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THE FBI'S CONTROVERSIAL HANDLING OF ORGANIZED CRIME INVESTIGATIONS IN
BOSTON: THE CASE OF JOSEPH SALVATI

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HEARING

before the

COMMITTEE ON
GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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THE FBI'S CONTROVERSIAL HANDLING OF ORGANIZED CRIME INVESTIGATIONS IN
BOSTON: THE CASE OF JOSEPH SALVATI

THURSDAY, MAY 3, 2001

House of Representatives,
Committee on Government Reform,
Washington, DC.

The committee met, pursuant to notice, at 10:25 a.m., in room 2154, Rayburn House Office Building, Hon. Dan Burton (chairman of the committee) presiding.

Present: Representatives Burton, Gilman, Morella, Shays, Horn, LaTourette, Barr, Jo Ann Davis of Virginia, Putnam, Otter, Kanjorski, Norton, Cummings, Kucinich, and Tierney.

Also present: Representatives Delahunt, Frank, and Meehan.

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; Pablo Carrillo, investigative counsel; James J. Schumann, counsel; Sarah Anderson, staff assistant; Robert A. Briggs, chief clerk; Robin Butler, office manager; Michael Canty and Toni Lightle, legislative assistant; Josie Duckett, deputy communications director; John Sare, deputy chief clerk; Danleigh Halfast, assistant to chief counsel; Corrine Zaccagnini, systems administrator; Phil Schiliro, minority staff director; David Rapallo, minority counsel; Michael Yeager, minority senior oversight counsel; Ellen Rayner, minority chief clerk; Jean Gosa, minority assistant clerk; and Teresa Coufal, minority staff assistant.

Mr. Burton. Good morning. A quorum being present, the committee will come to order. I ask unanimous consent that all witnesses' and Members' statements be included in the record. Without objection so ordered. I ask unanimous consent that all articles, exhibits, and extraneous or tabular material referred to be included in the record. Without objection so ordered. I ask unanimous consent that a set of exhibits which have been prepared for today's hearing be inserted into the record and without objection, so ordered. I ask unanimous consent that Representatives Barney Frank, Bill Delahunt and Marty Meehan who are not members of the committee, be allowed to participate in today's hearing and without objection, so ordered.

I ask unanimous consent that questioning in this matter proceed under clause 2(j)(2) of House rule 11, and committee rule 14 in which the chairman and ranking minority member may allocate time to committee counsel as they deem appropriate for extended questioning, not to exceed 60 minutes equally divided between the majority and minority and without objection, so ordered.

Today's hearing is going to focus on an injustice done by

the FBI that went on for nearly 30 years. We're going to hear about a terrible wrong that was done to one man and his family. As terrible as this story is, it's only one small part of a much larger picture. I have always supported law enforcement. I remember I used to watch "I Led Three Lives" on television, and I used to watch the FBI programs and I thought that the FBI Director walked on water. And my great faith in Mr. Hoover has been shaken by what I have learned in just the last few weeks. Over the years, I have worked with Director Louie Freeh on a number of issues, and I think Louie Freeh has done a terrific job, and I'm sorry to see him leave this summer.

I think that, on the whole, the FBI has done great work protecting the people of this country. But we are a Nation of laws and not of men. In this country, no one is above the law. If a Federal law enforcement agency does something wrong, they have to be held accountable. That's why we held hearings on the Drug Enforcement Agency last December. I have a lot of respect for the men and women of the DEA. They have a tough job and they do it well. But there was a very important drug investigation going on in Houston, TX. It was shut down because of political pressure that was brought to bear. And then the head of the Houston office for the DEA came up here and misled the Congress about it. That cannot be tolerated. What the FBI did to Boston 30 years ago cannot be tolerated.

We will hear today from Joseph Salvati. Mr. Salvati spent 30 years in prison for a murder he didn't commit. 30 years. Think about that. That is 1971. Do you remember what you were doing in 1971? Think about it, what it would be like if you were in prison for 30 years. It was a death penalty crime. He went to prison in 1968. He had a wife and four children. His oldest child at the time was 14, his youngest was 6 and he wasn't released from prison until 1997, 30 years later.

The reason Joe Salvati went to prison was because an FBI informant lied about him which is unthinkable. But the reason he stayed in jail was because the FBI agents knew their informant lied and they covered it up, and that's much worse. Documents we've received show that this case was being followed at the highest levels of the FBI in Washington. J. Edgar Hoover was kept informed on a regular basis. It is hard to believe he didn't know about this terrible injustice. The informant who put Joe Salvati in prison was Joseph "the Animal" Barboza. He was a contract killer in Boston. He was also a prized FBI informant. He was considered so valuable that they created the Witness Protection Program to protect him.

Most of the evidence now indicates that Joseph Barboza and his associates planned and executed the murder. Barboza pointed the finger at Joe Salvati because Salvati owed him \$400. Because of \$400, Joe Salvati spent 30 years in prison. Joe Salvati and his wife Marie are going to testify today. And I want to express to both of you how deeply sorry we are for everything that has been taken away from you and that you have had to go through over these past 30 years, and I want to thank you for being here today. And I intend to participate in making sure that you are compensated for--money can't pay for what you went through--but you should be compensated for what you went through and the time you spent away from your family. We will try to make sure that happens.

Joseph Barboza was a criminal. You would expect him to lie, but the FBI is another story. They are supposed to stand for the truth. The FBI had a lot of evidence that Joe Salvati didn't commit that crime and they covered it up. Prior to the murder, the FBI was told by informants that Joseph Barboza and his friend, Vincent Flemmi, were planning to commit the murder of Teddy Deegan. Two days before Deegan was murdered, J. Edgar Hoover, the head of the FBI, got a memo about Vincent Flemmi:

One the FBI's own informants was going to kill Deegan.

The author was H. Paul Rico, who will testify later today. He was a member of the FBI at the time. After the murder, the FBI was told by informants that Barboza and Flemmi had committed the crime. J. Edgar Hoover was told that Barboza and Flemmi had committed the crime. FBI memos spell all of this out. The FBI was compelled to make these documents public just in the last few months. They had all this information but they let Joseph ``the Animal'' Barboza testify anyway and put Mr. Salvati away for life.

Originally it was the death penalty. But that wasn't the end of it. In the 1970's, Barboza tried to recant his testimony. The FBI pressured him not to do it. Mr. Barboza's lawyer was F. Lee Bailey, and Mr. Bailey is going to testify about what happened later today. Mr. Bailey told the Massachusetts attorney general's office that his clients had lied and the wrong man was in prison. He was ignored. Mr. Bailey asked Joe Barboza to take a lie detector test to make sure he was telling the truth this time. Barboza was in prison at the time on a separate offense. When the FBI got wind of this, they went to the prison and told Barboza not to take the polygraph and to fire his lawyer, Mr. Bailey, or he'd spend the rest of his life in jail.

So the FBI once again was trying to protect their tails and cover this thing up. I think that is just criminal. Not only did the FBI conceal the evidence that they had on Joe Salvati that Joe Salvati was innocent, they went out and actively suppressed other evidence. To say what they did was unseemly was an understatement. It was rotten to the core.

And this is just one small part of the story. Joe ``the Animal'' Barboza wasn't the only mob informant the FBI official cultivated in Boston. There was James Whitey Bulger, who was a killer. There was Steve ``the Rifleman'' Flemmi, and there were others.

While they worked with the FBI, they went on a crime spree that lasted for decades. There were dozens of murders. There were predatory sexual crimes. They committed all of these crimes with virtual impunity because they were under the protection of the FBI. When informants emerged that tied these men to crimes, they were tipped off by the FBI and the informants were murdered.

So the FBI were complicitous and involved in the murders of some of these people that were informants. It was apparently a very cozy relationship. We understand there were FBI agents that got cash, they got money from the mobsters. Then got cases of wine, tickets for girlfriends and other favors, and we'll get to those issues in later hearings.

Joseph Barboza committed a murder while he was in the Witness Protection Program. Paul Rico, who will testify today, actually flew out to California to help Barboza's defense, and so did a man who is now a Federal judge. I have issued subpoenas to two of the principal FBI agents who were involved with Joseph Barboza: Paul Rico and Dennis Condon. Mr. Condon is not here today. I understand he is in very poor health, but that does not excuse the things he is accused of doing and we have still have a lot of questions to ask him.

I can assure everyone that one way or another, we will be interviewing Mr. Condon. Mr. Rico is here. I understand that there is a possibility he may take the fifth amendment because he's under criminal investigation. I hope that will not be the case. We have a lot of questions, and I think that Joe Salvati and the American people deserve answers. Years ago FBI agents would heap scorn when organized crime figures took the fifth amendment. I hope Mr. Rico does the right thing today and testifies.

One thing that really troubles me about our third panel comes from the document we have just received. Paul Rico and Dennis Condon interviewed Joseph Barboza in 1967. That report is exhibit 24, which we will show later. Barboza told him he would never provide information that would allow James Vincent Flemmi to fry but that he will consider furnishing information on these murders. Mr. Rico and Condon had lots of evidence that Flemmi was in on the Deegan murder. They knew that Barboza would not incriminate Flemmi, yet they stood by while Barboza protected his partner and put Joe Salvati in a death penalty crime.

[Exhibit 24 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.091

[GRAPHIC] [TIFF OMITTED] T6507.092

Mr. Shays. I don't know how they can sleep at night when they do things like that. I think this whole episode is disgraceful. It was one of the greatest, if not the greatest failure in the history of Federal law enforcement.

If there is one institution that the American people need to have confidence in, it's the FBI. I think that 99 percent of the time the men and women of the FBI are honest and courageous, and I don't want to tar the entire organization with the misdeeds of a few. But if we're going to have confidence in our government, we cannot cover up corruption when we find it. It needs to have a full public airing, and that's what we're going to try to start to do today.

I want to thank all of our witnesses for being here, and I will now yield to my colleagues for opening statements. Do you have an opening statement, Mr. Tierney?

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

[GRAPHIC] [TIFF OMITTED] T6507.001

[GRAPHIC] [TIFF OMITTED] T6507.002

[GRAPHIC] [TIFF OMITTED] T6507.003

[GRAPHIC] [TIFF OMITTED] T6507.004

Mr. Tierney. Thank you, Mr. Chairman. I have some opening remarks. First of all, I think what happened to Mr. and Mrs. Salvati is just a disgrace. I look forward to hearing your comments today and know that this is hopefully just the beginning of what we're going to do with this. I think it is important to get your remarks on the record and to talk about some of the things we will discuss today. This is not in any sense of the way a partisan hearing, and that is a good thing for this hearing, but I hope we use this as a basis to go forward and talk about the FBI's practice of using confidential informants and what that means for the future.

I know that we've been asked for the present to not delve in that area too deeply because it would interfere supposedly with the Justice task force work that is going on. But I don't think we can allow that to go neglected, and I hope this sets just the foundation for inquiring as to what that practice is, what the FBI intends to do going forward, and whether or not they have a set of proper procedures so we do not see this case of disgrace happen again.

Mr. Garo, I just want to say I think you are a credit to the legal profession for what you did, and I thank you for that. I know that there are other lawyers, some who will join us today and others in the profession that do that. I think you

shine to the public on that and you let the public know there are good lawyers out there who do the right thing for people.

My remarks to the Salvatis are that it is shameful what you went through, I think, Mrs. Salvati, particularly of your strength and your support, and I am glad things are working for a change. I don't know how it is that society will make it up to either of you and your family for what went on. But I appreciate and thank you very much for participating in today's hearing, and hopefully some good will come of this in terms of going forward. Thank you.

Mr. Burton. Thank you, Mr. Tierney. I might point out Mr. Tierney made reference to it, but Mr. Garo worked pro bono for 25, 30 years trying to get Mr. Salvati exonerated, and that is really something.

Mr. Shays.

Mr. Shays. Thank you, Mr. Chairman. Thank you so much for holding these hearings. Under our Constitution, we are a Nation founded to secure the blessings of liberty. The power we have in government to take away a citizens liberty, strictly prescribed by the bill of rights and is vested only in those sworn to enforce and uphold the law. Yet before us today is Mr. Joseph Salvati, a citizen whose liberty was stolen from him for 30 years by his own government.

So profound an injustice is almost unimaginable. But it takes very little imagination to reconstruct the sordid saga of official malfeasance, obstruction, brutality and corruption that brings us here this morning. In this tragic tale, ends justified means, cascading down a legal and ethical spiral until both the ends and means became utterly unjust. Protecting criminals in the name of catching criminals, agents of the Federal Bureau of Investigation [FBI], became criminals, willing accomplices in the problem they have set out to solve, organized crime.

Thomas Jefferson said, the sword of law should never fall but on those whose guilt is so apparent as to be pronounced by their friends as well as foes. Only Joe Salvati's foes pronounced his alleged guilt for a crime sworn law enforcement officers from the Director of the FBI to the local police knew he did not commit.

Solely on the basis of false testimony from a known killer, Joseph ``the Animal'' Barboza, with conclusive exculpatory evidence suppressed and ignored, an innocent man faced the death penalty; the death penalty. Because he made the mistake of borrowing money from a thug, local, State and Federal law enforcement officers joined the thug in a criminal conspiracy to take Joseph Salvati's life. And they did, 30 years of it; 30 years. A generation.

His young wife, Marie Salvati, suddenly on her own, raised a family. She visited her husband every week. Their four children, then ages 4, 7, 9 and 11 grew up seeing their only father in prison. Birthdays, first communions, proms, graduations, weddings, the birth of grandchildren, priceless events in the life of a family, forever denied him because the FBI considered his freedom an acceptable cost of doing business with mobsters.

The Reverend Martin Luther King, Jr. observed that injustice anywhere is a threat to justice everywhere. Joseph Salvati is not here today because of a local ethnic turf battle between Boston's Irish and Italian gangs who corrupted a few rogue FBI agents. Joseph Salvati is here today after spending 30 years in prison because he is the victim of a corrupted State and Federal criminal justice system. The protection of confidential informants by law enforcement in what can amount to a nonjudicial street immunity and an official license to commit further crimes is a national practice and national

problem.

The Federal Witness Protection Program was created to shield the same man who falsely accused Joseph Salvati. The tentacles of Joseph ``the Animal'' Barboza, FBI's protected criminal, stretched well beyond Massachusetts, from Connecticut to California. New Federal guidelines on the use of informants might help prevent the abuses that put Joseph Salvati in prison. But they will not necessarily break the self-justifying protective culture of some law enforcement agency that allow this gross miscarriage of justice to occur and to persist for 30 years. Only an official apology from the FBI will do that; only compensation from the State of Massachusetts and the Federal Government will do that. Only bringing those responsible before the bar of justice they swore to defend, but betrayed will do what must be done to right this wrong.

Mr. and Mrs. Salvati, thank you for being here. As a fellow citizen of a land that holds liberty sacred, let me say that I am profoundly sorry for what has happened to you. We can never replace what has been taken from you, but we are grateful for your openness and your willingness to share what you have. Your story of faith, incredible faith, Marie, incredible faith, family, your story of faith, your story of family, your story of courage and perseverance is a gift to your Nation, and we cherish it.

Your testimony will help ensure no one else has to endure the outrageous indignities and injustices you, Mr. Salvati and your family, Marie, and your family have suffered.

Mr. Garo, let me say something to you. You are a hero. You are an absolute hero, and you share that with some in the press who wrote this story up for years and years and years. I have just wished we heard it sooner.

[The prepared statement of Hon. Christopher Shays follows:]

[GRAPHIC] [TIFF OMITTED] T6507.005

[GRAPHIC] [TIFF OMITTED] T6507.006

Mr. Burton. Thank you, Mr. Shays. With the approval of the committee, I would like to read one paragraph from the statement of FBI Director, Louie Freeh, we just received this this morning. It says,

The allegations that have been made concerning the circumstances of Mr. Salvati's conviction and 30-year incarceration speak directly to the need for integrity and commitment in the pursuit of justice under the rule of law. These allegations that the law enforcement personnel turned a blind, including the FBI, eye to its exculpatory information and allowed an innocent man serve 30 years of a life sentence are alarming and warrant thorough investigation.

Under our criminal justice system, no one should be convicted and sentenced contrary to information known to the Federal Government. As with the conviction earlier this week in the Birmingham civil rights bombing case, we cannot allow the egregious actions of 30 years ago to prevent us from doing now what is right and what must be done to ensure justice is ultimately served.

I would like to insert into the record the rest of his letter. With that we'll go to Mr. Kucinich and then to you, Mr. Delahunt.

[The information referred to follows:]

[GRAPHIC] [TIFF OMITTED] T6507.007

[GRAPHIC] [TIFF OMITTED] T6507.008

[GRAPHIC] [TIFF OMITTED] T6507.009

[GRAPHIC] [TIFF OMITTED] T6507.010

[GRAPHIC] [TIFF OMITTED] T6507.011

Mr. Kucinich. I yield to Mr. Delahunt.

Mr. Burton. Mr. Delahunt.

Mr. Delahunt. Thank you, Mr. Chairman; and I applaud you for initiating these hearings.

I just want to associate myself with the remarks of Mr. Shays. I think, Mr. Salvati and Mrs. Salvati, that his eloquence, his obvious emotion really reflect the sentiment of everyone on this panel and I am sure most Americans. I want to congratulate my colleague from Connecticut for seeing it as it is.

I recently read a newspaper piece describing your story, Mrs. Salvati; and in that story you have indicated that no one ever had said sorry to you. You have heard that here today, and let me also state my profound sorrow for what you experienced.

And, Mr. Salvati, you should know that you and your family and your splendid attorney are making a real contribution to the United States. As Mr. Shays indicated, justice is something very special in a democracy; and your testimony and your story has opened up many, many eyes. We thank you for that and also express profound sorrow for what you experienced.

And, yes, Mr. Garo, you are a hero. I am proud that I am an attorney, that we belong to a profession that represents often, often those causes that are so unpopular, but that are so righteous. In this particular case, I am confident that if it had not been for the literally tens of thousands of hours that you have spent on this case, your persistence, your perseverance, that Joe and Marie Salvati would have never been reunited and that this injustice never would have been redressed. You are a hero.

Victor, we met recently in your office. You provided the muffins and the coffee. You know my background, that I served as the district attorney in the metropolitan Boston area for more than 21 years.

I would be remiss at this point in time not to note at this point on the second panel two of America's finest lawyers will also testify, Mr. Bailey, Mr. Balliro. All of you reflect such great credit on our profession. In an era when sometimes attorneys are held in low esteem, you represent the very best.

Let me conclude, Mr. Chairman, by thanking you for allowing me to participate in this hearing.

I know my two other colleagues from Massachusetts who served with me on the Judiciary Committee, Mr. Meehan and Mr. Frank, will also be here during the course of the hearing.

Also, let me indicate that I have been informed that Mr. Waxman, who is the ranking Democrat on this committee, is tied up with a hearing in the Commerce Committee dealing with the issues of energy in California; and since he represents California he will obviously be there for a considerable portion of this hearing. But I do have a statement that I have been asked to submit into the record on behalf of Mr. Waxman.

Mr. Burton. Without objection, so ordered.

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

[GRAPHIC] [TIFF OMITTED] T6507.135

[GRAPHIC] [TIFF OMITTED] T6507.136

Mr. Burton. We will now go to Mr. Barr, but, before we do that, let me just thank Mr. Shays for being so diligent in bringing this to the committee's attention and making sure we had this hearing. If it hadn't have been for all of his hard work, we wouldn't be here today.

Mr. Shays. You were not a hard sell.

Mr. Burton. Mr. Barr.

Mr. Barr. Thank you very much, Mr. Chairman, for not only convening this hearing today but also for the outstanding work of the staff. They have, over the past weeks, put in tremendous effort in both quality and quantity of effort, and I appreciate very much the dedication of Mr. Wilson and his fine staff in pursuing this evidence.

I appreciate your reading into the record part of the letter from FBI Director Freeh. He makes reference in his letter to the case earlier this week in Birmingham involving the civil rights bombing where four little girls were killed many years ago. Just in that case, the inference of those who would not let injustice sleep as in this case, even though very, very late and after a tremendous injustice has been done, at least some folks have stepped forward, including yourself and Mr. Shays and our witnesses here today and others, to try and see that at least at some point, at some level justice is done.

While this, the letter from the Director, is important, I would like to refer also to the very last sentence of Director Freeh's statement in which he says that he looks forward to working with the committee to ensure that not only the troubling allegations raised by Mr. Salvati's case but each of the allegations is investigated fully.

We certainly look forward to working very closely with the FBI, even though Director Freeh is leaving; and we certainly wish him well. We have tremendous regard for him. We hope that his successor is equally committed to pursuing this case so that all vestiges of it are aired.

The purpose of it, as you have indicated, Mr. Chairman, go far. I don't understand simply the injustices that were done to this family, these individuals, that alone would justify this action. But it's important that we also recognize that, in trying to correct the injustices in this case, we are taking some steps to ensure hopefully that similar cases will not arise in the future, both through the example of these hearings and, hopefully, further action by the Federal Government and the local authorities in directing these injustices but also perhaps through looking at legislation, perhaps looking at legislation too, that deals with how informants are dealt with by the government.

We certainly recognize that the use of informants is an essential law enforcement tool, but it must be done within the bounds of the Constitution, the same as all the other things law enforcement does.

So this hearing today is not certainly the end of either correcting the injustices in this case, nor is it looking at the ways--the very specific ways, Mr. Chairman, that we can help ensure that these kind of things will not happen in the future, if not through legislation then certainly policy changes at a bare minimum.

Thank you, Mr. Chairman, for convening this hearing and for the work of the staff; and I want to testify, beginning here, thank very much the witnesses here today and for what they represent. Thank you.

Mr. Burton. Thank you, Mr. Barr.

Mr. Kanjorski--or did you want to make a comment? Mr. Kucinich.

Mr. Kucinich. Thank you very much, Mr. Chairman, members of

the committee, to the Salvati family.

Franz Kafka once wrote a book called ``The Trial'' in which an individual was prosecuted, didn't even know why. I don't think that Franz Kafka, even with his great skills as a writer, could have countenanced the kind of trial and tribulations that Mr. Salvati and the Salvati family had to go through for decades.

The scriptures say that blessed are they who suffer persecution for justice's sake. The persecution of Mr. Salvati is a cautionary tale about the American justice system, and it shows the importance of attorneys who are willing to support the cause of justice without failing, without flagging but with persistence, with integrity, with the willingness to take a stand. It shows the quality of character of a family whose name was smeared, who endured trials that are of biblical proportions and yet who today come before this committee of the U.S. Congress fully vindicated and standing for all of America to see as a family in triumph, with a wonderful name as a family whose name will always be remembered for its perseverance, for its endurance and for its love of country. God bless you.

