

Informant issue remains unsettled

By Patricia Nealon
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When the Justice Department last week finally relented and revealed that a dead man with Mob ties was never an FBI informant, most thought that the issue of Robert Donati was settled.

Not so, apparently. Lawyers representing five alleged organized crime figures argued yesterday that Donati was actually an informant for the State Police, not the FBI — a question never asked of federal officials.

Anthony M. Cardinale, lawyer for indicted New England Mafia boss Francis P. "Cadillac Frank" Salemme and his associate and codefendant Robert DeLuca, said the defense had just learned that Donati may have been the unnamed informant who wore a hidden device to record conversations of convicted Mafia captain Vincent Ferrara.

The continuing dispute over Donati's status as an informant came during the often-heated hearing in US District Court in Boston. Federal prosecutors accused defense lawyers of "fishing" for informants, while Judge Mark L. Wolf soft-pedaled the notion that these hearings would end with crucial wiretap evidence being excluded — or the case being thrown out entirely.

Though defense lawyers have successfully argued for a pretrial hearing to determine if wiretaps were legally obtained, "it does not necessarily follow that evidence will be suppressed or that the case will be dismissed," said Wolf, apparently sensitive to speculation that decades of organized crime prosecutions are hanging by a thread.

Referring to the jailed defendants, he added, "if anyone plans to be home for Christmas with friends, we're not close to any of that." The hearings are not expected to begin until August.

Meanwhile, prosecutors and defense lawyers continue to spar over tactics and legal issues, which Wolf conceded are "subtle and nuanced."

Yesterday, defense lawyers reiterated a request for the complete informant files on fugitive gangster James J. "Whitey" Bulger, his Winter Hill Gang partner Stephen J. "The Rifleman" Flemmi and mobster Angelo "Sonny" Mercurio, all of

whom have recently been revealed as longtime FBI informants.

The defense cited the recent case of Gregory Scarpa Sr., an FBI informant and Gambino crime family member in New York. In that case, the defense received the FBI's entire file on Scarpa, something prosecutors here are refusing to do.

The central issue before Wolf is whether prosecutors and federal agents were required to tell judges who authorized a series of wiretaps — including the 1989 bugging of a Mafia induction ceremony — that the FBI was working with informants. The defense says they were, arguing that a judge would not have approved wide-ranging electronic surveillance such as a "roving bug" if other means, such as using informants, were available.

But the government, in a court filing last Friday signed by US Attorney Donald K. Stern, insisted that reading of the law is simply wrong.

"The suggestion loudly made by the defense that it is somehow illegal for the government to obtain an electronic surveillance order if it also has an informant, is, of course, not the law," the filing said.

Under federal law, the government contends, electronic surveillance is only allowed to obtain evidence that can be used in court. And since confidential informants by definition refuse to testify in court, "electronic surveillance is often necessary precisely because the government's confidential informants are unwilling to testify," court papers say.

In court yesterday, Assistant US Attorney Fred M. Wyshak Jr. accused Cardinale of engaging in a "fishing expedition" and "using the court as a vehicle to flesh out informants."

But outside the courtroom, defense attorney Cardinale said were it not for defense digging and court intervention, Bulger, Flemmi and Mercurio — the informant on the induction ceremony bugging — would never have been unmasked.

"Very grudgingly did we get this information," said Cardinale. "Frankly, had we not uncovered this stuff to begin with we wouldn't know about Bulger, Flemmi and Mercurio. We're coming up on Donati. Three out of four so far isn't bad ... it's great fishing."