enterprise was being orchestrated by the government," Mitchell said.

In the order, Wolf indicated that defense attorneys might also argue that Bulger and Flemmi's activities as informants amounted to entrapment.

Wolf pointed to the recent acquittal of seven reputed members of the Colombo crime family in New York after it

was revealed that Gregory Scarpa, who had participated in some crimes charged in the case, was an FBI informant for many years.

Quoting from an account of the verdict, Wolf wrote that jurors accepted the defense argument that Scarpa, while working for the FBI, had sparked a Colombo family war in the early 1990s, and the defendants acted in self-defense to avoid being killed by Scarpa.

While Bulger and Flemmi have been revealed as informants, the government's refusal to disclose whether four other men -- convicted drug trafficker and one-time fugitive Angelo "Sonny" Mercurio; Anthony "The Saint" St. Laurant, a reputed "made member" of the Patriarca crime family based in Rhode Island; the late Robert Donati; and Kenneth Guarino -- has set up a showdown between prosecutors and the court.

Wolf has given Acting Deputy Attorney General Seth Waxman until noon Thursday to disclose whether Mercurio, St. Laurant, Guarino, and Donati were FBI informants. Neither the Justice Department nor local prosecutors would comment yesterday.

Waxman is the senior Justice Department official who must approve requests to reveal the identities of informants. If he refuses to disclose whether the four men were acting as informants, Waxman must tell the court whether the department will agree to the exclusion of the wiretap evidence -- or have the case dismissed.

Wolf said the lawyers for the defendants have made "a substantial preliminary showing that the government may have deliberately violated the law" by not disclosing to judges that some of the people they wanted to bug were informants.

To get permission for electronic surveillance, Wolf wrote, government agents must make "a full and complete statement" detailing why conventional investigative techniques -- including use of informants -- "are unavailable or unlikely to succeed."

Specifically, Wolf has ordered hearings to consider throwing out evidence gained via electronic surveillance of Bulger, Flemmi, and associate George Kaufman, who is now dead, in 1984 and 1985; the FBI bugging of the Medford home used on Oct. 29, 1989, for the Mafia induction ceremony; and conversations federal agents intercepted at the Hilton Hotel in East Boston on Dec. 11, 1990.

It is "undisputed," court papers say, that Flemmi was cooperating with the FBI in 1984 and 1985 and that judges being asked permission for electronic surveillance of him and his associates were never told that.

Lawyers for the defendants contend that Mercurio began working as an FBI informant shortly after his bakery was raided in 1987 during an investigation into gambling and extortion. Mercurio attended the October 1989 Mafia induction ceremony -- for which a "roving" bug was authorized -- ferrying participants in his car.

Yet when he and other reputed mobsters were indicted the following month, Mercurio was not arrested. Lawyers for the defendants suggest that shows he was an informant being protected. Mercurio fled and remained a fugitive until he was convicted of drug trafficking in Georgia in 1995.

To bolster their suggestion that Guarino and St. Laurant were informants, defense lawyers point to comments by an FBI agent monitoring the electronic eavesdropping from an adjacent hotel room during the Hilton Hotel bugging. The listening device inadvertently picked up the agent's comments, in which he refers to both "Saint" and

"Kenny."

St. Laurant, the defense attorneys point out, also got a lenient sentence on a drug conviction, and gaming charges against him were dropped after his home was raided. Guarino, they say, received a light sentence on a Nevada conviction.

Donati, who was murdered in September 1991, is believed to have been killed after word got out that he was becoming a government witness.

DETAILS

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