Mr. Burton. Thank you, Mr. Kucinich.

Mr. Horn.

Mr. Horn. Mr. Chairman, I commend you for holding this hearing and withhold any comment for the question and answer period.

Mr. Burton. Mr. Horn, thank you.

Mr. Kanjorski, do you have any comment?

Mr. Kanjorski. No.

Mr. Burton. Mr. LaTourette.

Mr. LaTourette. Thank you, Mr. Chairman. I will be, I think, brief.

There is no doubt in my mind, as I look at this case and others, that back in the 1950's and 1960's organized crime was a scourge upon the landscape of America; and it isn't surprising to me that law enforcement used ordinary and extraordinary measures to bring those who would rape, murder and extort others to justice.

However, as Mr. Delahunt has mentioned and others I think will mention, prosecuting officials, be they enforcement or prosecuting attorneys, have a different responsibility than the defense attorney or those lawyers who are hired as advocates. Those individuals are bound by ethical considerations and confidentiality. But a lot of people who get into the business of prosecuting and law enforcement think it's about winning and whether or not you can rack up a conviction. It's not. It's about doing justice.

I have always believed prosecuting officials have a higher responsibility than others who engage in the practice of law. I think the saying is, the power to indict is the power to destroy. Simply by taking a good person to the grand jury and causing an indictment to be issued with faulty evidence, let alone convicting and placing that person in prison, you can ruin literally a person for life.

That is why, built into the system are a number of safeguards, beginning with the Brady decision in the 1960's. The Federal rules and I think State rules have something known as rule 16 that indicate that prosecuting officials have a responsibility and a duty to hand over exculpatory materials so that all facts are known when a jury or judge makes a consideration as to a defendant's guilt or innocence.

If this hearing develops the facts that we believe they will over the next few hours, this represents a failure of the system. It represents a failure of the responsibility of the prosecuting officials involved. It represents a failure of

ethics; and, more basically, it represents a failure of human decency to those who have been involved. And I am glad you are here, Mr. Salvati.

Thank you.

Mr. Burton. Thank you, Mr. LaTourette.

Mr. Frank.

Mr. Frank. Mr. Chairman, along with my colleague, we very much appreciate the initiative you have taken of having this hearing. I hope there will be further hearings here and in the Judiciary Committee because I think we have a very serious problem of abuse by law enforcement. Abuse that is the result of good motivation and a desire to do good is also abuse. It is clear by what has been brought out by Judge Wolf in Boston, by the media, that some agents in the FBI violated their oath and, in fact, perpetrated injustice, having started out to bring justice to people.

My view is that it is unlikely that what we are now dealing with, either here or in the case that Judge Wolf talked about, are isolated instances. The nature of bureaucracy is such that it is not at all persuasive to me that these are the only instances of this. So I think we need a systematic investigation so that the important essential and very well-performed work of the FBI in general is not called into question by a certain pattern of actions by a few people that causes problems. I think it is important for us to find out what and how high up people in the FBI knew and what they did about it. So I appreciate your giving us the chance to begin this.

I will now apologize for the fact that the Housing Subcommittee, which I am the senior ranking Democrat, is meeting simultaneously down the hall, so I will be in and out. But I leave with the confidence that my colleague from Massachusetts, my former State legislative colleague who spent more than 20 years as a first-rate prosecuting attorney in Massachusetts and has a good deal of first-hand information about this, will be here. Because this is a matter about which I have a great deal of confidence in his judgment and his knowledge.

But I do appreciate your beginning this process, and I think it is very important for us in the nature of the integrity of law enforcement to do a very thorough study to why this sort of event happened, again growing out of the zeal to do right. But just because bad things were originally motivated by the zeal to do right does not in any way justify them or mean that they should be overlooked.

I will say that, in closing, that I have been disappointed over a series of events in what seems to me an unwillingness on the part of the FBI to be self-critical. We still have the Wen Ho Lee case where an FBI agent admittedly gave false testimony in court that was material to the outcome that led to a man's confinement in part. That happened well over a year ago. The FBI still has not dealt with that.

So I appreciate your being willing, Mr. Chairman, to take this on.

Mr. Burton. Thank you, Mr. Frank.

Mrs. Davis. No opening statement?

If not, I think we have covered the panel.

Mr. and Mrs. Salvati and Mr. Garo, would you please rise to be sworn.

I'm sorry. Mrs. Morella, do you have an opening statement?

Mrs. Morella. No opening statement.

Mr. Burton. Would you please rise?

[Witnesses sworn.]

Mr. Burton. I guess we will start with Mr. Garo. Would you like to make an opening statement? Then we'll go to Mr. Salvati

and Mrs. Salvati.

STATEMENTS OF VICTOR J. GARO, ATTORNEY FOR JOSEPH SALVATI;
JOSEPH SALVATI; AND MARIE SALVATI

Mr. Garo. Thank you, Mr. Chairman.

At the very outset, I would like to thank you, Mr. Chairman, and the members of your committee for holding this hearing and with the promise of other hearings, because it is a story that has to be told. We live in America, not Russia.

In trying to find the opening remarks that I wanted to say, I thought very deeply as to how I wanted to begin; and I would like to begin as follows, if I may, Mr. Chairman: With liberty and justice for all. Those are famed words from our Pledge of Allegiance to our flag. Many dedicated men and women gave their lives for those words. Those words are the foundation of our country.

However, the FBI's investigation and participation in the Deegan murder investigation has made a mockery of those words. The FBI determined that the lives of these people were expendable; that the life of Joe Salvati, my friend and client, was expendable; that the life and future of his wonderful wife and my friend, Marie, was expendable; and that the four young lives of their children, at the time ages 4, 7, 9 and 11, were expendable.

From the very beginning, I said, no, they were not expendable. I don't believe a life is expendable.

What has gone on here, and as you will find out from the evidence as presented and the herculean efforts of counsel and his staff of putting together these documents, that this is probably the most classic example of man's inhumanity to man.

We are a system of laws. We are supposed to be a system of justice. Only justice failed Joseph Salvati, justice failed Marie Salvati, and justice failed their four young children.

As was just indicated, the FBI has always had a gloried background. What happened here in the big view of what was going on I think is important to understand.

The FBI determined that it was important to bring down organized crime in the Northeast area. At that time, the alleged organized crime figure in Massachusetts was Mr. Angiulo. The alleged organized crime boss of the New England crime family was allegedly Raymond Patriarca. In the Deegan murder investigation there was the right arms of Mr. Angiulo and Mr. Patriarca and other people that they wanted off the street. And with one witness, Joseph ``the Animal'' Barboza, who gave uncorroborated testimony in three cases, the government had what they wanted. The Federal Government had what they wanted. They wanted the press and the recognition that they were crime fighters, and based on that premise they issued propaganda to the press and to anyone who would listen to them.

There's more than just an apology that should be made to my clients. There is an apology that should be made to the citizens of the United States and to the premises of the United States. Because you were all taken in by the name of the FBI. It was more important to the FBI that they protected their prized informants than it was for innocent people not to be framed.

The truth be damned. It didn't matter, the truth. We want convictions. We don't care what happens to Joe Salvati. We don't care what happens to Marie Salvati. We don't care what happens to their four young children.

I care. I have cared for over 26 years.

The entire saga here can be summed up like this: The FBI determined who got liberty, the FBI determined who got justice,

and justice was not for all. It was for they who determined that justice was for.

What Constitution? What Bill of Rights? What human rights? What human decency? We're the FBI. We don't have to adhere to those principals so long as we have good press and so long as we get convictions. That will show that the ends justify the means.

Many defense lawyers like myself have through the decades fought difficult battles because the whispering campaigns would begin, such as, yeah, right, Salvati is innocent? He comes from the north end, you know what I mean? Right.

The mere fact that they were the FBI and those are the type of comments that they would make, it was all done with a purpose in mind so that the press that is here today would not get involved with the stories. They didn't want anyone investigating the investigators. Because they couldn't pass the smell test of honesty. No human rights, no human decency.

From the evidence that you will have before you, Mr. Chairman, and the evidence that I have, I believe it allows me to say the following: It is my opinion that J. Edgar Hoover, former Director of the FBI, conspired with FBI agents to murder Joseph Salvati. The manner of means by which that murder was to be committed was by way of an indictment on October 25, 1967 where the penalty was death by the electric chair.

J. Edgar Hoover knew the evidence of his prized informants, and he allowed Barboza to commit perjury in that first degree murder case. In my opinion, the date of October 25, 1967, will go down in the annals of the FBI as their day of infamy. Because it was on that day that the Director of the FBI crossed over the line and became a criminal himself.

Mr. Chairman and members of the committee, we're not here to paint with the same brush all of the FBI and agents of the FBI or law or law enforcement. Because they do a good job. Because we need them to protect us from those that would harm us.

But they who are under sacred oath and trust of allegiance to our country have to be accountable for their actions. And it isn't just the role of a few. It was known from the agents to those who were in charge of the Boston office of the FBI and with the evidence that you have that J. Edgar Hoover himself knew exactly what was going on. The truth be damned. Convictions are what we want.

What has been very worrying to my clients, who are my friends, is that there is a complete denial in the Boston office of the FBI that they have done anything wrong. Now the flip side of that argument would be, we haven't done anything wrong, so therefore we're going to continue and keep doing the same things over and over.

That's unacceptable to us. In saying those words, they are trivializing my client's 30 years in prison. They are trivializing his wife's 30 years without a husband. They are trivializing the four young children growing up without the love and companionship of their father. And we won't allow that to happen.

When did the FBI stop having a heart? When did our justice system stop caring for our citizens? When did they stop caring about a loving family being broken apart?

On the date of January 30, 2001, Mr. Chairman, I was asked by many reporters, you must feel very vindicated, Mr. Garo, and you must feel very happy that your client has walked out a free man. And it was just the contrary, Mr. Chairman. It was a very sad day in my life.

Because everything that I had been saying for all those years, 26 of them, came to be true. That means that the government stole my client's life for 30 years, his wife's life

for 30 years and the children's lives for 30 years. The FBI acted like a god. They determined liberty and justice for all. Not our justice system. The FBI.

In closing, I would like to just make some examples of the emotional part of this case.

I used to have meetings, Mr. Chairman, with my client's children and Mrs. Salvati. I would meet with them every 3 or 4 months to bring them some type of hope. Because H-O-P-E, those four letters, that's all they had. They had this fat bald guy. That is all they had to try to explain, we'll try a new way to do it. We'll find another door maybe we can open. We will find another way. Maybe we can do this. But we'll do it.

I said to the son, Anthony, the youngest of the children, in one of our meetings, I said, Anthony, when I get your dad home, you're going to say I created a monster. Because he's going to follow you around, and he's going to want to know everything you have done. Anthony is a rather emotional young gentleman, and gentleman he is. And he came over, and he sat beside me on the couch, and he said, no, Victor. He says, I have never seen my father get up in the morning, I have never had breakfast with my father in the morning, I've never taken a walk with my father, and I have never gone to a ball game with my father. I sure do want to do that in the future with my dad.

A second example is their daughter, Sharon. In returning from one of the visits before the trial of her father, she came home and asked her mother and then asked her father, daddy, what's the electric chair? They say you're going to get the electric chair. Are they giving you a present?

Tell me how a father and tell me how a mother explains that to a young child around 8 or 9 years old.

Finally, there is a story about love, commitment and devotion, of good people. When I used to visit Marie Salvati and her children at home, small one bedroom apartment, I always used to see a card on top of the TV stand, on top of the TV; and I saw it many times. I never asked a question, but I always noticed when I got there it was always a different card. I said one time, Marie, can I go over and look at that card? She said, yes, Victor.

Mr. Chairman, I have to say to you that when I went there and I saw it, a tear came to my eye. Because she never, ever mentioned this to me for decades, and neither did my client. How Joe and Marie kept their love and life together was by small, little things. Every Friday Marie Salvati would receive from her husband beautiful love cards. And inside those cards was always a statement of Joe Salvati to his wife. What else can I say? I love you. I love you. I have everything. I miss you, and I love you, Joe.

Marie Salvati has said to me, Mr. Chairman, that sometimes her life has been lived in a shoe box. Mr. Chairman and members of the committee, they have several shoe boxes of all the cards that she has saved over the years of his incarceration.

I bring those out, Mr. Chairman and members of committee, and I know maybe I have taken a little bit more time, and I'm sorry. But these are stories that people don't want to have told. They don't want you to understand the pain and the suffering that this family has endured. It is inhuman.

So I say to you, Mr. Chairman, in closing, that I think when you have this hearing and the other hearings that you're going to conduct, I have an opinion. It came true in the Joe Salvati case, and I have an opinion that I would like to share with you, Mr. Chairman and members of committee.

It is my opinion, when you discover all of the evidence in this case and the hearings, that you are going to hold that this is a scandal that is bigger than Watergate. It is broader than Watergate. It deals with people's lives, whether they get

killed or not killed. It depends on whether you go to jail or not to jail. They determined, as God, who lived, who died and who went to prison. Out of control. That's what was happening in four decades in Boston.

So I say, Mr. Chairman, that I cannot thank you enough for allowing us to come here today to share with you our thoughts and evidence. God bless you.

Mr. Burton. Thank you, Mr. Garo.

I understand you have a chronology of events that you want to go into. Why don't we have Mr. Salvati and Mrs. Salvati make a statement, and then we'll come back to you. And if you could quickly go through the chronology I would appreciate it.

[The prepared statement of Mr. Garo follows:]

[GRAPHIC] [TIFF OMITTED] T6507.012

[GRAPHIC] [TIFF OMITTED] T6507.013

[GRAPHIC] [TIFF OMITTED] T6507.014

[GRAPHIC] [TIFF OMITTED] T6507.015

[GRAPHIC] [TIFF OMITTED] T6507.016

Mr. Burton. Mr. Salvati.

Mr. Salvati. Thank you, Mr. Chairman.

I want to thank this committee for holding this hearing. This is a story that needs to be told so the country can know what awesome power the government has over our lives.

When I was arrested on October 25, 1967, for participating in the Edward ``Teddy'' Deegan murder, I was devastated. How do you prove that you're innocent? There were constant stories in the media that I was a very bad person and one not to be respected.

The government stole more than 30 years of my life. Just the statement of 30 years in prison can run shivers up and down your spine. My life as a husband and father came to a tumbling halt.

In order to clear my name, it has been a long and frustrating battle. Yet, through all the heartbreak and sometimes throughout the years, my wife and I have remained very much in love. Prison may have separated us physically, but our love has always kept us together mentally and emotionally. Our children have always been foremost in our minds. We tried our best to raise them in a loving and caring atmosphere even though we were separated by prison walls.

More than once my heart was broken because I was unable to be with my family at very important times. However, through love and courage, all of us have battled back through times of adversity. We were strong in bad times, and we are still strong in good times.

I am here to talk about our most precious possession of all: Freedom.

As you know, I have served 30 hard and long years in prison for a crime I did not commit. However, I still consider our justice system to be the greatest system in the world. But sometimes it fails, as in my case. I became a casualty in the war against crime.

The justice system has finally worked for me, although it has taken over 34 years. I wouldn't be here before you today if it weren't for an honest, dedicated assistant U.S. attorney by the name of John Durham. The FBI agents working for him found documents, and these documents were sent to my lawyer. We need agencies like the FBI, because there are many out in the world that want to hurt us; however, when the FBI or any other

similar agencies break the law, they must be held accountable for their crimes.

Finally, I'd like to say a few things about my wife. She is a woman with great strength and character. She has always been there for me in my darkest hours. She brought up our four children and gave them a caring and loving home. When God made my Marie, they threw the mold away.

Mr. Burton. It's OK. Take your time.

Mr. Garo. Mr. Chairman, may I please finish those last two sentences for Mr. Salvati?

Mr. Burton. Sure.

Mr. Garo. When God made my Marie, the mold was thrown away. I am one of the luckiest men in the world to have such a devoted and caring wife, my precious Marie.

Mr. Burton. Thank you, Mr. Salvati.

[The prepared statement of Mr. Salvati follows:]

[GRAPHIC] [TIFF OMITTED] T6507.017

[GRAPHIC] [TIFF OMITTED] T6507.018

[GRAPHIC] [TIFF OMITTED] T6507.019

Mr. Burton. Ms. Salvati, do you have a statement?

Mrs. Salvati. Yes, thank you.

Mrs. Salvati. Chairperson and everybody here, it's just overwhelming. OK. At the very outset, I want to thank this committee for holding this hearing and for asking us to participate in order that we can tell our story.

From October 25, 1967, the date my husband was arrested, until January 30, 2001, when all the charges were dropped, my life was extremely difficult. The government took away my husband and the father of our four children in 1967. My world was shattered. This wonderful life that we shared was gone. I was looked down upon by many. As we all know, children can sometimes be cruel. Other children in our neighborhood would make fun of the fact that their father had been arrested for murder, and they would taunt some of them and say, shoot you, bang-bang. Your father is going to die; you know, things that would really hurt the family. And my children would come home crying to me. And I did my best to comfort them in bad times, but I had no one to comfort me when my children went to bed. Many a night I cried by myself, and I suffered in silence.

When my husband was arrested on October 25, 1967, I found out that the punishment for the crime was death in the electric chair. That potential sentence weighed heavily on me until he was sentenced on July 31, 1968, and received a life sentence without parole.

The government stole 30 years of my life. I was unable to share with my husband the joys of being a husband and a wife. The government stole 30 years from my children, because they grew up without their father. However, the government was never able to break our spirit. Our love grew stronger, and I always knew my husband was innocent. I know the moral character my husband possessed. I did not accept as my destiny that my husband would never come home again. I always had faith and love.

Our lawyer, Vic Garo, always instilled in us that the glass was half full and not half empty. We gathered strength from this fact and that he believed Joe was innocent from the very beginning of his representation of my husband and my family.

While my husband was in prison, the pact between us was I would not inform him of the problems at home. You know, I used to say to my husband, you take care of yourself on the inside, and I'll take care of the family on the outside.

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

My husband and I have endured many hardships. As we grow older, we still have the cherished feeling that a husband and wife can have. We love each other very much. God bless you all.

[The prepared statement of Mrs. Salvati follows:]

[GRAPHIC] [TIFF OMITTED] T6507.020

[GRAPHIC] [TIFF OMITTED] T6507.021

Mr. Burton. Let me just say to both of you, Mr. and Mrs. Salvati, this has got to be a very difficult time to bring all of this out, but I'll tell you, it's important for not only the Congress, but the American people to see the emotion and the heartache that you guys had to suffer through for 30 years. And so I apologize for you having to make these statements, but I think you're doing an awful lot of good, because it's going to show the country that we must never allow innocent people to suffer like you folks have.

Mr. Garo, you want to go through that real quickly, the chronology of events?

Mr. Garo. Thank you, Mr. Chairman. As I said in the beginning, it is a very emotional case, and I thank you for allowing us to make those statements.

My representation of Mr. Salvati began in 1976 when I was asked to come down to see him by a client of mine who was in prison. I met Mr. Salvati. It was a dark, dreary, rainy day, and I went down to see him, and he told me the facts upon which that he was convicted. From the very facts he told me, I said, this doesn't seem correct to me. How could you be convicted on those facts?

I then did my own independent investigation, Mr. Chairman, and I found that what he said was so, not that I did not believe him. I just had to check the facts. I agreed to represent him and help him to gain freedom, and they gave me a retainer. Shortly after that, I found out that this family did not have a lot of money. I returned the money back to him, Mr. Chairman, and I said that I would stay with you. It's true, I never thought it would be 26 years later and over 20,000 free hours of my time, but I was brought up that when you make a commitment, you keep a commitment, and I've kept that commitment.

If I may, Mr. Chairman, I'd like to go over just for a few minutes, if I may, about the facts that were told in court by Joe ``the Animal'' Barboza concerning Mr. Salvati. On or about January 20, 1965, Barboza testified that one Peter Limone offered him a contract for \$7,500 to kill one Teddy Deegan. Barboza then said it took from January 20th until March 12, 1965 to put together his death squad. He went around the country, he said, to go get participants in this murder. They were going to do this through a setup, Mr. Chairman, of Mr. Deegan being involved in a breaking and entering in the Chelsea alley of a finance company, and it was supposed to be set up by certain people. Deegan would go in the alley and would be shot to death.

On March 12, 1965, the day of the killing, Barboza in the middle of the afternoon said, Salvati has got to be involved in the killing tonight. As a matter of fact, he's going to be my

getaway car driver, and he's going to wear three disguises. He's going to wear a wig to make him look bald. He's going to wear a pair of sunglasses and a mustache. Later that night, at about 7:30, Barboza testified that when he went to the Ebb Tide Restaurant and Lounge, which was a hangout for organized crime, he saw Joe Salvati at the bar, and he said to Joe Salvati, go outside and warm up the car, Joe.

Now, mind you, that night, they did not know if the breaking and entering was going to happen. The murder would depend on whether or not there was going to be a breaking and entering that night. Since they didn't know that was going to happen, no one knew the time that it would happen or if it would happen, but Joe Salvati is still warming up the car. It's 7:30. At 9 o'clock, Barboza receives the nod from a Roy French, indicating that the breaking and entering was going to take place and that Deegan would be there. That was the signal for Barboza to leave and to go and kill Teddy Deegan.

Barboza goes out to the car sometime about quarter past 9 and gets in and drives the car, tells Salvati to get in the back seat. Barboza then says, we go to the area and we bend the license plates--in those days you had a front license plate and a rear license plate--and they bent it in half to hide their identity. As they were in the car, a person was walking toward them, and Barboza said, I think it's the law. And it was. It was a captain of the Chelsea Police Department. Barboza saw him and said he took off at a high rate of speed. The captain later said that he saw a man in the back seat with a bald head, bald spot, and he was able to find the first three numbers of the license plate, 404.

Barboza then said he went back to the Ebb Tide. He told Joe Salvati, go throw away the guns, throw away the disguises, and meet me in the bar. He then said that he split up the money with Salvati the next day. All that testimony came from Joe ``the Animal'' Barboza, uncorroborated, no other witness, just him.

