

# The FBI on trial

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## ABSTRACT (ABSTRACT)

Federal Judge Mark L. Wolf is exceptionally qualified to decide whether FBI misuse of informants compromised the wiretap evidence used to convict several Mafia leaders. Whatever he decides, the allegations that the FBI gave favorable treatment to gangsters James "Whitey" Bulger and Stephen "The Rifleman" Flemmi have created a scandal that demands resolution by an unbiased investigation.

A Justice Department lawyer in the 1970s, Wolf helped devise guidelines on informants. As deputy US attorney from 1981 to 1984, he knows the intricacies of the relationship between US prosecutors and FBI agents. As a judge who presided over Mafia-related cases for several years, he is knowledgeable about details of how the FBI came to plant a wiretap that recorded a Mafia induction ceremony in Medford.

The 1989 wiretap provided compelling evidence that the participants were members of a criminal enterprise as defined by federal law. But this was a "roving bug," the most intrusive in the federal arsenal, usable only if there is no other way to obtain the evidence. One of the Mafiosi in the room was Angelo "Sonny" Mercurio, an FBI informant. Couldn't he have provided the evidence instead, and shouldn't prosecutors have told Judge David S. Nelson, who authorized the wiretap, that Mercurio was going to be present?

## FULL TEXT

Federal Judge Mark L. Wolf is exceptionally qualified to decide whether FBI misuse of informants compromised the wiretap evidence used to convict several Mafia leaders. Whatever he decides, the allegations that the FBI gave favorable treatment to gangsters James "Whitey" Bulger and Stephen "The Rifleman" Flemmi have created a scandal that demands resolution by an unbiased investigation.

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Defense lawyers in the case argue that the prosecutors should have and that their failure to do so means the wiretap evidence should be thrown out. Diane M. Kottmyer, the prosecutor at the time, made a strong case before Judge Wolf in 1991 that the roving tap was needed because she was uncertain whether the gangsters would

suddenly change the location of the meeting. And Nelson apparently was told there was an informant involved in the case.

Judge Wolf will have to decide these matters: Was Nelson adequately informed according to the standards of federal law, and even if he wasn't, was Kottmyer's rationale enough to justify the roving bug?

This case would be far simpler if it involved only the informant Mercurio, but he was recruited by the FBI after agents had planted a separate bug at his shop at the Prudential Center. They did so after receiving a tip from Whitey Bulger, an informant himself.

Flemmi says he and Bulger had been confiding in the FBI since the late 1960s. They were among the most notorious and successful gangsters in the city, surviving sweeping prosecutions of first the Winter Hill gang in Somerville and then the Angiulo family in the North End.

State Police investigators have long suspected that Bulger's longevity is at least partly explained by his close relationship with the FBI, notably agent John Connolly, a South Boston native like Bulger. Agents of the Drug Enforcement Administration have also been baffled by Bulger's seeming immunity from prosecution. These misgivings have poisoned the relationships between these agencies and the FBI.

In 1995 – long after Connolly had retired – federal prosecutors finally indicted Bulger on racketeering and Flemmi on loan-sharking and conspiracy charges. Bulger escaped, and Flemmi was arrested, he contends, only because he did not heed a warning to get out of town. Flemmi, in an affidavit intended to cast doubt on his own indictment, also said the FBI gave him and Bulger permission to commit any crime short of murder.

The FBI's relationship with Bulger reeks of an arrangement that was, at the least, out of control and, at worst, corrupt. The FBI's Office of Professional Responsibility is investigating, but in the past the FBI has been reluctant to peer too deeply into its own agents' dealings with informants. Attorney General Janet Reno should designate a lawyer with no ties to the bureau to investigate the case.

Informants are necessary tools of law enforcement, but the very secrecy with which they are handled can hide a multitude of legal shortcuts and wrongdoing. Judge Wolf has performed a public service by forcing the Justice Department to reveal the roles of Bulger, Flemmi, and Mercurio.

In large part because of federal prosecution, the Boston branch of the Mafia is far weaker than it was a decade ago. But new criminal elements are active in Boston. To fight them requires a high level of cooperation among disparate law enforcement agencies. An independent investigation of the Bulger affair would signal that the Justice Department is committed to making the FBI an integral part of this effort.

## DETAILS

**Subject:** Editorials; Informers; Organized crime

**People:** Bulger, James J Flemmi, Stephen Wolf, Mark L

**Company / organization:** Name: Federal Bureau of Investigation--FBI; NAICS: 922120

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