Three things that always bothered me, Mr. Chairman, from the first time I ever heard the story: Timing. Why would Barboza hire someone to be involved in a killing that afternoon when it had taken him 2 months to put together his death squad? It didn't make sense to me. Two, he was going to be my getaway car driver. Getaway car driver? Salvati and Barboza never hung with each other, never associated with each other, were not partners. Barboza was a killer. Salvati was never. Barboza was a hit man. Salvati was not. And they knew who Barboza's partners were. Salvati never hung with Barboza, never associated with Barboza, other than a year later when he borrowed \$400 from one of Barboza's associates. And we said, wouldn't there be a dry run? Salvati came from the north end of Boston. This was a killing that was supposed to take place in Chelsea, and I said, wouldn't a getaway car driver, at that-- want to know the street that you could go up and down? That bothered me, Mr. Chairman.

And the third one is that of all the killers in this case, Salvati had to wear three disguises, and the three disguises were a wig to make him look bald, a pair of sunglasses and a mustache. Now, from what I understand of law enforcement is that the reason why you wear disguises, because everybody knows who you are. Mr. Salvati had one criminal conviction in 1956. He was not known to the police, not known to the Chelsea Police Department, not known to the Boston Police Department as a driver or somebody for Barboza; didn't hang with Barboza. And I said, why would Barboza want somebody to wear three disguises?

Well, now, of course, you know from the evidence that you have seen and that your counsel Mr. Wilson and his staff so ably has put together, you have come to find out that story was

all made up and a fabrication. But one thing wasn't a fabrication. They did do a dry run. Can you imagine Mr. Salvati at 7:30 warming up the car, quarter of 8 warming up the car, 8 o'clock warming up the car, quarter past 8 warming up the car, 8:30 warming up the car, quarter of 9 warming up the car? They didn't know what time this was going to be. That was the best heated car in the world. This could have ran anyplace. They almost ran out of gas. Did that make sense to anybody? It didn't make sense to me.

Now, what is it that has happened? The biggest break in this case happened in 1989 when we were receiving a commutation hearing that took place in August 1989. About 3 weeks before that event, I obtained a copy of a hidden Chelsea Police Department report. In that report it had an informant who mentioned who left the Ebb Tide that night, who went out to do the killing, and then when they came back, he said, we nailed him.

Now, under the law at that time under Rowe v. United States, if they knew there were informants and that defense counsel would have known it, they could have made a motion for the name of the informant. But, of course, the FBI was protecting informants, because, lo and behold, who were their informants back at that time? I had always said that Barboza was hiding a friend or a close associate. Yeah, Vinny Flemmi was his partner. Vinny Flemmi was bald. Vinny Flemmi had a bigger criminal record than Joe Barboza. He was a killer, a known thug, and known as a driver for Barboza 90 to 95 percent of the time, because he was his chauffeur, because he trusted him.

When I received that report, I then went out and did my own investigation, because I was not an organized criminal defense attorney. Most of my work was in white collar crimes. When I looked at it, I had my investigators go out and check out who these people were. Lo and behold, Mr. Chairman, we find out that one of the men mentioned was Vincent Flemmi. I went out and checked who Vincent Flemmi was. He was bald. I found out his record. I said my God, that's who was there that night. It wasn't Joe Salvati. It was Vincent Flemmi.

When I brought that to the attention of the parole board in 1989, we received the unanimous vote of the parole board. The only problem is, Mr. Chairman, from 1986 to 1989, the FBI told the parole board that my client was going to get indicted, so don't give him a commutation hearing. Four years went by, and they said, don't you understand it's all phony information you're receiving? I appeared in 1989, Mr. Chairman, before the parole board. Mr. Salvati, after the unanimous vote of the parole board, finally gets out on his commutation on March 20, 1997.

Make no mistake about it, the Federal Government and the State government never wanted Mr. Salvati ever to get out of prison, because dead men tell no tales, and we wouldn't be here today before you if they had succeeded. Three of the six, though, have died in prison. Mr. Salvati is here today before you because he survived 30 hard years in prison.

Now, in 1993, Mr. Chairman, I obtained new evidence, and finally I was able to obtain coverage by the press in this case because of an event that occurred on the commutation, Mr. Chairman. On January 20, Governor William Weld at that time denied my client's commutation because of his long criminal record, one criminal conviction in 1956. I said, I need some help. And I did get that help from a reporter back in Boston by the name of Dan Rea, CBS affiliate, channel 4, WBZ, and he became my advocate through the press of our story. And through the years, he did many, many stories, and we found much, much evidence, as you have here documented before you. But no one

wanted to listen to it. No one wanted to see it, because, you know, Salvati, yeah, he's innocent, right, yeah, right, all those words.

In 1997, we obtained a commutation, and probably the most important day in the history of this case occurred in my office, Mr. Chairman, on the date of December 19, 2000. And that was when an assistant U.S. attorney named John Durham, who was in charge of the Justice Task Force in Boston that is investigating criminal activities of FBI agents, called me and said, Mr. Garo, I have some evidence for you. I'd like to come over to your office and see you. He delivered those documents that you have, Mr. Chairman, and it showed a shocking, shocking story that now we know the entire story that Mr. Barboza made up was untrue. When we saw that evidence, Mr. Chairman, it was shocking to me, and I just sat down looking at it.

On January 18, 2001, Mr. Chairman, the Suffolk County district attorneys on its own motion made a motion to vacate the judgment and the sentence and requested a motion for new trial that was allowed. On January 30, 2001, Mr. Chairman, Mr. Salvati walked out of the courtroom a free man for the first time since October 25, 1967.

Mr. Burton. Thank you, Mr. Garo.

We will now go to questioning. We'll start--Mr. Shays, would you like to start?

Mr. Shays. Thank you, Mr. Chairman.

Mr. Burton. Mr. Shays. We will proceed under the 5-minute rule today, so every Member that wants to ask questions will be able to quickly.

Mr. Shays. Mr. Salvati, I love your gentleness, and I love your wife.

Mr. Salvati, has anyone in the government ever told you or your children that they're sorry for what happened to you?

Mr. Salvati. No, they haven't.

Mr. Shays. Do you think people knew all along that you were innocent?

Mr. Salvati. A lot of people did, yes.

Mr. Shays. Mr. Garo, why does this case mean so much to you? You told me a story about your mother. Real short, tell it to us.

Mr. Garo. My mother was brought up as an orphan from age 3, and my father was born into abject poverty. When I passed the bar exam on November 9th, and when I was sworn in as an attorney on November 9, 1965, my mother and father took me to afternoon lunch that day. They were very proud, as I was, about the accomplishment. And my mother and father said to me that day, Congressman, that, look, now that you're a lawyer, you can go out and help people. Go help people. Don't do it for the money. Do it to go help them. The money will come, but don't do it just for the money. And I followed certain values I believe that my mother and father instilled in me.

I had a one-man law office, and the only way that I would keep business was to have personalized service. My mother for years talked to Joe Salvati, and they became friends over the phone, and my mother knew all the evidence that we had and were trying to do for Joe Salvati. And my mother was very sickly toward the end of the 1980's, and shortly before she passed away, my mother said to me as follows: ``No one will represent Joe Salvati in this matter unless you stay with him. So I want you to promise me that you will stay with Joe Salvati until you walk him out of prison.''

On March 20, 1997, with the wonderful help of the Massachusetts Department of Corrections, they allowed only two people to walk out of prison that day, and that was Joe Salvati and myself. After we left the prison and went to the parole officer that Joe had to go to, Joe and Marie, my father and

myself all went to my mother's gravesite, and I placed roses on her grave, and I said, ``Mommy, I kept my promise.''

Mr. Shays. Thank you for keeping your promise.

Mrs. Salvati, I am amazed at your strength. I am amazed at the love you had for a man who was in prison for 30 years. I would love to know how you did it.

Mrs. Salvati. You know how I did it. We were always a happy, loving couple, and I wouldn't have it any other way. My family values, my children, it was so important for me to keep it all together. You know, and when I went to visit him, like on the weekends, my children needed the hugs. They needed the kisses from their father. They needed all that stuff. So I tried to put it all together the best I could.

I reevaluated myself, you know, and I put my goals and my objectives, and I feel like I've done the right thing in life. I've worked. I went on to be a program director of the Head Start Program, and, you know, you do what you have to do. And we always believed in his innocence, and it was just, you know, like I said in my opening remarks here, you know, it wasn't hard to do. In a way it wasn't, because we had the love of my husband. I had my family, and I was just a--I don't know. I was driven. It was something that I felt like I could never give up, and that's how I felt about it.

And then, like, 10 years came, and we put in appeals, and then you get some--you know, get some good reports, and then you still have----

Mr. Shays. You still kept hope alive?

Mrs. Salvati. Yes, yes. Never gave up.

Mr. Shays. I have other questions, but I won't get to them now.

Mr. Salvati, I want to know about your first attorney. I want to know if you were under a jury trial. I want to know why you didn't win that case in the first time around, and I'll ask that later, but it's not now.

Mr. Chairman, thank you.

Mr. Burton. Did the gentleman yield his time or----

Mr. Shays. I finished.

Mr. Burton. Oh, you finished. OK.

Mr. Kanjorski.

Mr. Kanjorski. Thank you very much, Mr. Chairman.

Mr. Garo, being a lawyer, you make me proud of the profession. That doesn't happen too often when you're sitting on this side of the aisle and dealing with----

Mr. Garo. Thank you, Mr. Congressman.

Mr. Kanjorski [continuing]. This profession in Washington.

Let me ask you this, though. Looking at the statement of facts and the evidence, is this peculiar to the Boston area, or is it possible that this is occurring in other American cities and in other FBI offices across this country?

Mr. Garo. That's a good question, Mr. Congressman, and I guess my best answer that I can give to that is this, that if you have a cookie cutter and it works one place, that it should be able to work a second place, a third place and the fourth place. I have a distinct feeling that this is not just a situation that happens only here in Boston. I think there are those and many around that would like us to believe that it was only happening in Boston, and when these actions and these events were allowed to happen by the Director of the FBI, I just don't believe it just happened in Boston. And I think that the good that can come out of this hearing and other hearings will be that maybe other people will come forward with similar situations and would have the courage to face up and say what they have to say.

Mr. Kanjorski. Do we in the Congress have a process of oversight of the FBI and to look through these complaints that

may have occurred across the country, or is this a unique situation?

Mr. Garo. I think, Mr. Congressman, that if you people don't have this type of power, then who is investigating or watching over the investigators? Because there has to be some accountability, there has to be some checks and balances, and that's one of the reasons why we ask this honorable committee in all of your power and wisdom that you might be able to help us so that another family doesn't go through this again.

Mr. Kanjorski. Mr. Garo, a lot of discussions are occurring in the country right now on the question of capital punishment. At this time the State of Massachusetts--or the Commonwealth of Massachusetts did have capital punishment----

Mr. Garo. At that time, yes, Mr. Congressman.

Mr. Kanjorski. If, in fact, Mr. Salvati had been sentenced to die in the electric chair or by lethal injection, 30 years he would have been executed; is that correct?

Mr. Garo. That's correct.

Mr. Kanjorski. So this is another very strong piece of evidence for us to reexamine the whole concept of capital punishment, particularly many cases of convictions of uncorroborated testimony.

Mr. Garo. Absolutely. And you hit the nail right on the head, Mr. Congressman, when you're dealing with the uncorroborated testimony of a person who is more of a killer than anything else, because the FBI, Mr. Congressman, at that time made the determination that it was far more important for them to protect the integrity of the informant system than it was to see innocent people go to prison or to potentially die in the electric chair.

Mr. Kanjorski. I'm aware of some of the investigations of organized crime that have occurred in the Northeast and the Philadelphia area, and I am aware of what I tend to believe is selective prosecution; that when you read the wiretap evidence or other material, there are a host of crimes against sometimes very involved and very impressive people that seem to be totally ignored, and the FBI and the Federal attorneys seem to narrow in and focus in on their hunt, if you will, or their bait. Do you find that in Boston to be the factor?

Mr. Garo. I would say that whatever you can think of, you'll find it in Boston. If there's any type of corruption that hasn't come forward and it hasn't been prosecuted, when you still have the FBI in Boston, Mr. Congressman, still maintaining today that they did nothing wrong, and a superior court judge has already discharged the cases, and the district attorney's office refuses to retry them because of what they have done, then we're out of control.

Mr. Kanjorski. Mr. Garo, I complimented you as a lawyer in the legal profession, but it's almost impossible for me to believe that Federal prosecutors and members of the Justice Department and the FBI were not aware of this miscarriage of justice. Has any disbarment or prosecution of any of the professionals involved in this case taken place?

Mr. Garo. Mr. Congressman, I would say to you that other than certain investigations that are being conducted by John Durham, assistant U.S. attorney in Boston, especially assigned to the Justice Task Force, he is trying to get to the bottom of what FBI agents and what the statute of limitations problems are and the prosecution of those agents is really about.

You will find, Mr. Congressman, if you check in the newspapers and in the records in Massachusetts, that we have been saying things about this case for decades, Mr. Congressman, and no one has bothered to ever investigate any part of this. There are State crimes, Mr. Congressman, that have been committed here, and there's been no grand juries held

for accountability of what local law enforcement officials did. Let us hope, Mr. Congressman--and that's our hope here, Mr. Chairman, is that through your committee and through your hearings that maybe the truth will finally come out.

And it's interesting that my pastor at my church has said it well: The truth will set them free, but no one wants to tell the truth.

Mr. Kanjorski. Thank you, sir.

Mr. Garo. Thank you, Mr. Congressman.

Mr. Burton. Mr. LaTourette.

Mr. LaTourette. Thank you, Mr. Chairman and Mr. Garo.

You described in your testimony--your written statement that your first big break, I think you called it, was the delivery to you of the Chelsea police report, and that was in 1989 at the----

Mr. Garo. That is correct, Mr. Congressman.

Mr. LaTourette [continuing]. Commutation hearing. Have you had a chance to talk to the lawyer that represented Mr. Salvati at this trial?

Mr. Garo. Let me just say about this very eminent counsel here, Mr. Balliro, who was a lawyer at that time and representing the case, that case was stacked, Mr. Congressman; that God could have come down and tried that case, and he would have never won that case. The chicanery that was involved with the evidence in this case, and the hiding of the evidence, and the wheeling and dealing behind the scenes, no one had an opportunity to win that case. And that's why, if I may just----

Mr. LaTourette. Sure. Sure.

Mr. Garo. That's why I have never and will never, ever say anything about legal counsel at that trial. They tried their damndest, but they were up against an insurmountable wall.

Mr. LaTourette. And by asking that question, I wasn't meaning to disparage the trial counsel.

Mr. Garo. I understand.

Mr. LaTourette. But my question was, do you feel comfortable and confident that this 3-page--it's exhibit 11 in the book in front of you, but do you feel comfortable and confident that no one in the defense had access to or----

Mr. Garo. Absolutely not.

Mr. LaTourette [continuing]. Knew of the existence of this report?

[Exhibit 11 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.053

[GRAPHIC] [TIFF OMITTED] T6507.054

[GRAPHIC] [TIFF OMITTED] T6507.055

Mr. Garo. Absolutely not. As much as the judicial opinions in the case have tried to place it in the hands, through unbelievable miscarriage of the facts in the case, no, it was never had.

Mr. LaTourette. And just for the purposes of the record, the reason that the report, I think, written by a lieutenant in the Chelsea Police Department, was significant, on page 3 of the report, it mentioned confidential information as to who the murderers were eventually?

Mr. Garo. That is correct. As a matter of fact, from the evidence that you have in your pamphlets, provided by chief legal counsel and the staff, you will see that the exact killers that were mentioned in the Chelsea police--hidden police report were the same as the killers that were mentioned on March 13, 1965 by Vincent Jimmy ``the Bear'' Flemmi to a prized informant of the FBI, who I say, Mr. Chairman, in my

opinion, was his brother Steven Flemmi.

Mr. LaTourette. OK. Did you have the opportunity to chat with the individual prosecuting authorities about this Chelsea Police Department report after it was discovered to you in 1989?

Mr. Garo. Yes, I did.

Mr. LaTourette. And who was the prosecuting----

Mr. Garo. The prosecutor in the case was an attorney Jack Zalkind.

Mr. LaTourette. And can you relate to the committee what the substance of that conversation was?

Mr. Garo. Surely. In fact, he has filed an affidavit that I have filed in court, and Mr. Zalkind said that he had never known that Chelsea police report ever existed as to whether or not there was an informant in there. He said if he had known that there was an informant there that night that did not see Mr. Salvati, that he would have done a more thorough investigation, and Mr. Salvati may never have been indicted.

Now, what's interesting to note, Mr. Congressman, is that when I filed my motion for new trial in 1993, the District Attorney's Office of Suffolk County filed that affidavit by a Mr. McDonough, who was the legal assistant to Mr. Zalkind, who stated in his affidavit that that police report was in the files when he was there as a legal assistant to Mr. Zalkind. So what we have, Mr. Congressman, is we have prosecutors saying, I didn't have it, a legal assistant who said that it was there. I don't care who had it or what had it. If they said it was there, they didn't do anything with it, and you're going to have people die in the electric chair. My God. Don't you think you have a duty to go and investigate that? It's unconscionable, Mr. Congressman.

Mr. LaTourette. Did you--it was written by a Lieutenant Thomas Evans. Did you ever have a chance to chat with him about when it was prepared or anything of that nature?

Mr. Garo. No. Lieutenant Evans had passed away.

Mr. LaTourette. Had he? OK.

Mr. Garo. But what I did do, Mr. Congressman, and that's an excellent point, is that when I found out Lieutenant Evans had died, I then sent my investigators out to go find out if he had a partner. Lo and behold, I found he had a partner. I contacted their partner, and he said, sure, we worked on that together, and we filed it. As a matter of fact, we knew who the killers were that night. They had----

Mr. LaTourette. Did he say who he had filed it with?

Mr. Garo. Lieutenant Evans.

Mr. LaTourette. OK. And the last question that I have for you, who is John Doyle?

Mr. Garo. I don't think I'd have enough time probably to answer that question, but suffice it to say he was the liaison at the Suffolk County District Attorney's Office, Garrett Byrne, with the FBI at that time. And he was the head detective that would put together the cases on organized crime. That's who he was.

Mr. LaTourette. OK. Thank you.

Thank you, Mr. Chairman.

Mr. Burton. Mr. Cummings, did you have a question?

Mr. Cummings. Thank you very much, Mr. Chairman.

And, Mr. Garo, from one lawyer to another, I'm very glad that you do what you do and that you take your job as seriously as you do, and I wish more people had an opportunity to hear the testimony. And I understand you're just doing what you believe what you should be doing, and this is your job.

Mr. Garo. Thank you, Mr. Congressman.

Mr. Cummings. You know, I really wish that more people would have an opportunity to hear this testimony, because so

often I think what happens is that when someone lands in prison and they declare their innocence, although they have come through the criminal justice system, there are some who believe that the criminal justice system in our country does not--I mean, there's some that believe that it's perfect. And one thing is very, very clear, and that is that one of the things that will get us as close to perfection as we can get is that if the people that we trust, such as FBI agents and others and judges, it is important that they do their job in an honest and truthful manner, because I think that's what leads to the trust of the public.

And that leads me to my first question. You know, in reading your testimony, Mr. Garo, you seem to have kind words about John Durham, the prosecutor heading up the Justice Department's Task Force.

Mr. Garo. I do.

Mr. Cummings. Why is that, sir?

Mr. Garo. He is the first prosecutor, in my opinion, that I have met in the entire investigation of this case for over 26 years that had as his motive in this case to let the truth come out, and that it would have been very easy for him, Mr. Congressman, to have thrown away these documents, and that the FBI agents that were working for him found these documents, and they found them because they were misfiled in other files, Mr. Congressman, and they were in the Boston office. All of the regular files had already been destroyed at that time, Mr. Congressman. This was all done--Mr. Congressman, if you throw away the evidence, it can't come back to haunt you. The only problem is that it had been misfiled, and they spent hours and days and weeks and months poring over these documents to give me those documents.

And that's why we say, Mr. Congressman, that we still have the greatest justice system in the world. And when you have a person like John Durham, and you have a person like Judge Mark Wolf in the Federal court who took on the investigation here of informants back in Boston, they're heroes. They're the ones who have fought the system, and they have let come out the evidence that we have. And it makes us feel good, because we don't paint all the FBI with the same brush, and we say we need them, but, darn, when you break the sacred oath of trust--when I represent defendants in court and it's a public official, the first thing that the prosecutor says is, because he was a public official and he broke his sacred trust, we throw the book at him. Conversely in this case, no book has been thrown at any of the Federal officials.

Mr. Cummings. Do you think the book should be thrown at them?

Mr. Garo. Absolutely. For those that are guilty, for those that took part in this, because how can anybody be so inhuman? Because we wanted, Mr. Chairman, you to see how much this affected this family.

That's what people don't want you to see, Mr. Congressman, and that's why this is difficult for the three of us. We're not here for publicity. I don't practice criminal law. I'm not looking to get referral cases. But we're here--when we first got approached by Mr. Wilson, who I have the deepest respect for and his staff, both on the Democratic side and the Republican side, and the work and the hours that they have put into this, we knew that sooner or later this is important to say, and this has never been about money, power, prestige. Those that know me know that I'm not like that, but if we can help you out, we have pledged that we will be here for you at any time. I said that I would give and help Mr. Wilson, Mr. Yeager behind the scenes on anything that your staff wants, Mr. Chairman, and I'll be here for you all the time.

Mr. Cummings. Mr. Garo, your client was facing the death penalty. Is that what you said?

Mr. Garo. Yes, sir. That's true.

Mr. Cummings. And, Mrs. Salvati, how did that affect you?

Mrs. Salvati. I became numb. I just couldn't believe it that our lives could be so shattered with all this here, and, you know, it's devastating. It's just devastating. You get yourself in a state when the verdict came in, and I just--you know, I had a horrible night that night. Especially when the verdict came in, my children were my first priority. I went to get them from school, you know, because I didn't want them to hear nothing in the street. So I took them home, and I told them what had happened to, you know, Dad. We call him Dad. And he said--you know, I said, you know, you're going to hear a few things. You're going to read things in the paper. You know, families talk when they go home. You know how people are. So I tried to comfort them and tried to, you know, not tell them more than what I had to because they were little, you know, especially the young--the 4-year-old.

And we got through that. Then the very next day, my husband had the chaplain call me, and he wanted to see me right away. So we needed that bonding between us to go through the sorrow, this heartache together. All I could think of him was the night before being shackled in jail. I had no concept of what jail was about or how anything was, and, you know, we needed each other, too, but you have to be there for each other, and we had that bonding with us all the time.

Mr. Cummings. Mr. Chairman, just one quick statement. I just want to express to you and your husband, you know, something that Mr. Garo said. We do have an outstanding system of justice. It does fail. We have a lot of great people in our justice system, but I hope and I pray that God will give you the strength and the courage to continue on. You both have held up tremendously. I mean, a lot of people would not have held up under these circumstances, and I thank God for you and for your lives, and certainly you'll be in my prayers.

Mrs. Salvati. Thank you.

Mr. Salvati. Thank you.

Mr. Burton. Thank you for your comments, Mr. Congressman.

Before I yield to Mr. Barr, one of the things that I will ask our legal counsel and our staff to investigate is whether or not there were some other injustices done as well. I understand that Mr. Barboza testified in some other criminal trials, and people were sent to jail. I don't know if anybody was sent to death or not, but we're going to investigate that as well. And so what you're telling us here today is not going to just reflect on the injustice done to the Salvatis, but also we're going to look at other things as well.

Mr. Barr.

Mr. Barr. Thank you, Mr. Chairman.

Could the staff prepare exhibits 15, 8 and 7, please, beginning with 15.

Counsel, when I first started learning about this case from counsel and from the chairman and from Mr. Shays, probably, as most people, I was skeptical. You know, it reads like a novel. And then as you get into it, you say, yeah, well, maybe this sort of stuff did happen, but certainly the head of the FBI didn't know about it. He would have stopped it. But the fact of the matter is that there appears to be documentation that indicates very clearly that the Director of the FBI, Mr. Hoover, knew exactly what was going on, and that's very, very disturbing as a former U.S. attorney, as a citizen. You don't have to be a former U.S. attorney or an attorney to be disturbed by that. It's disturbing deeply as a citizen.

Document exhibit No. 15 is an airtel--this is back in the

days before all the technology. We didn't have e-mails and so forth--dated March 19, 1965, which was, I think, about a week after the Deegan murder, and that document is to Director, FBI. In your knowledge, which is certainly extensive, my understanding is that Mr. Hoover kept very close tabs on what happened in the FBI.

[Exhibits 15, 8 and 7 follow:]

[GRAPHIC] [TIFF OMITTED] T6507.062

[GRAPHIC] [TIFF OMITTED] T6507.063

[GRAPHIC] [TIFF OMITTED] T6507.064

[GRAPHIC] [TIFF OMITTED] T6507.047

[GRAPHIC] [TIFF OMITTED] T6507.045

[GRAPHIC] [TIFF OMITTED] T6507.046

Mr. Garo. He was getting information on a weekly basis, Mr. Congressman, on exactly what was happening back in Boston, because Boston in the 1960's was going through a gang war, and there were approximately 50 to 60 people who got killed. And they weren't able to get any convictions on a lot of the murders, and he wanted to be on top of everything that was happening in the Boston area during that period of time. So he was being informed on a weekly basis. This is only one of the documents that was left as misfiled. Other documents that Mr. Durham believes has either been destroyed or may even be around in other places and have not surfaced yet.

But there are documents, also, Mr. Congressman, that show that the Director knew exactly what was going on. What happened here, if I can, Mr. Congressman, that in March 1965--if I could do just a little chronology of this, in February 1965, Steven ``the Rifleman'' Flemmi had been targeted as a top-echelon informant. On March 9, 1965, his brother was being targeted as an informant. On March 10----

Mr. Barr. When you say targeted as an informant, you mean by the FBI?

Mr. Garo. Yes. Absolutely.

Then on March 10th, they received information that Flemmi and Barboza might be going to kill Teddy Deegan. On March 12th, Teddy Deegan was killed. On March 13th, Vincent Flemmi told the same informant that he and Joe Barboza killed Teddy Deegan the night before with three other guys, told them how it happened, how they were going to get in and do the B&E, how it happened, who was there, who did what. And they did a very sloppy job.

On March 19th, all this information now is given to the Director of the FBI. Now what happens is--now you have to go 2-1/2 years later, because in March, April or May 1967, Barboza becomes a witness for the Federal and State governments on various defendants that I've talked about previously.

Now, when Barboza was willing to take down and give false and perjurious statements on first degree murder cases, and it's all uncorroborated testimony, now--in my opinion, what happens now is between March, April, May 1967 and October 25, 1967, when the indictments came down as a result of Barboza's testimony on October 25th, the previous information just got in the way of the prosecution of these three cases. So now they let Barboza tell another story. No one is ever going to find out about these documents, because we're going to bury the documents and destroy them.

Mr. Barr. In your view, are there sufficient checks and balances and access to information now that weren't available

back in the 1960's----

Mr. Garo. No.

Mr. Barr [continuing]. So that you would have a confidence level that this sort of thing would not happen?

Mr. Garo. No. I have no confidence right now that won't happen, because this has been happening in the 1960's, 1970's, 1980's and the 1990's. It's occurring right up today, Mr. Congressman, because there's still a denial at the FBI in Boston that anything was wrong, they have done nothing wrong.

Mr. Barr. But I don't mean just in this case, in other cases. I mean, we have additional safeguards that have been put in place, both statutorily as well as is in guidelines for the use of informants, as well as court decisions that have come down in the intervening decades. Do you have a confidence level that with all of those safeguards that we have in place now, that this sort of thing could not happen again?

Mr. Garo. None whatsoever.

Mr. Barr. Do you have some recommendations for us on specific steps that could be taken to help raise your comfort level?

Mr. Garo. I think that should be done, Mr. Congressman, with the defense bar. When everybody makes guidelines determining what's going to happen within the FBI or the government, they go to government. They don't go to the criminal defense bar. I think that the criminal defense bar, as over here, are two of the finest criminal defense lawyers that there are in the country. I think that they ought to be sitting down around the country and determining what legislation is necessary. I don't practice criminal law anymore, Mr. Congressman, and--other than for the Joe Salvati case for all these years, so I'm not maybe the best person in the world to tell you how to do that, but I know that the Massachusetts Association of Criminal Defense Lawyers would make themselves very available to sit down and talk, either with you or the committee, to find what can be done with the legislation and checks and balances to make sure that something like this, Mr. Chairman, will never happen again.

Mr. Barr. Thank you, sir.

Thank you, Mr. Chairman.

Mr. Burton. It's really troubling to think that this has continued to go on. As I understand it, the assistant U.S. attorney up there, they're working on this right now to dig out all the dirt that they possibly can. Is that not correct?

Mr. Garo. That is correct.

Mr. Burton. OK. Thank you.

Mr. Tierney.

Mr. Tierney. Thank you, Mr. Chairman. It is not out of lack of respect that I keep leaving, and I apologize for that. Like Mr. Waxman, I have another Committee on Education that is marking up a bill.

Mr. Garo. We understand, Mr. Congressman. Thank you.

Mr. Tierney. I appreciate that.

I would like to yield my time to Mr. Delahunt, who I know is prepared to go forward on that at this time, and so I would yield to Mr. Delahunt.

Mr. Burton. Mr. Delahunt.

Mr. Delahunt. Yes. I thank you. I thank my colleague from Massachusetts for yielding, and I thank the Chair again, for allowing us to participate.

Mr. Garo, you stated that it is your belief that the informant alluded to, in the various reports that have come to your attention--the report by the FBI, by a Special Agent Paul Rico; a Chelsea Police Department report authored by a captain--or a Lieutenant Evans; and a Boston police report authored by one William Stewart; a State police report authored

by a Lieutenant Cass--refer to the same individual when they reference an informant. Is that correct?

Mr. Garo. No. No. I say that there are several different informants, Mr. Congressman. On the Chelsea police report, that is one informant. The informants on the FBI documents that were handed to me by Mr. Durham, that's a second informant, in my opinion, and in the documents that were provided on the others, I think that in the Detective Richard Cass's report from the State police, that he had further information that no one else had, and I say that there was another informant.

Mr. Delahunt. OK. Let me go back then again. I know you mentioned the name of one Steven----

Mr. Garo. Flemmi.

Mr. Delahunt [continuing]. Flemmi. And it's your belief that he was the informant referred to in the report by Special Agent Paul Rico?

Mr. Garo. That is my opinion.

Mr. Delahunt. Are you aware of any documents or any reports whatsoever that exist that reveals the name of that informant?

Mr. Garo. No, I do not. As a matter of fact, Mr. Durham in his investigation was unable to find that, because the informant documents had already been destroyed.

Mr. Delahunt. Well, that answers my question, because I was going to request the Chair of this particular committee to inquire of the FBI to reveal the name of that particular informant.

Mr. Garo. Mr. Congressman, though, I would say this to you, that I wish you would still make that request, because I have a feeling that there's still information----

Mr. Delahunt. Well, then----

Mr. Garo [continuing]. That's around.

Mr. Delahunt [continuing]. I will make that request then.

Mr. Garo. Because I think it's an excellent request.

Mr. Delahunt. I yield to the Chair.

Mr. Burton. If the gentleman will yield--and I thank you for yielding. We certainly will contact the head of the current--acting head of the FBI and whoever his successor is, and we'll ask for any documents pertaining to this investigation and what's going on in Boston.

Mr. Garo. I think that's an excellent point.

Mr. Delahunt. I just simply can't imagine any basis, in terms of what has gone on in Boston, pursuant to the proceedings presided over by Judge Wolf, why the name of that particular informant cannot be revealed, because it's simply my opinion that would remove some of the mystery surrounding the case against Mr. Salvati.

We spoke, as I indicated earlier, last Saturday regarding the case of Mr. Salvati, and I took a particular interest in your explanation of the efforts that you made to seek a commutation on behalf of Mr. Salvati. Could you just repeat them once more for members of the panel? And maybe, Mr. Garo, you could start with explaining to members of the panel what the commutation process is and how one proceeds and its significance in the Commonwealth of Massachusetts. If you could start there, please.

Mr. Garo. Certainly. Thank you, Mr. Congressman.

In Massachusetts when you are convicted of murder in the first degree, you have no right to parole. The only way that you have the right to parole is if you receive a commutation, and a commutation is considered to be an extraordinary legal remedy. In order to get a commutation, three votes have to be taken, one by the parole board sitting as the advisory board of pardons, the second vote by the Governor of the Commonwealth of Massachusetts, and the third by the Governor's Council, not legal council, the Governor's Council, a duly elected body. The

three of those votes have to be situated for you to get a commutation. It is not easy to obtain.

So that I had filed for a commutation in 1986, but I was told by the then current chairman of the parole board that they weren't going to hold the hearing. In granting, Mr. Chairman, a commutation hearing in the Commonwealth of Massachusetts by a parole board, that means that they are very seriously contemplating giving you your commutation, because they don't do it to raise the hopes of an inmate that you're going to get out. They don't do that. So it's--Mr. Salvati's really to lose--95 percent for him to win it, 5 percent for him not to win it.

The chairman of the parole board said to me in 1986 that he was contacted by the FBI that they were doing an investigation, and Salvati was part of it, and that he was going to get indicted.

Mr. Delahunt. Will you just repeat that slowly? You were contacted by the chair--or the Massachusetts Parole Board was contacted by the FBI, indicating that they were conducting an investigation that implicated Mr. Salvati?

Mr. Garo. That is correct, Mr. Congressman.

Mr. Delahunt. Proceed, please. Do you know the name of the FBI agent?

Mr. Garo. No, I do not. No, I do not.

Mr. Delahunt. Could you identify the individual on the Massachusetts Parole Board who----

Mr. Garo. Yes. Jim Curran, who is now currently a judge out in the western part of the State.

Mr. Delahunt. And Mr. Curran was the Chair at the time?

Mr. Garo. Yes, sir.

Mr. Delahunt. And he indicated----

Mr. Burton. If the gentleman will yield. We will contact the judge, and we will ask who the FBI agent was that informed him it was an ongoing investigation.

Mr. Delahunt. I thank the Chair.

Would you proceed, Mr. Garo?

Mr. Garo. Thank you.

I was very well known to the parole board, because I used to knock on their doors all the time for many years. As a matter of fact, when they heard I was in the building, they would say, hey, Vic, come on and have a cup of coffee with us, because I believe that I've always conducted myself as a gentleman. I believe I've always conducted my representation of Mr. Salvati always on another level.

Mr. Delahunt. But what happened to that investigation, Mr. Garo----

Mr. Garo. Nothing.

Mr. Delahunt. Nothing?

Mr. Garo. After 3 years----

Mr. Delahunt. After 3 years nothing happened?

Mr. Garo. That is correct.

Mr. Delahunt. And what did you do then, Mr. Garo?

Mr. Garo. I went to Mr. Curran and I said, they are trying to prevent you from ever having a hearing on Mr. Salvati.

Mr. Delahunt. And what did Mr. Curran say to you?

Mr. Garo. He said, you're right, we're going to hold a hearing.

Mr. Delahunt. And did he hold a hearing?

Mr. Garo. Yes, they did, sir.

Mr. Delahunt. And what was the conclusion of that hearing?

Mr. Garo. It was held in August 1989, and at a date that I still don't know, Mr. Congressman, they voted unanimously for the parole----

Mr. Delahunt. Mr. Garo, how many members on the parole board?

Mr. Garo. At that time I had five members that were present at----

Mr. Delahunt. And each and every one of them voted in favor of commuting the first degree murder sentence of Mr. Salvati, and that was in 1989?

Mr. Garo. I don't know the date they----

Mr. Delahunt. You don't know----

Mr. Garo. It's always been hidden from me because----

Mr. Delahunt. It's been hidden from you?

Mr. Garo. And I would explain----

Mr. Delahunt. And I would hope that the Chair of this particular committee would request the documents from the Massachusetts Parole Board relative to when that unanimous vote was taken.

Proceed, Mr. Garo.

Mr. Garo. Thank you, Mr. Congressman. At that time when--I received a phone call from a member of the parole board who said to me, Mr. Garo, I have some good news and bad news for you. You have received the unanimous vote of the parole board, but the documents are not going to be placed on Governor Dukakis' desk; and I said, can you tell me why? He said, because of the Willy Horton scandal that had happened and other matters, that they really don't want to deal with your commutation. And that was a major blow to us, Mr. Congressman, because I then had to meet with my client Mr. Salvati and his wife and four children, because at that time----

Mr. Delahunt. Are you aware of any communication between the then Governor Dukakis' office and the Chair of the parole board regarding concern about the Willy Horton case?

Mr. Garo. Only what I was told by the parole board themselves.

Mr. Delahunt. At some point in time, could you give the names of the----

Mr. Garo. Yes. I will be glad to give that to you at the appropriate time, Mr. Chairman--I mean, Mr. Congressman.

Mr. Delahunt. And what happened then, Mr. Garo? If I could indulge the Chair for the additional time.

Mr. Garo. What happened then----

Mr. Shays. I'm happy to yield the gentleman my 5 minutes.

Mr. Burton. We'll give you time. Without objection, we'll--

--

Mr. Delahunt. There's a particular line of questioning I want to pursue.

Mr. Shays. You just stay right at it, sir.

Mr. Delahunt. Mr. Garo, please.

Mr. Garo. We had a very difficult decision, Mr. Congressman, as you well know, that if I filed a motion for new trial, I'd lose my unanimous vote of the parole board, and knowing the history here of the judicial handling of these cases, I told him, we're not going to overturn this case.

Mr. Delahunt. So that's when you made the decision not to pursue the motion for the new trial?

Mr. Garo. That is correct.

Mr. Delahunt. Fine.

Mr. Garo. We gave that up because we had a unanimous vote of the parole board, and we said, let's keep what we have. Why go into waters where we don't know what we're going to get?

Mr. Delahunt. Right.

Mr. Garo. 1992, then came Governor Weld. On January 20, 1993, Mr. Salvati's commutation was turned down by Governor Weld.

Mr. Delahunt. And what was the reason expressed by the then Governor for rejecting the unanimous recommendation of the parole board?

Mr. Garo. My client's long and involved criminal record.

Mr. Delahunt. Can you relate to us how long and involved Mr. Salvati's criminal record was?

Mr. Garo. A conviction in 1956 for breaking and entering and possession of a precarious implement and a couple of traffic tickets.

Mr. Delahunt. You referenced earlier that one Jack Zalkind was the prosecutor in the case against Mr. Salvati?

Mr. Garo. That is correct.

Mr. Delahunt. And during our conversation last Saturday, I requested any documents that you might have relative to this commutation process?

Mr. Garo. That you did, sir.

Mr. Delahunt. And I have a bunch of them here, and I will ask the Chair to submit them.

And if I----

Mr. Burton. Without objection.

[The information referred to follows:]

[GRAPHIC] [TIFF OMITTED] T6507.022

[GRAPHIC] [TIFF OMITTED] T6507.023

[GRAPHIC] [TIFF OMITTED] T6507.024

[GRAPHIC] [TIFF OMITTED] T6507.025

[GRAPHIC] [TIFF OMITTED] T6507.026

[GRAPHIC] [TIFF OMITTED] T6507.027

[GRAPHIC] [TIFF OMITTED] T6507.028

[GRAPHIC] [TIFF OMITTED] T6507.029

[GRAPHIC] [TIFF OMITTED] T6507.030

[GRAPHIC] [TIFF OMITTED] T6507.031

Mr. Delahunt. Back on March 12, 1979, Mr. Garo, did you receive a letter from Jack Zalkind?

Mr. Garo. Yes, I did.

Mr. Delahunt. And if you could read--if you have it before you, if you could read the second paragraph for the benefit of the committee, please.

Mr. Garo. Surely. And this is a letter dated March 12, 1979.

To whom it may concern, Re Joseph Salvati.

Second paragraph: During the investigation of this case, prior similar activities by Mr. Salvati never came to my attention, and it was my belief at that time that it was Mr. Salvati's first serious criminal involvement.

Mr. Delahunt. Can you repeat that again for the benefit of the panel?

Mr. Garo. It was my belief at that time that it was Mr. Salvati's first serious criminal involvement.

Mr. Delahunt. And that was a letter dated to you on March 12, 1979?

Mr. Garo. That is correct, Mr. Congressman.

Mr. Delahunt. And back in 1979, did you also receive the communication from a Frank Walsh?

Mr. Garo. Yes, I did.

Mr. Delahunt. Could you inform the panel who Mr. Walsh is?

Mr. Garo. Mr. Walsh was a detective in the Boston Police Department assigned to organized crime activities and homicides, and he was involved in the investigation and arrest

of Joseph Salvati.

Mr. Delahunt. OK. Referring--if you have before you a letter from Mr. Walsh, dated March 15, 1979, and if you would refer to the third paragraph. Could you read it to the committee?

Mr. Garo. Certainly, Mr. Congressman.

During my investigations prior to his indictment, subsequent sentencing, unto this date I have never become aware that Mr. Salvati has been even remotely connected with firearms or physical violence.

Mr. Delahunt. Thank you. And both of these letters--and they were subsequent letters similar in nature. Is that a fair statement----

Mr. Garo. That's a very fair statement.

Mr. Delahunt [continuing]. Recommended--from the prosecutor and the investigator, recommended a commutation for Mr. Salvati; is that accurate?

Mr. Garo. That is very accurate.

Mr. Delahunt. And yet we have the then Governor of Massachusetts in 1992 making a statement that it was because of his long criminal history. And I also remember reading something about his association with organized crime. Is that--

--

Mr. Garo. That was part of it also, yes, Mr. Congressman. That was in 1993, January 20, 1993.

That was January 20, 1993.

Mr. Delahunt. Did you ever have any communication with anyone from Governor Weld's office?

Mr. Garo. No, I was like persona non grata. No one would talk to me.

Mr. Delahunt. Do you have any reason to believe that anyone from the Federal Bureau of Investigation would have communicated with the Governor's Office relative to the commutation of Mr. Salvati?

Mr. Garo. May I, Mr. Congressman, do that with an old evidence trick that we were once taught in law school, that when it snows during the night and you wake up the next morning and you see footprints around the building--I can't tell you who the footprints belonged to, but I can tell you that the footprints are there. The footprints are all there that no doubt Governor Weld was talked to.

Mr. Burton. Would the gentleman yield?

Mr. Delahunt. Yes.

Mr. Burton. I think this is important. I know Governor Weld. I think he relied on some staff people for this.

Do you know who at the Governor's Office would have been contacted about this?

Mr. Garo. I have no idea.

Mr. Burton. You have no idea. We will contact former Governor Weld and ask him who gave him that information.

Mr. Delahunt. I think that is very important. Because I presume, given what I have read in newspaper reports, that the FBI--and even today in--the Special Agent in Charge of the FBI office, one Charles Prouty, has indicated that, while they had this information, they did transmit it to local authorities. It would seem that, at least in terms of Mr. Prouty's statements, that it's his opinion that terminated any obligation that the FBI had relative to providing this exculpatory information about Mr. Salvati.

But it's clearly different if the FBI took an active role and involvement in impeding the process of the commutation of Mr. Salvati, extending those years for maybe 10 or 15 years, that is clearly a significant injustice, to some 30 years. It's disgraceful, and I hope the Chair proceeds to examine that matter very closely.

Mr. Garo. Mr. Chairman, may I make one comment? Maybe you are now beginning to get the flavor of what I was going through all of these years. Because no one was listening.

Mr. Burton. Well, we're listening; and we will contact Governor Weld to find out what transpired.

Mr. Shays.

Mr. Shays. Thank you, Mr. Chairman.

Mr. Chairman, I hope Mr. Delahunt continues to participate in these hearings that we will be having.

I have a close friend named Austin McGuigan, who is the Chief State's Attorney in Connecticut; and 20 years ago he predicted to me that some day there would be a story about the corruption that existed in the FBI operation in New England. Part of what motivated him to say that is that he was questioning witnesses that were being--in dealing with the World Jai Alai, and they were being murdered. And he was puzzled by the fact that so many retired FBI agents were working for organized crime in Connecticut.

I have such a difficult time understanding the early stages of this. Mr. Salvati, I need to ask you a question, too, and I'm sure I will understand it after you tell me, but, first, was this trial a jury trial or was it a trial by a judge?

Mr. Salvati. Jury trial.

Mr. Shays. Jury trial.

Mr. Salvati. Yes.

Mr. Shays. Was it pointed out that the witness had an incredible, despicable record? Was it made clear to the jury?

Mr. Salvati. Yes, and they used that to say that you need the bad guy to catch the bad guy.

Mr. Shays. OK. Didn't you have an alibi?

Mr. Salvati. No, I did not.

Mr. Shays. Explain that to me. You were somewhere.

Mr. Salvati. I don't know where I was that night.

Mr. Shays. That is because----

Mr. Salvati. Because I wasn't there. Why do I need an alibi?

Mr. Shays. What you don't have is what I have. I have a Franklin planner, and I can tell you where I was. Obviously, we didn't have Franklin planners then, and you didn't have one. But I'm smiling because I am so incredulous. Because there was such a timeframe between--it would be like asking me what I did----

Mr. Garo. 2\1/2\ years earlier.

Mr. Shays [continuing]. So I would have had to have identify now what I did 2\1/2\ years earlier on a particular day.

Mr. Salvati. Right.

Mr. Garo. And, Mr. Congressman, that's what is so unbelievable, is that Joe Salvati did not invent an alibi and did not create an alibi. He just said, look, I wasn't there. I don't know where I was, but I certainly wasn't there, because I had nothing to do with that situation.

Mr. Shays. The problem for me is someone who--this is causing me----

Mr. Burton. Would the gentleman yield?

Mr. Shays. It makes me wonder about so many things I have read and heard.

Mr. Burton. Let me ask you about one question that needs to be asked, but I hope it's not too uncomfortable for you. But in your first trial there were a number of defendants along with you, and others who were innocent of this crime as well as you, and we have been told that that the head of the Mafia up there paid the legal expenses for everybody that was involved in that case. Is that correct?

Mr. Salvati. No, it's not.

Mr. Burton. Who paid for your legal expenses?

Mr. Salvati. I paid whatever I had saved, and they ran a benefit for me, and that was it.

Mr. Burton. So you paid for your own legal expenses.

Mr. Salvati. Yes.

Mr. Burton. So the information I have was erroneous then.

Mr. Shays.

Mrs. Salvati. Excuse me. I can attest to that. Because we had a fundraising in the community, and the little money we had we put toward legal counsel for him, and he didn't have the best.

Mr. Burton. OK, thank you very much.

Mr. Shays.

Mr. Shays. I would like to make mention to exhibit 11 which Mr. LaTourette had showed earlier. I'd love to have you turn to the third--and it's the third to the last paragraph.

Just explain to me, first, Mr. Garo, what this exhibit is. It is my understanding this is the Police Department of Chelsea's statement by the officer, Lieutenant Thomas Evans, of what he saw when he investigated this crime.

[Exhibit 11 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.053

[GRAPHIC] [TIFF OMITTED] T6507.054

[GRAPHIC] [TIFF OMITTED] T6507.055

Mr. Garo. What this document represents, Mr. Congressman, is the investigation done by Lieutenant Evans and his partner Bill Moore on the night of the murder and the next day of the murder and what they observed and what they have found out from all different sources.

Mr. Shays. And the Chelsea Police Department is a small police department.

Mr. Garo. Not that small. A good size.

Mr. Shays. How big is the town, the community of Chelsea?

Mr. Garo. I can't tell you.

Mr. Shays. Is it part of Boston?

Mr. Garo. Yes, it is a suburb of Boston.

Mr. Shays. But it is its own entity, its own community.

Mr. Garo. Yes, it is.

Mr. Shays. But this was the report of the officer who was investigating.

Do I have your permission to proceed, Mr. Chairman.

Mr. Burton. Yes.

Mr. Shays. And this is a document that was not made available to the prosecutor or the defendant.

Mr. Garo. That is correct.

Mr. Shays. And this is a document that at one time people denied even existed?

Mr. Garo. That is correct.

Mr. Shays. What I don't understand, though, is Lieutenant Evans knew it existed because he wrote it.

Mr. Garo. That is correct.

Mr. Shays. So when Mr. Evans says in this paragraph--excuse me, it's not Mr. Evans, he's Lieutenant Evans--I received information from Captain Renfrew--did he work in the department?

Mr. Garo. Yes, he did.

Mr. Shays [continuing]. That an informant of his had contacted him and told him that French had received a telephone call at the Ebb Tide at 9 p.m. on March 12, 1965; and after a short conversation he left the cafe with the following men. And then it lists six people: Joseph Barboza, Ronald Cassesso,

Vincent Flemmi, Francis Imbuglia, Romeo Martin and Nicky Femia, and a man by the name of Freddie, who is about 40 years old and said to be a ``strong man.'' They are said to have returned at 11 p.m., and Martin was alleged to have said to French, we nailed him.

Now this was actually in a police document.

Mr. Garo. That is correct.

Mr. Shays. What I don't understand is there is more than one person who is aware of this document.

Mr. Garo. Correct.

Mr. Shays. Who did you ask this document for and who denied it existed?

Mr. Garo. Well, first of all, I obtained a copy of this document, Mr. Congressman, about 3 weeks before the beginning of the commutation hearing in August 1989.

Mr. Shays. August 1989.

Mr. Garo. I received it about 3 weeks before.

Mr. Shays. Where did you receive it from?

Mr. Garo. I would rather not disclose that, Congressman.

Mr. Shays. Was it in the possession of the Chelsea Police Department.

Mr. Garo. That's an interesting story, and if I could answer that, Mr. Congressman. When I had obtained a copy of this document, I used it on the commutation hearing of Mr. Salvati. And when Governor Weld denied the commutation back on January 20, 1993 because of his long criminal record, etc., I said I needed someone in the press to start helping me. And I found a wonderful ally who has done a wonderful job, Dan Rea, who is here today in chambers, and Dan has done wonderful investigative reporting in the case, also.

When I showed him the report in March 1993, he then went out and did his own investigation also. He went to the Chelsea Police Department, and he said, do you have an old file on the Deegan murder case? And they said, I'll go look for one. Lo and behold, they came back with a folder. The first document he opens up is the original of this document. So that the original of this document was in a small file folder on the Deegan murder case.

Mr. Shays. I thought you said they didn't have the document.

Mr. Garo. That's what they said.

Mr. Shays. They is what----

Mr. Garo. If what you're being confused about--and I know you're not confused--is this: Are you saying the Chelsea Police Department conspired with the FBI in this case, the answer is yes. Do I think that the Boston Police Department conspired with the FBI office in this case? Yes, I do. Do I believe that certain police officers associated and did things with the FBI concerning this case? The answer is yes. Because for this document to come out, Congressman, then they would be coming out with information about informants.

Mr. Shays. Why weren't you able to get the document when someone from the police was able to get the document? Explain that to me.

Mr. Garo. No one ever looked at that time.

You have to understand, Congressman, no one wanted to talk about this case.

Mr. Shays. In other words, when you asked, they didn't even bother to look.

Mr. Garo. When was that? I was not the trial counsel.

Mr. Shays. Didn't you ask for this document earlier?

Mr. Garo. No, no. I obtained a copy of it 3 weeks before my commutation hearing.

Mr. Shays. I'm sorry. If I can just make sure. I am confused.

Mr. Garo. I'm sorry. I'm confusing you.

Mr. Shays. It's not your fault.

I want to know this. You would have clearly gone to the Chelsea Police Department to ask for any record they had. You did that before, correct?

Mr. Garo. There were no documents that were ever turned over to me from the Chelsea Police Department having anything to do with Salvati's case.

Mr. Shays. And you did ask for it.

Mr. Garo. The lawyers had asked for it. There were motions filed, and the request made. It would almost seem, Mr. Congressman, didn't it, that maybe somebody had been keeping that document hidden for a lot of years.

Mr. Shays. I'm saying you didn't specifically ask for it. It didn't come into your possession, and you didn't feel you had to ask for it. You would have thought it had to have been given to you. And it just so happens that someone asked for this document, and they were handed it.

Mr. Garo. What happened, Mr. Congressman, in reading the 8,000 pages of transcript, you would come to find out that all the reports they had were in evidence. This was an additional document.

Mr. Shays. I hear you. I hear you. This is something totally----

Mr. Garo. That is correct--out of the blue. That is why I said, Mr. Congressman, the most important document that I ever received in the case, because this hidden Chelsea Police Department shows who the real killers were.

Mr. Shays. What strikes me is that Lieutenant Evans didn't somehow feel compelled to come forward. But also Captain Renfrew, did you ever speak to him?

Mr. Garo. Captain Renfrew would not speak to me.

Mr. Shays. And he's living today.

Mr. Garo. He died.

Mr. Shays. And evidently Lieutenant Evans----

Mr. Garo. He passed away.

Mr. Shays. Well, I will say to all three of you that I rejoice in the fact that, Mr. Salvati, that you're out and, Mrs. Salvati, that you get to hug your husband without anyone watching. But I wonder now who else is like you, Mr. Salvati, who is still there, and maybe he doesn't have a lawyer like Mr. Garo, and I wonder how many people died in prison who were in your circumstance and were not able to celebrate their being out.

Mr. Garo. More than a few, Congressman, more than a few.

Mr. Shays. Thank you.

Mr. Burton. Let me just say to my colleague we will, as far as we can--we can't cover every case that took place up in the Boston area, but any case involving Barboza and others we will try to get information, and if we find that there are similar circumstances we will look into them.

Mr. Meehan.

Mr. Meehan. Thank you, Mr. Chairman; and, Mr. Chairman, I want to thank you for holding this hearing. This is a critically important case. The revelations about the relationship between the Boston FBI agents and Boston area underworld figures are obviously are a matter of concern to us in Massachusetts but really to the entire country.

To get back to what Congressman Shays has just indicated, this isn't just a question of what happened in this case or what happened in a series of cases but a culture in the FBI that may be taking place or have taken place not only in Boston but throughout the country.

I want to go quickly to this 1993 report. You had indicated that WBZ's Dan Rea had a police report that was found in a file

in 1993.

Mr. Garo. Yes, Mr. Congressman.

Mr. Meehan. Where had it been all these years?

Mr. Garo. I don't know.

Mr. Meehan. Does anybody know?

Mr. Garo. You will probably have to ask somebody on the Chelsea Police Department, Mr. Congressman.

Mr. Meehan. Well, Mr. Chairman, I want to thank you, Congressmen Frank and Delahunt, and I appreciate the fact that we can participate here.

We had called for congressional hearings not because we wanted to cripple the FBI. We respect what the FBI does on a daily basis to protect people from violence and terrorism and fraud. But I think, at a minimum, we want to find out the truth. Because sunlight and accountability ultimately prevent a repeat of the mistakes that have severely tarnished the FBI here.

We also want the truth to come out so that Mr. Salvati and others whose lives have been shattered at least can be heard. They deserve so much more than that, but, at a minimum, they deserve to be heard.

Actually, I called for hearings as far back as the summer of 1998 when the relationship between the FBI agents and two particular Boston area gangsters was revealed. In general, this isn't a new story for us from Boston, but the revelations that have been leaking out over the 4 or 5 years with Judge Wolf's 260-page opinion being, from my perspective, a watershed event in pulling back the curtains of decades of the incestuous relationship between the agents and the informants and the destructive consequences. I didn't know much or focus back in the summer of 1998.

The most tragic part of this story, the most tragic thing of all is one that we hear today. It's hard to believe that this could happen in America. It is hard to believe that FBI agents could know of a murder in the making and not stop it from happening. It's hard to believe that FBI agents could know a man was innocent of a crime yet allow him to be jailed for what was to be life.

We've heard about the process with the Governor--first, Governor Dukakis and then Governor Weld, and to allow him to be stripped from his family, his life, his liberty--and the FBI says they were forthcoming. They say they didn't conceal information indicating Mr. Salvati's innocence, and they didn't attempt to frame anybody. Well, there is plenty of dispute here over how the FBI handled the information it received in this case, the information exonerating Mr. Salvati.

But one way or the other, I think that we deserve better than ``we didn't attempt to frame anyone.'' It is the FBI's job to protect us. Obviously, it failed miserably here.

Ultimately, we can never undo the pain and suffering inflicted in this case. At least we can offer apologies. We can ensure that this doesn't happen again.

One of the issues is the so-called guidelines that the Justice Department has reported. But I can't help but look back to early in the Ford administration, I think it was Attorney General Levi went through a process of guidelines at that time, but they didn't seem to have much in effect here. The guidelines didn't affect the culture of the FBI.

I would add, Mr. Chairman, that at the time, the early 1970's, it was a congressional hearing shedding light on that process of guidelines that resulted in getting the new guidelines and resulted in putting some guidelines that at least took into account--so that's why these hearings are so critical, Mr. Chairman.

But I wonder if you have a perspective, Mr. Garo, as to how

you change this culture. It is one thing to make guidelines and to have hearings and continue--I am happy to hear the chairman is going to continue this process, get information and get to the bottom of it. How do you change the culture, notwithstanding the attempt to have guidelines?

Mr. Garo. I don't think you can just do it, build guidelines. I think there has to be some checks and balances that are in there.

What I'd offered earlier, Mr. Congressman, is this, is that whenever guidelines or anything comes down of the government doing its own checks and balances, that never works. What happens is we have in Massachusetts a wonderful organization called the Massachusetts Association of Criminal Defense Lawyers; and it would seem to me, Mr. Congressman, that when and if this committee or if your committee in the future investigates further, that some of the more practicing attorneys--because I don't practice criminal law anymore, Mr. Congressman----

Mr. Meehan. The case burned you out, huh?

Mr. Garo [continuing]. And I'm not looking for more business like this.

But Mr. Balliro is here. Mr. Bailey is here. They are wonderful criminal defense lawyers. Actually, they're the ones that should be part of any process in the future because that is where the tire meets the road. They're out there every day fighting the system. And we were told in law school that the system has to work for the very worst of us to work for the very best of us.

Mr. Meehan. I was detained earlier. You think this case has been frustrating. I was in a meeting. We are trying to get campaign finance reform passed, and I am reminded of the frustrations trying to do that with a lot of the frustrations you have had.

But I wanted to ask you, the Supreme Court in *Brady v. Maryland*, *Rivero v. the United States*, held the government had certain obligations to give exculpatory information to defendants in criminal cases; isn't that right?

Mr. Garo. Absolutely.

Mr. Meehan. Could you explain in general terms what that means?

Mr. Garo. What it means in the general sense is the government is a human being. It doesn't just look to convict. It looks for justice.

What they're looking for there shouldn't even have to be a rule of law like *Brady*. If there's a situation and you have evidence of a person as being innocent and you're going to put him to death in the electric chair, you would think that human rights and human decency--forgetting the law--would make the government want to comply with that. But, as we know, they didn't obey the law, they didn't obey their conscience. It is, the truth be damned, full blown speed ahead for convictions only.

Mr. Meehan. In the *Rivero* case, the court stated specifically where the disclosure of an informer's identity or the content of his communication is relevant and helpful to the defense of an accused or is essential for a fair determination of a case, the information must be disclosed or the case must be dismissed. Now is that your understanding what the law was at the time of Mr. Salvati's trial?

Mr. Garo. That was a 1959 Supreme Court of the United States' decision. I had used it successfully many times in the past. I don't have to tell Mr. Balliro or any of the good criminal defense lawyers that were involved in the Deegan murder case at the time. They knew all about those laws. That's the reason why, Mr. Congressman, it was withheld from them that

there was informants.

Because, under Rivero, the law is, if you make a demand from an informant during trial and you can show it will be relevant and helpful, you will get the name of the informant 95 to 99 percent of the time. And if the government doesn't give it to you, the charges are dismissed.

Can you imagine how the chicanery was going on in the Boston office of the FBI, the Suffolk County District Attorney's Office, the Boston Police Department, the Chelsea Police Department, the U.S. attorney's office? If anybody finds out that we have informants and we don't give the name of the informants, we're going to blow the cases. I think that's a pretty big incentive not to come forward with the fact that there were informants in this case.

Mr. Meehan. So in this case the government failed to disclose this information to the defense because----

Mr. Garo. It could have--since they would have never given away the names of informants, they would have had to dismiss the cases. I had done that myself about a year earlier in 1966. I understood the Rivero case very, very well because I used it many successful times.

Mr. Meehan. So if the system had worked correctly in this case how should the government have handled the information received from the confidential informants?

Mr. Garo. If they're looking for the truth and you don't want to put someone in prison or to die in the electric chair, you would think that the common decency is that--let me give them this evidence. But if I am bent only on convictions and I have an agenda that I don't want to share with anybody else, I am looking to hide all the good evidence, conjure and perjure and make up the bad evidence and let's go with the convictions--because, as has been stated, the criminal--the Witness Protection Program began with Joseph Barboza. I say it was a misnomer. I say it was the criminal protection program, and it wasn't the Witness Protection Program. When Joe Barboza went out to California under the Witness Protection Program, he killed three to five more people. He's in the Federal Witness Protection Program, and he is killing people in California.

As a matter of fact, he goes to trial on a first degree murder case in 1971 and is still in the Witness Protection Program. And the head of the organized strike force and two FBI agents go out to California and help the defense of Barboza in his 44-day trial of a first degree murder case by saying he was a good guy and he helped us with crime back here.

Mr. Bailey will be able to tell you more about that because he was going to be a witness out there, and that's what caused--it was said--Barboza to finally plead to second degree murder while in the Federal Witness Protection Program and get a sentence, I believe, that is 5 to life. And he has killed others, and no one wanted to investigate it. No one wanted to talk about it.

Mr. Delahunt. Would the gentleman yield for a moment?

Mr. Meehan. Sure.

Mr. Delahunt. Mr. Garo, I'm aware of the fact that two FBI agents testified on behalf of Mr. Barboza in that capital case. Could you identify them for the record?

Mr. Garo. H. Paul Rico and Dennis Condon.

Mr. Delahunt. Thank you.

Mr. Meehan. What's really repulsive about the behavior in this case is, before I got elected to Congress, I was a first assistant district attorney in Middlesex County up in Massachusetts. We take young lawyers and we take them into the office and train them, basically a training ground; and we teach the ethics of making sure that they balance the enormous power that the prosecutor has with making sure that the police

are getting it right, making sure that they always maintain their responsibility, their integrity to disclose exculpatory information and to get it right. I know that's the way Mr. Delahunt's office operates, and to see that it can get this bad is just very very concerning.

Again, Mr. Chairman, I look forward to participating with you further.

Mr. Burton. I hope you gentleman will be able to be with us for the next panel. We have some interesting testimony coming there as well. Thank you.

Mr. LaTourette.

Mr. LaTourette. Thank you, Mr. Chairman.

Mr. Garo, I want to go back to exhibit 11 just to clean up some stuff, if I can. Those of us that have been involved in prosecutions and law enforcement know that there are informants and there are informants. I think you were talking to Mr. Delahunt earlier about that fact, and I think you indicated that in the various reports you think there may have been up to three different informants supplying law enforcement with information concerning this homicide.

Exhibit 11 to the layman is startling because it indicates very early on, even though it's not dated, very early on Lieutenant Evans had information from an informant as to who the murderers of Mr. Deegan were. My question is, given the fact that there are informants that are good informants and there are bad informants, did you ever discover who the informant was that supplied this information to the Chelsea Police Department back in 1965?

Mr. Garo. No, the identity of that informant has not been made known yet.

Mr. LaTourette. When I had the chance to talk to you before in my 5 minutes, I asked you who John Doyle was. It sort of brought a smile to your face, and you sort of indicated it was a long story, and you identified what his position was. But I want to spend the rest of my time, if I could, talking to you about what it is he did or didn't do in this case; and, specifically, the staff of this committee has indicated to me that after this document came to light that it may have been offered or brought to his attention. Is there such a story you can relate to us?

Mr. Garo. Yes, there is; and I'll gladly share it with you. Dan Rea, who was the only voice that I had for this case from 1993, had been talking to--we call him Commander Doyle, and he wanted to know from Doyle--he had a relationship with Mr. Doyle for many years, and Dan told him that he was getting involved in the case with me. And he says, why do you want to do that? That's a dead end case. Why don't you just forget about it and go on home? And Dan said, no, I think it's a story that I'm going to follow. He says, I think you're barking up the wrong tree. Dan at that time had then found the original of the police report in the Chelsea Police Department.

Mr. LaTourette. Was there a public record law that was passed in Massachusetts when all of this took place?

Mr. Garo. Yes. And at that time when Dan found it and he told me all about it and he was very surprised and I was shocked, and with that document what he did was he called up Commander Doyle. And he said to Commander Doyle--this is what has been relayed to me, now.

Mr. LaTourette. Sure.

Mr. Garo [continuing]. And the Commander said to him, what is it that you're bothering me about now? And he said, well, he said, that Chelsea police report. Yeah, there was no Chelsea police report. He said, yes, there is. As a matter of fact, I found the original Chelsea police report, and I have a copy of it. I would like to come over and show it to you and discuss it

with you. I don't want to see you. Don't call me anymore. And that was the end of conversation.

Mr. LaTourette. Was that in 1989?

Mr. Garo. No, that happened in 1993.

Mr. LaTourette. 1993. OK. But at that time you had a copy of it.

Mr. Garo. I had a copy of it for 4 years.

Mr. LaTourette. And your client had been in prison for over 20 years.

Mr. Garo. That is correct.

Mr. LaTourette. And still an additional 4 years went by before he was released from prison.

Mr. Garo. That is correct.

Mr. LaTourette. Thank you very much. I don't have any other questions.

Mr. Barr [presiding]. Ms. Holmes Norton, did you have some questions for the panel?

Ms. Holmes Norton. No.

Mr. Barr. Mr. Shays, do you have some additional questions?

Mr. Shays. I do.

Mr. Barr. The gentleman from Connecticut is recognized for 5 minutes.

Mr. Shays. Thank you. I have a few, yes, sir.

I would like to go through this fairly quickly. I would like exhibit 11 to be put up. Exhibit 11 is the report of the Chelsea Police Department, Lieutenant Evans. There is a report of the city of Boston. And what's very interesting about it is this is a report of the murder of Teddy Deegan in Chelsea on March 12.

It's dated March 14, and it says, ``From a reliable informant the following facts were obtained to the murder: Informant states that the following men''--and it goes through the list of men, and here it identifies Freddie as being Freddie Chiampi, and it goes on and on and on. But basically it confirms what was pretty much in the memo, the report from Thomas Evans. So they had an informant. The city of Boston had their informant.

Now is this a document that you were provided years ago.

[Exhibit 11 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.053

[GRAPHIC] [TIFF OMITTED] T6507.054

[GRAPHIC] [TIFF OMITTED] T6507.055

Mr. Garo. I have never seen that document I think until Mr. Wilson showed it to me.

Mr. Shays. So even as we proceed in this case this is a document, and--is there a name identified, Mr. Wilson, with this document? Other than the city of Boston, we don't know who it is. This is December 12.

Mr. Wilson. If I could, this was a document that was provided to us by the FBI on Friday night of last week.

Mr. Shays. So the FBI had this document, and we have been provided it, and you have got it.

Then if you could look at exhibit 13. So we have the Chelsea Police Department and the Boston Police Department; and, Mr. Salvati, your name doesn't show up in this--in either one. And before--they knew it a few days before your trial, they knew it a few days after the murder that they had these informants.

Now this one is from the Department of Public Safety. Is that the State police?

[Exhibit 13 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.058

[GRAPHIC] [TIFF OMITTED] T6507.059

[GRAPHIC] [TIFF OMITTED] T6507.060

Mr. Garo. State police.

Mr. Shays. And this is dated March 15. The murder occurred----

Mr. Garo. March 12.

Mr. Shays. So this is a pretty fresh document. It is not something they discovered a few years later.

I am looking at No. 9; and it says, on the second page, ``During the evening of Friday, March 12, French was at the Ebb Tide''--and it goes on, and it basically mentions the same name, and really what--in this case, they seem to have gotten the report from the Chelsea Police Department. But the point is there is someone in the State police department that also was aware of the Chelsea report, because they mirror it almost perfectly.

Mr. Garo. Absolutely.

Mr. Shays. This is a document you got when?

Mr. Garo. This is a document that I received when the Suffolk County District Attorney's Office in October 1993 filed a brief in opposition to my motion for a new trial.

Mr. Shays. So just to reiterate, that was in 1993?

Mr. Garo. 1993.

Mr. Shays. But the report by Lieutenant Thomas Evans, Chelsea Police Department, wasn't dated, but it appears to be fairly current but--so we have the Chelsea Police Department, we can make an assumption it was done shortly after, if not right after----

Mr. Garo. The partner said that, Bill Moore said that.

Mr. Shays. And then we have the Boston Police Department talking about what informants it had, and then we have the Massachusetts Police Department--excuse me, State police on our document 13. And there it was dated March 15.

So, just a few days afterwards, this was made available to not just one person or two people, not just one department, but you had three different departments, two communities, plus the State police.

Mr. Garo. What you are having here, Congressman, that we never knew is that there were parallel investigations going on in the Deegan murder case shortly after it happened within March 12th to 15th, and none of us knew about this Cass report of the State police because in it they talk about a different motive.

If you were to look on page 3 of the Cass report, it says, on No. 11 at the top of the page, ``Further information was received that about 3 weeks prior Deegan had pulled a gun on Barboza, aka Baron, at the Ebb Tide and forced him to back down and that this was the cause of Deegan's death.''

Now Barboza had said that the motive for this was to get \$7,500 from Peter Limone to kill Deegan. The State police at that time had another informant that was giving them information as to the real motive that Deegan was killed, and they sat on it.

Mr. Shays. But I would like to think that there is a fail-safe system that we have in, that somebody is going to step forward. It would seem to me that someone would want to think that someone else might show up and reveal what happened and then be made to look bad. So your concept of the conspiracy becomes almost inevitable. It seems like you have no other way to come to any conclusion.

Mr. Garo. That is correct, Congressman; and let me say

this. You know, this is not easy for me to come here before Congress and to belittle the enforcement of the laws in the Commonwealth of Massachusetts. But if things are going to change you have to first find out what the evidence really was and to say how do we prevent this from ever happening.

Because it looks like, Congressman, you have hit the nail right on the head. Because what you're saying, there is a Chelsea police report, there is a State police report, there is a Boston Police Department report and god knows how many other reports that have been hidden or destroyed over the years that all say the same thing. Joe Salvati was innocent. He was never mentioned. You people knew who it was, and you all sat back and were happy enough that Joe Salvati could die in the electric chair. My God, what are we coming to?

Mr. Shays. Thank you.

Mr. Barr. All Members having concluded their questioning, the Chair now recognizes the counsel for 30 minutes.

Mr. Wilson. I won't take the full 30 minutes.

First of all, Mr. and Mrs. Salvati, thank you for being here and thank you for extending courtesies to myself and my colleagues when we have talked to you. It has meant a lot to us that you have spoken with us and spoken with us freely. You have made our jobs a lot easier by being willing to cooperate with us, and we appreciate that. It's something that we don't always get in this line of work, and we really do appreciate what you have done for us.

I will just take a few minutes right now, because there are some documents we should work through fairly quickly. Because we have submitted documents for the record and because there is a transcript of this, I want to get a few things down so we all understand what was going on right at the time of the murder, and I want to explain some of the initial documents that we have put in the record.

If you could please put up exhibit No. 7 on the screen. Exhibit No. 7 is described as an Airtel to the Director of the FBI. It's dated March 10, 1965. That would be 2 days before Teddy Deegan was murdered.

On the second page of the exhibit which you have in your book, in the first full paragraph, it says, ``According to Patriarca, another reason that Flemmi came to Providence to contact him was to get the OK to kill Teddy Deegan of Boston who was with''--and there is a redacted name, and then it goes on. It says, ``It was not clear to the informant whether he received permission to kill Deegan.''

Now this is 2 days before Deegan was killed, and the document we have indicates that the FBI was in possession of information that Deegan was to be killed. Mr. Garo, is it fair to say you did not know about this document until December 2000?

[Exhibit 7 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.045

[GRAPHIC] [TIFF OMITTED] T6507.046

Mr. Garo. December 19, the year 2000. That is correct, Mr. Wilson.

Mr. Wilson. Now, the next document--if we could go to exhibit 8, please. Exhibit 8 is also titled Boston's Airtel to Director and SACS--that's special agent in charge of the offices in Albany, Buffalo and Miami. So this is a document that was disseminated not only to the Director of the FBI but to the head of offices to Albany, Buffalo and Miami. The date is March 12, 1965. That's the date Teddy Deegan was murdered.

We don't know when this was transmitted, but presumably,

because Mr. Deegan was murdered late at night, this was the document that was transmitted before the Deegan murder on the same day of the murder. It says in the third paragraph, Flemmi stated that Deegan is an arrogant nasty sneak and should be killed.

So this is the second important document on the day of the murder in the FBI's possession.

Now, again, Mr. Garo, again you did not know about this information until----

[Exhibit 8 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.047

Mr. Garo. December 19 the year 2000.

Mr. Wilson. If we could move to exhibit 15, please.

Exhibit 15 is a memorandum to the Director of the FBI from the man in charge of the Boston FBI office. It's dated March 19, 1965, and this is the document that Congressman Barr was referring to earlier.

It states,

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.'

Now this is another one of the documents that was released in December 2000, is that correct?

[Exhibit 15 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.062

[GRAPHIC] [TIFF OMITTED] T6507.063

[GRAPHIC] [TIFF OMITTED] T6507.064

Mr. Garo. That is correct, Mr. Wilson.

Mr. Barr. Excuse me, if I could--this document says, the following are the developments during the current week. Were there weekly updates that were being furnished?

Mr. Wilson. It's our understanding from the documents that there were weekly updates that were going to the Director of the FBI. They were not voluminous. They were the highlights of what was happening, and we have other documents of this sort.

Mr. Barr. Thank you.

The gentleman from Connecticut.

Mr. Shays. So we have Chelsea, and we have the Boston Police Department, and we have the State police. This is from the FBI, basically saying the same thing that were in the other three documents.

Mr. Wilson. Yes. Although these are different in that these documents actually talk about the Deegan murder before it occurred. They actually had information that the Deegan murder was to occur.

The one thing I can say, having reviewed all the documents produced to us and we received, we made a document request for all documents related to the murders of Teddy Deegan and anything related to Teddy Deegan, and we got about a linear foot of documents from the FBI last Friday night. That would probably be 1,000 pages of documents. And in those 1,000 pages of documents there was nothing contemporaneous that mentioned Mr. Salvati's name, nothing. The other people were described in the different reports and seem to be accurately described.

Mr. Shays. Just one last question. When I see this blacked-out area, what is that? What did they black out?

Mr. Wilson. There are a number of conventions that the FBI used when they redacted documents. The most consistent redactions go to the names of the informants. The FBI never shared the names of informants or information about informants with anyone, including the Attorney General.

Mr. Shays. Is it possible they blocked out a signature of someone who made notes that they read it or anything like that?

Mr. Wilson. This we just don't know.

Mr. Shays. I would like to know if we have the ability to have counsel go to the FBI and see what was redacted. It would be amazing. We can only speculate. Sometimes when people read documents they check them off and put their initials next to them and so on.

Mr. Wilson. We have gone through three documents, one before the Deegan murder, one the day of the Deegan murder, one 7 days after the Deegan murder.

Now I would like to turn, if we could, to exhibit No. 24.

Now bear in mind that all the documents we've seen identify Vincent Flemmi as a participant in the Deegan murder, and these are the documents that we've just put up, the one before the murder where Vincent Flemmi went and asked permission to kill Deegan and afterwards where he was identified as in fact a person who participated in the Deegan murder.

Exhibit 24 is a write-up of an interview of Joseph Barboza. The interview took place on March 8, 1967. It was conducted by Dennis M. Condon and H. Paul Rico.

The important point that I think we need for the record here, that on the second page of this exhibit there is a section that was redacted so we don't know what it says, but then the one bit that's left in says, Baron--Baron is another name for Joseph Barboza--Baron knows what has happened in practically every murder that has been committed in this area. He said he would never provide information that would allow James Vincent Flemmi to fry but that he will consider furnishing information on these murders.

Now, the easy question we're asking, Mr. Garo, is, did you know anything about this statement ever until---

[Exhibit 24 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.091

[GRAPHIC] [TIFF OMITTED] T6507.092

Mr. Garo. Never.

Mr. Wilson. When did you first see this statement?

Mr. Garo. I don't recall.

Mr. Wilson. Now, one thing we know from reviewing the document was that in 1965 when Mr. Deegan was murdered Vincent Flemmi was an FBI informant.

Mr. Garo. That's correct.

Mr. Wilson. His brother Steven was also an FBI informant.

Mr. Garo. That is correct.

Mr. Wilson. If you could provide an explanation to us in the context of all the things we have heard today, what this means, and specifically Mr. Barboza has told two FBI agents in 1967--that's before the Deegan trial, correct, the Deegan murder prosecution? Barboza has told two FBI agents that he will never provide information that would allow Vincent Flemmi to fry. Is it fair to say that all of the evidence that was in the possession of prosecutions at the time or investigators at the time indicated that Vincent Flemmi was at the crime scene?

Mr. Garo. From the very beginning when the Chelsea Police Department, Mr. Wilson, investigated the case that night with

the information--if you remember me telling you that there was a number 404 on a license plate that had been turned over. And from the statements by Captain Kozlowski that he had come upon the scene and that he had seen the red car and that it had been a registration plate 404, and from the informants' statement that they had left the Ebb Tide that night and mentioned the people, the Chelsea Police Department from that very night knew who the killers were. They had a good notion as to who the killers were.

Mr. Wilson. And there was eyewitness identification--or at least eyewitness identification of a bald man.

Mr. Garo. Absolutely. That is why the ridiculous story about Joe Salvati--about him having to wear a wig to make him look bald is because Vincent Flemmi was bald. Isn't it interesting that Barboza would give the story to have Joe Salvati look like his partner? Doesn't that make a lot of sense?

Mr. Wilson. I will finish here, and I will ask for your opinion on this.

Mr. Garo. Surely.

Mr. Wilson. What I would like to know is that, in your opinion, do you think it was fair or appropriate for the FBI to put a witness on the stand in a murder trial to testify when he had told them in confidence that he would never provide information about somebody who they had information had been at the crime and had committed the crime?

Mr. Garo. In my opening statement you heard what I said, the truth be damned. This was never a search for the truth, Mr. Wilson. It has always been a search only for convictions and to help the propaganda of the FBI during that period of time to show that it was the ultimate crime-fighting force in the United States and in the world. And in order to keep that up they have concocted and perjured testimony to show that, what they were, that they were the FBI.

Mr. Wilson. Thank you very much, Mr. Garo. And again, Mr. and Mrs. Salvati, for all the courtesies you have extended to us, thank you very much.

Mr. Garo. Mr. Acting Chairman, may I make a statement at this time?

Mr. Barr. Yes, sir, Mr. Garo.

Mr. Garo. Thank you. What I'd like to say is this, that I wanted to thank everybody that's here. I'd like to thank the chairman, Mr. Burton. I'd like to thank the Congressmen who have gone out of their way to do an awful lot of work in this case.

Some time ago, I met Mr. James Wilson. He calls me up on the phone and said, Victor, I would like to talk to you. And I said sure. When he told me about the Deegan murder case, I said, I have been known to talk for a few minutes about that case; and I met his staff, Mr. Bowman and Mr. Schumann.

Then Mike Yeager from the Democratic side called me up, Mr. Rapallo, and I have never seen a group of people work so hard and so diligently for any type of organization in my life time. The dedication that they have shown here in putting together a very, very difficult story--folks, it is a very difficult story. I guess maybe I am said to be the master of the facts because I've been around it so long. But just to have people on your staff knowing that when they do their research they have done a damn good job, I am proud to be associated and to know them. And I say this in front of this committee and, Mr. Wilson, especially to you, thank you so much. We're here for you whenever you need us. We thank you for giving the attention to this case that it really needs.

Congressman Delahunt, thank you so much for the kind statements. Thank you for coming to my office for the muffins

we enjoyed for over 5 hours.

And the final statement that I would like to make is this, there is a country for the people. It is a country where we have as our most prized possession freedom. It is an awesome responsibility to make sure that freedom stays where it belongs, with those that were innocent. The job that you are doing is God's work.

Because here you have seen in actuality pain, emotion and feelings. When you were reading the documents, they were only pages. I have lived with these people 26 years. And I say to you that a gentleman and a lady and four good young kids, I knew them then. It isn't right that their lives were taken away from them and stolen from them. So we thank you for giving us the opportunity here today to speak to our case. We thank you so much, and God bless all of you.

Mr. Barr. Thank you, Mr. Garo, Mr. Salvati, Mrs. Salvati. Thank you very much for being here today. We know it has been very difficult, and we look forward to being in further contact with you. I know I speak for the entire committee, those that are here and those that could not be with us, in wishing you godspeed.

Mr. Shays. I wonder if either one of them wanted to make a closing comment. This may be the last time you are before this committee.

Mr. Garo. Say that once more.

Mr. Shays. If either one wants to make a closing statement.

Mr. Garo. You mean Mr. or Mrs. Salvati.

Mr. Salvati. My family and I would like to thank you for giving the opportunity to tell our story. I get very emotional when I speak about my family, but that's the way I am. Again, thank you very much.

Mr. Shays. Thank you.

Mrs. Salvati. To add to that, my husband speaks from his heart. That's the kind of people we are. Thank you for the opportunity at least to hear the story, and I know all good would come out of this here. OK. Thank you.

Mr. Barr. Your faith is inspiring. Mr. Garo, we can't thank you all enough for what you have done. Thank you very much.

Mr. Burton [presiding]. I don't know if anybody needs about a 5-minute break. We're ready for your next panel. Mr. Bailey, are you ready to go or do you need to take a break?

Mr. Bailey. I am ready.

Mr. Burton. We'll bring the next panel up. It's F. Lee Bailey and Joe Balliro.

Would you both please stand.

[Witnesses sworn.]

Mr. Burton. I think we'll start with you, Mr. Bailey; and if you have an opening statement we will be glad to hear you say it.

STATEMENTS OF F. LEE BAILEY, ESQUIRE, ATTORNEY FOR JOSEPH BARBOZA; AND JOSEPH BALLIRO, SR., ESQUIRE, ATTORNEY FOR VINCENT FLEMMI AND HENRY TAMELEO

Mr. Bailey. I do not have a prepared opening statement. Mr. Wilson suggested that a quick recap might help the committee.

I was admitted to practice in Massachusetts in 1960, have been trying cases in the military from 1954 and defended Joe Barboza on an unrelated crime in 1965, the year of the Deegan murder.

Later, I was contacted by a contractor named Frank Davis that said Barboza wanted to recant his testimony both in the Federal case against Cassesso, Imbuglia and Raymond Patriarca and in the Deegan murder case. He was afraid that he would go away for life for perjury in a capital case because that is the

punishment in Massachusetts. But he had, surprisingly, been acquitted--surprising to him at least--in 1965 and thought that I might have some magic scheme that would enable him to vindicate the victims of his perjury and at the same time leave him with a whole skin.

I flew down to New Bedford by arrangement and was picked up by someone and went to a two-story wood frame home where I was confronted with more machine guns than I ever saw in military service. I spoke with Mr. Barboza and essentially learned that he now wanted to say what we in Boston had always known. That although Cassesso and French were in fact involved in the Deegan murder with him and Vincent Flemmi, that Tameleo and Mr. Salvati and Peter Limone and Louie Greco had nothing to do with it whatsoever; and Greco, in fact, was in Florida when the murder occurred.

And he wanted to say that his story about Patriarca, Tameleo and Cassesso was at least, in large measure, fabricated, and I asked him if he had any help in putting these false stories together, and he told me that he had quite a bit of help that came from two agents in the FBI. I did not name them in my affidavit, but the agents he named to me were Paul Rico, then known as ``the Spaniard'' in Boston, and Dennis Condon who has been the subject with Mr. Rico of some fairly fiery testimony in the proceedings before Judge Wolf, where Stevie Flemmi, the brother of Vincent Flemmi, is defended by my colleague, Ken Fishman on a court appointment.

This, I believe, has been the genesis of smoking out most of this dirt from the FBI files, because some of them have testified extensively, and I think some of the questions you have may be answered in that record; for instance, who was the informant. You were asking a while ago--there are papers here that show and that it has been independently shown that it was Stevie Flemmi who told the FBI.

One of the things that puzzled me was how Barboza's testimony was able to switch. Flemmi, who had been seen in the back seat by a Chelsea police officer who couldn't identify him but knew he had a bald spot, ``the Bear,'' Jimmy Flemmi, was a person about 5 foot 8\1/2\ inches tall, very burly and strong. He had a bald spot in his crown, which was prominent and everybody knew about it. And he said that in order to fit to those facts, because no one knew when that police report was going to come up, that he had to put someone else there since Flemmi was his partner and he wasn't going to rat him out, as he put it, and that he didn't like Salvati anyway, because Salvati had been rude to one of his shylock collectors and Salvati was about the right size. So he made up a story, with encouragement, that a wig had been obtained that simulated a bald spot, because Joe Salvati had and he knew he still has a full head of hair. That struck me as highly corroborative of what Barboza was saying.

However, I have long been an advocate of protecting one's self against chronic liars. He certainly was one, had been one all his life, and the condition I had made to the man paying the fee, Frank Davis of HiLo Construction, was that I wasn't going to go forward with the case unless Barboza would agree to take a polygraph, because recanting witnesses are never looked on with favor, but buttressing his testimony would at least make me more comfortable before starting to name names.

While that program was in progress, Barboza managed to get himself caught with a weapon in his car. He was clamped in jail, violated on probation, but did not give up his effort. I arranged for Charles H. Zimmerman, then the probable dean of all polygraph examiners in the United States, certainly in Massachusetts, much revered by the courts in years when we used polygraph, to test Barboza on the truthfulness of his statement

and whether he was being paid any money under the table by anyone connected with the case, innocent or guilty. That test was scheduled for, I believe, July 30, 1970. I saw Barboza in the prison, and although I cautioned him, he would recklessly describe his crimes, and he had no hesitation at all about describing the most cold-blooded, ruthless killings--he claimed more than 20, largely in the McLain-McLaughlin gang wars of the fifties--as if he were eating a piece of apple pie. And cell mates were within earshot.

Mr. Harrington--who I hasten to interject is one of the best Federal judges on the bench, he was then a strike force lawyer--and an assistant named Barns went to Walpole, and somehow the polygraph test went away. We later learned, of course, that the FBI said, fire Bailey and don't take the polygraph test or you're here forever. And I'm quite satisfied that happened, since I was terminated.

Unfortunately for Mr. Barboza, one of the killings that he boasted about in Santa Rosa, CA was within earshot of another inmate, who then went to the authorities, caused Barboza to be indicted in Santa Rosa, and I was summoned as a witness. And I said, I have, I'm afraid, attorney-client privilege. The judge out there ruled no; Barboza knew there were people not within the umbrella of the attorney-client privilege present when he talked about this, and you can be called and will be called as a witness. And I said, all right, but I want you to order me to answer any questions that relate to conversations, whether anyone was there or not.

It was agreed by the prosecutors that would happen.

When it was known that I was going to appear as a witness in the case and that he would face more than a cell mate on the prosecution side, Mr. Barboza began to negotiate, with considerable help from the Federal Government, and walked away with second degree murder, 5 to life, and was hustled off to Montana to some country club to serve his time.

In 1976, in January, Barboza was out, once again with Federal help, roaming the streets of San Francisco as I was engaged in defending Patty Hearst, and I believe in February of that year, was gunned down by someone with a machine gun. The curious twist to Mr. Barboza is that he was, at the end of it all, not a tough guy. When he first came to me to get me to defend him in the unrelated charges in 1965, which were felonies and of which he was acquitted by a jury, I took an immediate dislike to him. I was to defend him as a favor to a man named Howie Winters, who's still alive and was a gang member at the time, and Wimpy Bennett, who was simply murdered later on. And I told Barboza to take his hat off, and he exploded, because I didn't make Bennett take his hat off. And I frankly put my hand in my drawer, where I had a 38, because this man's reputation was fearsome. And I said, Wimpy Bennett is bald, he can keep his hat on; take yours off or get out. And he left the room and broke down in tears and came back in crying, saying if you don't defend me, I'll go to jail. That was the beginning of a relationship which later evolved into the meetings of 1970, and that is most of my knowledge from Barboza that I can disclose.

Mr. Burton. I have a question, but we'll defer that till we hear from Mr. Balliro. Mr. Balliro.

Mr. Balliro. Mr. Chairman, I first of all want to thank you and members of the committee for the privilege of appearing here today. I suppose, almost as much as the Salvati family, I am just thrilled to see what this committee is attempting to do, because for some 30-odd years of the 50 years that I have been practicing law and defending people accused of crime, I've had to carry with me the knowledge that Joe Salvati, Henry Tameleo, who was my direct client, Louis Greco and Peter

Limone, who also had a very young family at the time, were in jail, had suffered the almost expectation of being executed for crimes that I was satisfied from the get-go that they did not commit.

Now, during the course of the 50 years that I have been practicing law, many people have asked me how can you do that day after day, because all of my practice is on the criminal side of the court. And I've always told them that which I believe as much as I believe in anything in this world, that everybody is entitled to a defense, no matter how bad anybody else might think they be. And as a matter of fact, I feel so strongly about it, that I feel that our very form of government, our system of government depends upon due process and the right of everybody who's accused by the government of having committed a crime to get a fair trial.

During the course of my career, I've represented clergymen, politicians, lawyers, judges, the old, young, male, female, people of all kinds of lifestyles. And in all of those cases, except one kind of case, the government always has the burden of proof, and they've got to prove their case beyond a reasonable doubt, except when it comes to an organized crime figure. I've lectured at seminars throughout this country, and I've always told lawyers, especially young lawyers, don't ever walk into a courtroom defending someone who's been labeled as a part of organized crime and ever expect that those things that you learned in law school are going to hold true.

Now, I'm not at all defensive about the fact that I was the lead counsel in the Deegan murder case. And a young colleague in my office, Chester Paris, who was an excellent lawyer, I designated to represent Joe Salvati. And, by the way, Mr. Chairman, and members of the committee, all of the defendants paid for their own fees in that case. And much to the contrary of what the public may have an expectation or deception of believing, the fees were not very large. As a matter of fact, I have a daughter and a son in practice, and they accuse me, even today, of charging less money to represent people than they charge to represent people.

But the Congressman from Connecticut, Mr. Shays, asked earlier on today, how could you lose that case? Well, we lost it for a number of reasons, but I think the principal reason was expressed somewhat in the chairman's earlier remarks this morning--his opening remarks this morning, when he talked about what his feelings were toward the FBI back in those years of the 1950's and the 1960's and the 1970's, the tremendous amount of respect he had, and understandably so, because I myself had, other than for the fact that I knew things that perhaps others didn't about some of the agents of the FBI.

But, you know, the star witness in this case really wasn't Joseph Barboza. The star witness in this case was the FBI. And I don't mean that just figuratively. I mean it literally, because what the government did in that case, in addition to putting Joe Barboza on the stand, totally, completely uncorroborated, as far as his testimony was concerned--there was no other corroboration in the case--except the fact that they put on the stand Dennis Condon. There was no legitimate reason for putting Dennis Condon on the witness stand. The only reason he was put on the stand was to project up there on the board, so to speak, the image that everybody respected of the FBI at that time.

And I was reminded earlier today of some of my cross-examination, obviously, not very successful, but I think very significant, as far as the work that this committee is starting to do. I was trying to undermine through my cross-examination of Dennis Condon the credibility of that which Joseph Barboza had testified to. And I sought to do that by pointing out that

over the period of time that Barboza was in the custody of the government, preparing for trial, a whole raft of different law enforcement people had access to him. And in doing that, I was trying to convey to the jury the fact that his testimony had been shaped and molded. And the only thing that I could get Dennis Condon to agree to was how essential it was to have the purity of a witness' testimony.

He agreed with me in this case, knowing about all of these intels and all of these memorandums that we have no clue about, of course, at all, he agreed with me how essential it was to the administration of justice, the due process, that a person's witness' testimony be pure. And he did that as his testimony was being monitored by a whole sheave of law enforcement officers that had participated in the preparation and the prosecution of that case.

So, Congressman Shays, I'm not defensive, as counsel in that case. We never had a chance from the get-go, but that's what we were up against. That's what these defendants, these innocent defendants, were up against during the course of that trial. I'll be happy to answer any questions that the committee might have.

Mr. Burton. I only have one question at the outset, and then I'll yield to Mr. Barr, and then we'll come back to Mr. Delahunt. And that is, when you met with Mr. Barboza when he was incarcerated----

Mr. Balliro. Mr. Flemmi.

Mr. Burton. Beg your pardon?

Mr. Bailey. Barboza.

Mr. Balliro. Oh, I'm sorry. Yes.

Mr. Burton. When you, Mr. Bailey, met with Mr. Barboza when he was in prison--I think it was in prison--you said that within earshot, there were other inmates who overheard the conversation. Did he say anything about the Deegan murder to you? Did he say that he was involved in it or that--who the other members were that were involved in that murder?

Mr. Bailey. Oh, yes. He was involved--Vincent Flemmi was involved. Nicky Femia, who was a Barboza sidekick, was involved. Chico Amico, his other sidekick, I do not believe was involved. Roy French was the trigger man, and Cassesso was involved. When it came to adding names, he dealt with the FBI this way: You let me put in a couple, and I'll put in a couple that you want.

Mr. Burton. But when you talked to him, did he mention Salvati at all? Did he say, you know----

Mr. Bailey. Yes.

Mr. Burton. What did he say?

Mr. Bailey. He said Salvati was innocent, had nothing to do with the case.

Mr. Burton. So he flatly told you Salvati was innocent in that meeting, and you wanted him to take a polygraph about that issue as well as the others that you talked about?

Mr. Bailey. He signed an affidavit, which although not this specific, was the first step. And I wrote a letter to Attorney General Quinn telling him what was up.

Mr. Burton. Did you send the affidavit with the letter?

Mr. Bailey. Oh, sure. Yes.

Mr. Burton. So he got the letter from you saying that Salvati was innocent, plus the affidavit, and nothing was done?

Mr. Bailey. Nothing was done. All of this was mentioned in my memorandum to Mr. Balliro in 1970 after I was fired.

Mr. Burton. Thank you very much. Mr. Barr. You want me to go to Mr. Shays first? Mr. Shays.

Mr. Shays. I would like Mr. Delahunt to go, and then I'll--

--

Mr. Burton. Mr. Delahunt, are you prepared? Mr. Delahunt.

Mr. Delahunt. First of all, let me welcome two gentlemen for whom I have great respect, that I consider friends, people whom I had dealings with, Mr. Chairman, during the course of my 20 years as an elected prosecutor in Massachusetts. These are people of great talent, great skill, and in my dealings with them, I can tell you now that their integrity was unimpeachable. It's good to see you both here, Lee and Joe. I can tell you this, too. They're very formidable adversaries, but I think that they both know that in their dealings with my office----

Mr. Shays. 'Fess up. They whipped your butt every time.

Mr. Delahunt. No. We had some wins. We had--in fact, the first case that was ever televised in Massachusetts, the case of the Commonwealth v. Prendergast, Mr. Balliro was the counsel for the defendant in that case. So we've made some history together, and, again, this is not just hyperbole or saying good things about good people. It's the truth, and their remarks today I think are very important, because, again, my experience has been as a prosecutor. But I always remember, and I think they both would verify that I had a group of prosecutors that were exceptionally talented. In some cases, their abilities far exceeded mine in a courtroom. But my only admonition was to remember that they had delegated to them the most single awesome power in a democracy, which was to deprive people of their liberty and that one thing I would never tolerate would be the abuse of that power. And I hope that's my legacy of 21 years.

I would pose it to either of you, it's interesting that with all the attention given to Mr. Barboza, in the end what did he really produce for the U.S. Government, if you know? I think Mr. Garo indicated earlier that he testified in three cases. Well, in one of them, it's now overwhelmingly clear that he put four innocent people in jail. If either one of you know, what did he contribute to public safety in Massachusetts and in New England by virtue of his involvement in the other two cases?

Mr. Balliro. Well, it's my view that not only did he not contribute anything toward public safety, but the use of his testimony, like the use of many other jailhouse informants or cooperating witnesses who are testifying solely for reward, does much to damage terribly the administration of criminal justice in this country.

Mr. Delahunt. What you're saying, then, is that in the end, when we find people who are innocent in jail because of a result of this kind of testimony, that in the end it really erodes the confidence of the American people and the integrity of the system? Isn't that really what we're talking about here?

Mr. Balliro. And in a very expensive way.

Mr. Delahunt. And in a very expensive way. It's my understanding in my conversation with Mr. Garo that on the other cases that he testified that resulted in convictions, what we're talking about were sentences of some 5 years, and who knows what the veracity, the credibility, of his testimony was in that case. But after all this, all this money, all this effort, Joe Barboza did absolutely nothing in terms of justice and in terms of protecting the people. It was an egregious mistake to recruit him as an informant to begin with.

Mr. Bailey, you said something that was very disturbing to me. It's clear to me that the position of the Federal Bureau of Investigation, reading from just newspaper reports, is that when they receive this information--and if you had an opportunity to review the exhibits, you see the correspondence back and forth from the special agent in charge in Boston and the Director of the FBI, who at that time was J. Edgar Hoover, as well as reports filed by Special Agent Rico and in some

cases by Special Agent Condon, that they concluded that by simply disseminating the information, that was the end of their legal obligation.

Now, I don't know whether failing to produce that information or insist upon it being brought to the appropriate court of jurisdiction would violate any criminal statute. I find it offensive on a moral and ethical basis. But what you said earlier about Mr. Barboza's testimony being helped, were you suggesting that his testimony was manipulated, was agreed to, was suggested by Federal agents?

Mr. Bailey. I'm quite certain of that. And before more FBI bashing, let me say I am a big fan of the FBI. Judge Webster and Judge Sessions are friends. But the FBI is like the little girl with the curl; when they're bad, they are horrid. In this case I believe that the testimony was furnished. When the FBI decided who they wanted to target, it just happened to be the right-hand man of Raymond Patriarca, the reputed right-hand man of Jerry Angiulo. They suggested those names. Barboza threw in Greco, because Greco beat him up once, and he threw in Salvati, because he had to replace Flemmi. They knew all about that. And one particular agent not only did it in this case but did it again with another----

Mr. Delahunt. You know, that's a very serious statement.

Mr. Bailey. It is.

Mr. Burton. Could the gentleman yield real quickly? You said they did it in another case?

Mr. Bailey. Yes.

Mr. Burton. Would you care to be a little bit more specific? I'll grant the gentleman the time.

Mr. Bailey. Certainly. As these people were indicted, Mr. Balliro and I were engaged in defending what Congressman Delahunt will remember as the Great Plymouth Mail Robbery, then the largest in the history of the country. All these men were acquitted. The purported leader, John J. Kelley, whom I defended, was caught a year later, in a Brinks truck robbery, nailed cold. And he was told--and I talked with Mr. Kelley about this extensively. He was told, you are such a big fish, that to get a deal you're going to have to give us somebody bigger. And there are only two people we can think of, F. Lee Bailey and Raymond Patriarca. He chose Mr. Patriarca, was helped to make up a story about Mr. Patriarca orchestrating a homicide, testified falsely in Federal court and obtained a conviction. The manager of that witness as well was Paul Rico, who came to my office attempting to intimidate me after Kelley turned, and I threw him out.

Mr. Burton. Any information you have about that case we'd like to have. Anything----

Mr. Bailey. I can only tell you, because----

Mr. Burton. We'll check with the FBI to get documentation on that as well.

Mr. Bailey. You should. Yes.

Mr. Burton. I'm sorry, Mr. Delahunt.

Mr. Delahunt. I thank the Chair. I just would note that this goes far beyond simply the withholding of exculpatory evidence, which is--what you're suggesting here is that in a capital case----

Mr. Bailey. Well, I said, ``now, Joe, could you have done it by yourself?'' And he said no, he wouldn't have known how to arrange his facts so that he could testify falsely to them.

Mr. Delahunt. Well, again, in the Deegan case, this is suggestive of subornation of perjury, Mr. Bailey.

Mr. Bailey. It is, the penalty of which is life.

Mr. Delahunt. And that particular statute does not have any statute of limitations, does it, Mr. Bailey?

Mr. Bailey. It does not. And it suggested strongly to me of

a conspiracy to cause murder to happen. If these men had not been saved, not by the judicial process in the United States, which endorsed the death sentences, not of Salvati and French but of the other four, had they not been saved by the U.S. Supreme Court's widespread--effective the Furman v. Georgia decision of striking down capital punishment, they would have been executed, and nobody would have come forward on---

Mr. Delahunt. Mr. Bailey, you seem to be convinced that one Stevie Flemmi was the informant in the reports of the FBI.

Mr. Bailey. He is mentioned not by name but because we know that he was the owner of a certain property, and that's how he's described in the memo which I saw a little while ago. But please understand, the FBI had, we now know, a nest of ruthless, cold-blooded psychopathic killers, two Flemmis, Barboza and Whitey Bulger. They left them on the streets, they protected them at all times. They were killing people left and right and committing all kinds of other crimes. And who gave them information in a given case is hard to say, but Vincent Flemmi has admitted that he was that person in the back seat with the bald spot.

Mr. Delahunt. Mr. Balliro, could I ask you just in terms of how do we remedy this situation? Let me just give you my own theory.

Mr. Burton. Can I clarify?

Mr. Delahunt. Certainly.

Mr. Burton. Mr. Balliro, I want to make sure we don't miss that point. You're saying your client was Mr. Flemmi. Did Mr. Flemmi admit to you that he was the fellow with the bald spot in the back seat?

Mr. Balliro. Oh, yes.

Mr. Burton. OK. Well, I think that's very important that we make sure that's clear to everybody. I thank the gentleman.

Mr. Balliro. Not only did he admit to me that he was the fellow sitting in the back seat, but he also told me that Barboza had sent him a message explaining that he had substituted Salvati for him, and that Limone, Tameleo and Greco had nothing to do with it; but since they didn't give him, Barboza, the proper, what he called respect, he was very concerned about being respected by the people in the north end of Boston, all of whom were of Italian heritage, and he wasn't getting that respect, so he was going to get even.

Mr. Delahunt. I posed a question earlier, but I'd like to ask another question of Mr. Bailey. Can you identify the law enforcement agents that told Barboza, according to Barboza's conversation with you, that you're here forever if you continue to insist upon recanting your testimony?

Mr. Bailey. No, because he didn't tell me that. It has since come out, and I don't have personal knowledge of that, but I do know this: Whenever Barboza was on the move doing anything, Rico and Condon would pop up as they did in Santa Rosa.

Mr. Delahunt. Mr. Balliro, in the State, some offices, including mine when I was the district attorney, adopted a policy of full discovery, an open file policy. Can you describe for members of the committee the discovery procedures in the Federal system and whether, in your opinion, there is difficulty securing exculpatory evidence?

Mr. Balliro. It's like pulling teeth. That's what it's comparable to. You know, they boast--most U.S. attorney's offices--about how much discovery they give to defense counsel in criminal cases, and they're prone to sending you banker boxes full of discovery, really without identifying what in all those thousands upon thousands of pages really is important, what's significant and what isn't significant. But when it comes down to the real nitty-gritty of what you need to

effectively represent your client and to do a competent cross-examination, it's like pulling teeth. They fight it all the way.

Mr. Delahunt. Thank you. Just indulge me, Mr. Chairman, for one more question. You referenced earlier Stevie Flemmi and Whitey Bulger, and I know you were present earlier when I inquired of Mr. Garo about his problems with the commutation, securing the commutation, despite having in his possession documents that were clearly exculpatory. Now as I sit here and I reflect, if Stevie Flemmi, one could theorize, was the informant in this case, given his role and position in the criminal element in Massachusetts, it certainly wouldn't be to his advantage to have Limone and Greco and Tameleo out on the street, would it, Mr. Bailey?

Mr. Bailey. I don't think Stevie was ever accepted as a member of the so-called Angiulo group. The two Flemmis----

Mr. Delahunt. Well, in fact, it was his testimony that did lead in the late 1980's, early 1990's, to the conviction of Gennaro Angiulo and others. Am I correct in stating that? He played a role in it. Not only did he play a role----

Mr. Bailey. The Federal prosecution of Gennaro and Angiulo, yes.

Mr. Delahunt. Yes. But I guess my point is, if you will listen to me for one moment----

Mr. Bailey. Yes.

Mr. Delahunt [continuing]. And just reflect on this premise, it was as if Stevie Flemmi and his associate, Mr. Bulger, were acquiring a monopoly in terms of organized crime in the greater Boston area. There was no competition.

Mr. Bailey. Well, they had their own organization, but they had a very powerful partner, called the FBI.

Mr. Delahunt. I yield. Thank you, Mr. Chairman.

Mr. Burton. Thank you. We'll come back, if you have more questions. Mr. LaTourette. Then we'll go to Mr. Shays. And Mr. Horn, you have questions, too? We'll get to all of you in just a minute. Mr. LaTourette.

Mr. LaTourette. Thank you, Mr. Chairman. Mr. Bailey, I come from Cleveland, OH, and my mom put together a scrapbook and this doesn't have anything to do with it, but I was born in the month of July 1954, the month Marilyn Sheppard was murdered, and your name is certainly emblazoned in a lot we've done, and there are some parallels. As a matter of fact, I just heard Sam Ray Sheppard on the radio the week before I came back and his continuing travails to clear his father, but it's a pleasure to be in your company.

Mr. Balliro, it's a pleasure to be in your company too. I don't want to exclude you, but you didn't have anything to do with Marilyn Sheppard.

I am concerned, Mr. Balliro, about an exhibit that's in our book, exhibit No. 35, which is an affidavit that I think you executed earlier this year in connection with the release of-- dealing with representation you had. You're conversant with that affidavit and----

Mr. Balliro. Yes.

Mr. LaTourette. OK. And I think that the chairman was talking to you before about the fact that--whether or not you had a conversation with Vincent Flemmi about the murder of Teddy Deegan, and you did in fact have such a conversation. And in that conversation, as I understood not only your previous observations but the affidavit as well, he basically told you what had happened to Teddy Deegan.

[Exhibit 35 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.123

[GRAPHIC] [TIFF OMITTED] T6507.124

[GRAPHIC] [TIFF OMITTED] T6507.125

Mr. Balliro. He told me it in the context of the attorney-client relationship. As a matter of fact, he started off by saying--I had gone up to see what information I could get from him that might undermine the credibility of Barboza----

Mr. LaTourette. Right.

Mr. Balliro [continuing]. In the upcoming trial. And he started off by saying that he was very concerned about giving me any information, which kind of stunned me, because I knew what his relationship was to other people in that whole group, and the expectation was that he would be very happy to be of help, if he could be of help. But he said he couldn't and that he was concerned about Barboza, because as close as he was to Barboza, he didn't trust Barboza for one moment. He felt that he might turn on him and might implicate him in the Deegan killing. And if so, he wanted me to represent him. I represented Jimmy on previous cases. As a matter of fact, I represented him on a case that he was in jail for at that time.

Mr. LaTourette. Right. But this conversation which I think I want to get to, this conversation took place, according to the affidavit, at least, in the summer of 1967?

Mr. Balliro. Correct.

Mr. LaTourette. The trial for the Deegan murder took place in 1968?

Mr. Balliro. Correct.

Mr. LaTourette. OK. So at the time that you were representing one of the codefendants, I guess, in the Deegan murder, you had information from another client that the client you were representing had nothing to do with the Deegan murder, and in fact, it was Vinny Flemmi and ``the Animal'' that had actually been the bad people. Is that right?

Mr. Balliro. Correct. It was a lot more complicated than that, because one of the co-counsels who represented Joe Salvati was a fellow who I had put into the case. He was in my office at the time.

Mr. LaTourette. Well, that was the next thing that I was going to ask you. Mr. Salvati's lawyer came from your firm as well?

Mr. Balliro. Correct.

Mr. LaTourette. And it's been--I haven't practiced law, obviously, since I've been here, but it seems to me that there was some rule that what was knowledge of----

Mr. Balliro. Conflicts.

Mr. LaTourette. Well, we'll get to conflict in a minute maybe, but what was the knowledge of one person within the firm was imputed to be the knowledge of the law firm, I guess. Is that----

Mr. Balliro. I think that's a fair statement, yeah.

Mr. LaTourette. OK. So at the time your associate was representing Mr. Salvati, your firm had institutional knowledge, at least, that Vincent Flemmi and Mr. Barboza were the murderers?

Mr. Balliro. We didn't set up Chinese walls in those days.

Mr. LaTourette. I'm not trying to cast stones here. I'm trying to just indicate that this is a pretty intense web that was weaved back in 1968, and I think that it's intense, because when your client was found guilty on July 31, 1968, you knew it was wrong. Right?

Mr. Balliro. Oh, absolutely.

Mr. LaTourette. And you didn't know it was wrong because they had just done a nice job of the prosecution. You knew it was wrong because you had another client who was the murderer?

Mr. Balliro. Sure.

Mr. LaTourette. And that applied to Mr. Salvati as well?

Mr. Balliro. Absolutely.

Mr. LaTourette. You know, we're going to deal with how the government handles informants and things of that nature, but-- and I also understand that the fact that the attorney-client privilege is inviolate. But I guess I would solicit an opinion from you as to that's a pretty big pickle you've found yourself in.

Mr. Balliro. Sure.

Mr. LaTourette. And do you think that there is no ethical way out of--not just you, but----

Mr. Balliro. Well, there is now, and there is in Massachusetts anyway, because the Supreme judicial court in Massachusetts, effective January 1, 1998, opened the door for counsel to invade the attorney-client privilege if, among other things, it would result in preventing an unlawful incarceration. That's one of the phrases that's in the rule now. So you can do that today, and that's----

Mr. LaTourette. But that change only took place----

Mr. Balliro. Which led to my finally divulging the name of Flemmi. It says ``may.''' It doesn't say ``has to,''' and in an exercise of caution, I asked for a court order, and I did get that.

Mr. LaTourette. And as we look at changing that, what do you think about making it mandatory, the ``shall''? If you have information as a lawyer, or I had information or Mr. Delahunt or Mr. Bailey, that a fellow is going to go to jail, face the death penalty--and thankfully the jury showed mercy and he only got--only, I say, life in prison, but he spent 33 years--do you think making it mandatory would have----

Mr. Balliro. Well, I think that--I'm a little hesitant about making it mandatory, because there are too many shades sometimes, you know, having to do with those kinds of revelations. But I do think that an acceptable alternative would be to have the attorney at least make an in camera presentation to a judicial officer and then let the judicial officer in the exercise of his discretion determine whether or not he should----

Mr. Delahunt. Would the gentleman yield?

Mr. LaTourette. The red light is on. If you want me to yield, Mr. Chairman, I'll yield.

Mr. Burton. Well, we're being very lenient, because we don't want to break up the train of thought of those who are doing the questioning, but I'd just like to say, we don't have a Federal statute that deals with that. Do you think it would be advisable to have a Federal statute that's similar to the statute in Massachusetts that would allow a defense attorney to divulge that kind of information if there was somebody wrongfully convicted?

Mr. Balliro. I think it's extremely important, Mr. Chairman and, you know, this isn't the first time that I've had a client tell me about someone else's innocence in a case that I was representing, you know, somebody on, and it's not the first time that the person that's told me was the person who actually committed the offense that I was defending somebody else on.

Mr. Burton. I think Mr. Delahunt and others on the Judiciary Committee, I'll be happy to cosponsor a bill like that. Would the----

Mr. Delahunt. Yeah. The question that other--again, the observation by Chairman Burton and your informing the committee about the change in Massachusetts rules, I think it's something that this committee, in conjunction with the Judiciary Committee and the full Congress, ought to give serious consideration, and any ideas that either one of you or any

members of the bar, whether it be prosecutors or defense counsel. I think this particular case highlights the need to have some discretion. I concur, Joe, with you. I think making mandatory might cause some real problems, given the various degrees, if you will, of culpability and involvement, but I think it's an excellent suggestion, and I'd welcome working with the Chair and Mr. LaTourette on that.

Mr. Balliro. Whatever my committee in Massachusetts can do to be of help. I want you to know, Congressman, that we'd be very happy to set up a liaison relationship in that regard.

Mr. Delahunt. Thank you, Joe.

Mr. LaTourette. I thank you. I thank the Chairman.

Mr. Burton. Mr. Shays.

Mr. Shays. Thank you, Mr. Chairman. Gentlemen, it's very nice to have you both before this committee. You've sat very patiently listening to the first panel, and so we don't need to bring forward those exhibits. But just to quickly go over them again quickly without bringing them up, exhibit 11 was from Lieutenant Thomas F. Evans, Chelsea Police Department, in which it was fairly clear they had identified the perpetrators of the murder.

Exhibit 12 was the city of Boston Police Department of March 14, 1965, in which they basically had similar information. Then you had the Department of Public Safety, March 15th, Massachusetts State Police, exhibit 13, that confirmed what the first--what the Chelsea police had been told and what the police department in Boston had been told. None of this information, Mr. Balliro, was made available to you. Correct?

[Exhibits 11, 12 and 13 follow:]

[GRAPHIC] [TIFF OMITTED] T6507.053

[GRAPHIC] [TIFF OMITTED] T6507.054

[GRAPHIC] [TIFF OMITTED] T6507.055

[GRAPHIC] [TIFF OMITTED] T6507.056

[GRAPHIC] [TIFF OMITTED] T6507.057

[GRAPHIC] [TIFF OMITTED] T6507.058

[GRAPHIC] [TIFF OMITTED] T6507.059

[GRAPHIC] [TIFF OMITTED] T6507.060

Mr. Balliro. You know, one needs only to look at the transcript of the record of the trial in this case. If anything, a glimpse of all of that information had been furnished to defense counsel, it would have resulted in a flurry of discovery motions and days of cross-examination of Mr. Barboza and other witnesses that we would then put on the witness stand.

Mr. Shays. You would have had an absolute field day. Exhibit 15 was the Airtel to Director of the FBI from the special agent in charge, dated March 19th, which was actually dated after the murder, but described what they had been told would be the murder--what was going to take place, and in fact the murder did take place. And, again, your witness was not mentioned in any of these as well.

[Exhibit 15 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.062

[GRAPHIC] [TIFF OMITTED] T6507.063

[GRAPHIC] [TIFF OMITTED] T6507.064

Mr. Balliro. Absolutely not.

Mr. Shays. Mr. Bailey, you had--I now would like to turn to exhibit 26. This is an affidavit that Joseph Barboza signed in front of a notary, and this was at your request. Is that true?

[Exhibit 26 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.102

Mr. Bailey. Yes. And the notary was my law partner.

Mr. Shays. Thank you. Would you read No. 1 and No. 2, ``that I am the same''?

Mr. Bailey. You mean Paragraphs 1 and 2?

Mr. Shays. Yes. Thank you.

Mr. Bailey. OK. ``That I am the same Joseph `Baron' Barboza who testified in the trial of the Commonwealth v. French,' with numbers.

No. 2, ``That I wish to recant certain portions of my testimony during the course of the above-said trial insofar as my testimony concerned the involvement of Henry Tameleo, Peter J. Limone, Joseph L. Salvati and Lewis Grieco in the killing of Teddy Deegan.''

Mr. Shays. So basically, he is acknowledging--and he was in fact the only witness in their--he was the witness against these individuals. Is that correct?

Mr. Bailey. The men were sentenced to death on the sole basis of Barboza's testimony.

Mr. Shays. And he is saying that he did not testify accurately. Is that not true?

Mr. Bailey. Yes, he certainly is.

Mr. Shays. OK. So you have this document, and walk me through again what you did with this document.

Mr. Bailey. I believe I sent it to the attorney general.

Mr. Shays. OK. And the attorney general at the time was?

Mr. Bailey. Robert Quinn.

Mr. Shays. Now, in the State of Massachusetts, the attorney general does criminal as well as civil? In the State of Connecticut it's only civil but---

Mr. Bailey. He has a supervisory role and can take over most any case, as Senator Brooke did the strangling cases that were being handled by several jurisdictions.

Mr. Shays. And it's not like frankly you're a lightweight attorney. It's not like you aren't well known. It's not like this would have just passed through his desk and somehow slipped through. I mean, this came with your signature, and this was the affidavit. And in your letter, did you outline what was said in the affidavit? Do you remember?

Mr. Bailey. I believe I said generally that Mr. Barboza was looking for a vehicle to make the truth known without being penalized too heavily.

Mr. Shays. OK. So the bottom line to it is, though, you got what kind of a response?

Mr. Bailey. None.

Mr. Shays. By none, you got no thank you, or you didn't get a no thank you?

Mr. Bailey. No. I got no response.

Mr. Shays. OK. I just need to know what you would do after that. If you got no response, is it kind of case closed or----

Mr. Bailey. Well, bear in mind on the day this affidavit was signed, I believe according to other documents you have, Barboza was visited by the Federal prosecutors, and that ended my relationship with him.

Mr. Shays. OK.

Mr. Bailey. And the lie detector test was canceled.

Mr. Shays. OK. So this relates to the lie detector----

Mr. Bailey. Yes.

Mr. Shays. In other words, all of this is related to the same----

Mr. Bailey. He was to take the test to verify the fact that he was now truthfully saying these four men had nothing to do with it and that he lied in the Federal case against Raymond Patriarca and others.

Mr. Shays. So you seem to not just imply, but you're saying quite strongly that the FBI, aware of this affidavit, was basically saying you shouldn't have any more relationship with Mr. Bailey?

Mr. Bailey. Well, after their visit, I never did.

Mr. Shays. OK. What is the penalty in Massachusetts--I don't know if either of you qualify--for giving false testimony in a trial?

Mr. Bailey. Well, there's a penalty for perjury, which I believe carries 5 years or more, but there's a special statute for perjury in a capital case, and life is the punishment, and was then.

Mr. Shays. So for me, the nonattorney, if Mr. Salvati was going to be sentenced potentially to capital punishment--and receive the death penalty, then if someone else gave false evidence, they could be subject to the same penalty?

Mr. Bailey. Not the death penalty, but life.

Mr. Shays. Life. OK. What is the penalty for helping a witness give false testimony?

Mr. Bailey. Well, perjury and suborning perjury are usually treated equally in the eyes of the law, and I would say that if I were the prosecutor, a good case could be made for the architects of perjured testimony to suffer the same penalty as the perjuring witness.

Mr. Shays. And what is the penalty for a law enforcement officer withholding evidence important to a case?

Mr. Bailey. Unfortunately, to my knowledge, it is no greater than the average felon marching down the street. I believe there should be much stiffer penalties for those entrusted with great power and respect who choose to abuse that power, as was done here.

Mr. Shays. In the third panel, we have Mr. Paul Rico, retired FBI special agent. We also requested that Dennis Condon, retired FBI special agent, testify. Mr. Condon, I believe, will not be able to show up, and I believe----

Mr. Burton. We will question him. He, on the advice of his physician because of health reasons, couldn't be here.

Mr. Shays. So we will be having Mr. Paul Rico after you testify. Would you describe to me--both of you gentlemen, would you describe to me what you think their involvement was in this case?

Mr. Bailey. My only personal contact with Paul Rico was when he came to my office shortly after John Kelley had become a government witness and been incarcerated in the Barnstable County Jail. Prior to testifying in the Federal case, which he appeared as a witness who had organized an escape route for a murder requested by or ordered by Raymond Patriarca, and he later told me that story was one that he was told he would have to tell. Since he was unwilling to implicate me in my felonies, Patriarca was the only acceptable trade for his freedom, which he got. But I saw him many times after the trial was over.

The only other knowledge I have of Mr. Rico's activity was one of which I am highly suspicious, and that was in the attempt to convict your colleague, Alcee Hastings. He was up to his ears in that.

Mr. Balliro. May I say this, Congressman?

Mr. Shays. Yes.

Mr. Balliro. It's, to me, unconscionable, given what we know now, seeing these internal documents that were going up the line to the Justice Department to just before, during, and after the Deegan killing, many of them authored by Special Agent Rico. I mentioned the testimony of Agent Dennis Condon during the course of the Deegan trial. And to sit by and just let that happen, I don't know that there's any penalty for that, but I can't imagine anything worse for a law enforcement officer to do. Talk about obstructing justice, much less a perjury. This is fashioning the obstruction of justice with a determined purpose to frame people, and that's happened. They were framed.

Mr. Shays. Well, we won't have Mr. Condon here today to ask questions, but I do look forward to asking Mr. Rico a number of questions that are the result of our two panels. I thank you both for being here. At this time I have no more questions.

Mr. Burton. Thank you, Mr. Shays. Do you have questions, Mr. Barr? We'll come to you in just a minute.

Mr. Barr. I think both of you gentlemen are aware of the Justice Task Force on this and related matters that was formed in January 1999. Are you all familiar with that?

Mr. Balliro. I have a peripheral awareness of it, Congressman, but---

Mr. Bailey. I am aware of Mr. Fishman, who is partly responsible for smoking out this mess.

Mr. Barr. Mr. Bailey, has the task force contacted you and communicated with you to gather information?

Mr. Bailey. They have not.

Mr. Barr. And they have not contacted you, Mr. Balliro?

Mr. Balliro. They have not.

Mr. Barr. Well, the Justice Task Force was formed in January 1999--2 years ago. And the investigation, its history and a brief synopsis of its work, is contained as an attachment to the Director Freeh statement that he furnished to us. Was that included, Mr. Chairman, in the earlier----

Mr. Burton. In the record?

Mr. Barr [continuing]. Record?

Mr. Burton. Yes. We included not only Director Freeh's letter but the contents of the attachment.

Mr. Barr. OK. There is a case that has risen out of the Justice Department's task force in this case involving John Connolly, Bulger, Whitey Bulger and Flemmi. Are either of you aware of the status of--I know there has not yet been a trial, but are you aware of the status of that case?

Mr. Balliro. It's in its very early stages, I would suggest to you. I know the counsel for John Connolly, Tracy Minor from Mince, Lever, and they've just begun to scratch the surface, both defense-wise and prosecution-wise. So it's going to be a long time before that case goes to trial.

Mr. Barr. Now, Mr. Bailey--I'm not sure which one of you is better qualified to do this, but could you just briefly describe--this fellow Bulger's name keeps surfacing in all of this. What role does he play in these goings-on? I know he's part of this case, in which an indictment and then a superseding indictment was brought by the Justice task force, but how does he fit into all this, if at all?

Mr. Balliro. Well, he was the handler, of course, for both Bulger and for Steve Flemmi, the handler in this----

Mr. Barr. Connolly?

Mr. Balliro. Connolly was--John Connolly was. My understanding from his remarks to the media at or about the time that he was indicted was that he didn't know what bad people they were, and as far as he knew, Steve Flemmi was just--well, maybe a bookmaker and perhaps a loan shark. So they

were willing to give him a pass on those kinds of activities.

But I can tell you this, Mr. Congressman. I've lived in that area my entire life and got a pretty good street sense of everything that is going on. And I can tell you that every kid in south Boston, which was their area, understood very, very clearly what violent people both Flemmi and Bulger were. They terrorized that area. When they walked into a place of business, people actually quaked. John Connolly comes from that area. It's just unconceivable to me that he didn't know what every kid on the street in south Boston knew, much less all the rest of law enforcement, both State and local, in Massachusetts knew.

And, by the way, I've had many, many cases involving shylocking, and time and time again at sentencing I've heard prosecutors stand up and tell judges what a terrible, violent crime shylocking was. So for John Connolly, an FBI agent, to demean it and deprecate its importance or its lack of violence is just unconceivable to me.

Mr. Barr. And Bulger was an FBI informant for a fairly long period of time, too, wasn't he?

Mr. Bailey. Until he became a fugitive, yes.

Mr. Barr. For over 20 years he was an informant?

Mr. Bailey. So far as we can sort out, because Flemmi knows all about it, and Flemmi has made that known to the court as his defense in a racketeering case. In other words, he says I was set in motion by the government. You can't now turn on me; I have, in effect, immunity. And that is the defense he has raised. He has since been indicted for murders all over the country, and they're still digging up bodies as of this time to indict Flemmi.

Mr. Balliro. And, Mr. Congressman, may I just say this in addition, because I think this may be important to counsel as a source of information. Back in the early 1980's, between 1980 and 1985 when the Anguilos were prosecuted, there were--I don't want to exaggerate it--but carefully, I say, many, many, many hundreds of hours of wiretapping in two different locations in the north end of Boston conducted by agents of the Federal Bureau of Investigation, and you don't have to get into too many pages to start hearing Bulger's name and Flemmi's name being mentioned in connection with the most violent of offenses.

Now, apparently Agent Connolly, Agent Rico, agent whoever, didn't know what those wiretaps contained. Everybody in the world knew it in 1985 when they were finally released. They had all been put by Judge Nelson, who handled that case, in my custody until the court proceeding, the actual trial took place. So we knew about it in between 1983, 1984 and 1985 when the trials began, but then the public knew, and those were open for anybody's examination.

Mr. Barr. I'm not personally yet familiar with this case that the Justice task force has brought, but according to the material furnished by Director Freeh yesterday, this brief synopsis indicates that the December 1999 indictment was returned against retired FBI Senior Special Agent John Connolly, Bulger and Flemmi. Do you all know what the nature of the charges against Connolly were or are?

Mr. Balliro. Included in them, I believe, are accessory to murder charges.

Mr. Bailey. I think that was a---

Mr. Barr. So arising out of the dealings with these gentlemen as--or these men as informants?

Mr. Balliro. Well, they claim--Connolly claims, of course, that he didn't know anything about murders. I mean---

Mr. Bailey. I believe, Congressman, that the first indictment affecting John Connolly was for obstruction and

related offenses and that a new indictment was brought, dragging him in as being responsible in part for murder.

Mr. Balliro. What happens is the government keeps flipping people, and between the first indictment and the second indictment, they flipped a confidante of Bulger and Flemmi, a man by the name of Kevin Weeks, who now is a cooperating witness with the government. He was able to tell them about many of these murders, because he participated in things like hiding the bodies and burying the bodies and digging them up and reburying them. You know, like some movies that we've seen recently, this all happened, and they found those bodies. And the government has gone in, they're digging up places, and these bodies keep coming up now, all of which Kevin Weeks tells them exactly where they are, and that's why you're getting these--and I'm not sure the indictments are all finished either. I believe there may be superseding indictments in those cases.

Mr. Barr. Thank you very much. I appreciate both of you gentlemen sharing both your history in these cases, as well as your vast expertise on these type legal matters with us and look forward to continue to work with you as we try and fashion some additional safeguards to avoid these things happening in the future. Thank you.

Mr. Burton. Thank you, Mr. Barr.

Mr. Delahunt, did you have one more question?

Mr. Delahunt. Yes, I do. I just wanted to make a note, too, that--I don't know whether it was Mr. Bailey or Mr. Balliro that indicated that Mr. Connolly was the so-called handler for both Bulger and--Flemmi.

Mr. Balliro. Steve Flemmi.

Mr. Delahunt. Steve Flemmi. Are you aware--obviously both had been informants prior to Mr. Connolly's coming to the Boston office of the FBI? Are you aware of--whom the FBI handler was for Mr. Bulger or Mr. Flemmi, Mr. Steven Flemmi? Maybe you---

Mr. Balliro. Well, whether he can be named as a handler or not, I don't know, but from the materials that I'm now reading just recently in late December that have been revealed, it appears that Special Agent Rico very well could be categorized as a handler, at least of Steven Flemmi.

Mr. Delahunt. So it's a---

Mr. Balliro. I don't know if there's anything about----

Mr. Delahunt. Right. I reviewed those too, and I reached the same conclusion. But I guess it's a fair statement to say that Steve Flemmi went from the supervision of Mr. Rico to the supervision of Mr. Connolly?

Mr. Balliro. It appears to be that way.

Mr. Delahunt. He was passed in that direction. Joe, if I can just ask this question, because I think when I listen to the questions of my colleagues here, particularly Mr. Shays, I think it's important to try to clarify how a homicide investigation, which is a State prosecution, is conducted in Massachusetts, specifically in the case of Deegan. Am I correct when I say usually it is the local police department, and sometimes there is assistance from the State police; and rarely, but sometimes, it does occur there is assistance from the FBI?

Mr. Balliro. This was highly unusual. It's a very rare case that the FBI, in my experience, has been participating so intimately in the preparation, investigation and prosecution of a criminal--of a State case of homicide. But they were all over this one.

Mr. Delahunt. So they were intimately involved in the trial preparation. They were witnesses. They were present when this case was being prosecuted?

Mr. Balliro. That's correct.

Mr. Delahunt. Thank you.

Mr. Burton. Well, let me just thank both of you very much. You've been very, very helpful. We realize that you're very prominent attorneys. And Mr. Wilson, with whom you've worked, and I and the rest of the panel wants to thank you very much for being here, because I know that it took time out of your busy schedules, which in your income brackets is pretty expensive.

So we really appreciate you very much being here and giving us information. We would like for you if we have additional questions to respond to them in writing if you wouldn't mind.

Mr. Bailey. Thank you very much.

Mr. Burton. Thank you very much. We will now go to our third panel, which is Mr. Rico. Would you come forward, please?

[Witness sworn.]

Mr. Burton. Do you have an opening statement, Mr. Rico?

STATEMENT OF H. PAUL RICO, RETIRED FBI SPECIAL AGENT

Mr. Rico. I have no opening statement.

Mr. Burton. We will go directly to questions then.

You have heard the statement about the murder which took place which involved the conviction of Mr. Salvati. Were you aware that he was innocent?

Mr. Rico. I was aware that he was on trial and he was found guilty. That's all I know. I have heard what has transpired and I believe that it's probably, justice has finally been done. I think he was not guilty.

Mr. Burton. Were you aware----

Mr. Rico. I am saying that until I heard the facts, which is the first time I have heard the facts is today, that I was not convinced that he was innocent until today. I'm convinced he was innocent.

Mr. Burton. Well, you were one of the FBI agents in the Boston office at the time. Were you not aware of any of the statements or documents that we have been able to uncover during our investigation?

Mr. Rico. I think I caused some of those documents to be written. I think I wrote some of those documents, and when I identified who I knew from an informant who committed this homicide, but as someone has said before, the information is a lot different than testimony.

Mr. Burton. You knew--according to the record, you sent a memo to FBI Director Hoover, as I understand it, saying that you had been informed that Mr. Deegan was going to be hit or murdered?

Mr. Rico. That's probably true, yes.

Mr. Burton. And you knew before the fact that was going to occur?

Mr. Rico. We have had several of those things happen in the past. I have been involved in warning some of the people that have been targeted in the past.

Mr. Burton. Did you or anybody in the FBI let Mr. Deegan know that he was going to be hit?

Mr. Rico. It's possible because----

Mr. Burton. Wait a minute.

Mr. Rico. I want to say to you that normally when we hear something like that we try to figure out how we can do something to be able to be of assistance, like make an anonymous phone call or call the local police department or something along that line. I don't know what happened in that case. Whether or not someone did notify him or not, I don't know.

Mr. Burton. Did you know Mr. Barboza?

Mr. Rico. I came to know Mr. Barboza.

Mr. Burton. Did you know him prior to the Deegan murder?

Mr. Rico. No.

Mr. Burton. Did Mr. Condon know him prior to the Deegan murder?

Mr. Rico. No, I don't think he did.

Mr. Burton. So he was not working with you and he was not an informant or anything?

Mr. Rico. That's right.

Mr. Burton. How about Mr. Flemmi?

Mr. Rico. At one time I had Steven Flemmi as an informant. He has admitted that before Judge Wolf and all of the contacts were exposed between my contacts with him and those contacts that were written--were introduced before Judge Wolf.

Mr. Burton. Did you know he was a killer?

Mr. Rico. No.

Mr. Burton. Did you not know he was a killer?

Mr. Rico. I knew that he was involved in probably loan sharking and other activities but, no.

Mr. Burton. Well, it's testified here by several witnesses, including the last two, that it was fairly well known on the north side of Boston that he was to be feared and that he was killing people, but you in the FBI didn't know about that?

Mr. Rico. Are we talking about Steven Flemmi or Vincent Flemmi.

Mr. Burton. Vincent Flemmi, Jimmy Flemmi.

Mr. Rico. Oh, Vincent Flemmi. I think when I was in Boston I would have known that Vincent Flemmi had committed homicide.

Mr. Burton. Did you have any dealings with him?

Mr. Rico. Not really, no.

Mr. Burton. Did Mr. Condon have any dealings with him?

Mr. Rico. I think at one time he might have opened him up as an informant, I don't know. I don't personally know.

Mr. Burton. But neither you nor Mr. Condon knew anything about his involvement in the Deegan murder prior to the murder?

Mr. Rico. I can only speak for myself, and it's possible that I had information that he might have been involved or going to be involved.

Mr. Burton. Well, there was a memo from you to FBI Director Hoover that was 2 or 3 days prior to the killing that said that you had information that Mr. Deegan was going to be hit or killed?

Mr. Rico. Yeah.

Mr. Burton. Did you not know who was going to be involved in that? You did not know Mr. Barboza or Mr. Flemmi was going to be involved?

Mr. Rico. Is that document before me?

Mr. Burton. Where is that document, Counsel? He would like to look at that real quickly, the document that went to FBI Director Hoover informing him that there was--it's exhibit No. 7, in front there.

[Exhibit 7 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.045

[GRAPHIC] [TIFF OMITTED] T6507.046

Mr. Rico. Seven.

Mr. Burton. Yes, sir. It's on the second page, the relevant part. I think it's right at the top, isn't it? ``according''--

--

Mr. Rico. ``according to''--this reads like it's a microphone, not an informant report.

Mr. Burton. But it was sent by you to the FBI Director. And I guess while----

Mr. Rico. I don't see where, I don't see where I sent this. I can see what it says, but I don't see where I sent it.

Mr. Burton. It's exhibit No. 7. It was from the head of the FBI office there in Boston.

Mr. Rico. Yeah, right.

Mr. Burton. So that would not have been you at that time?

Mr. Rico. No, I have never been the head of the FBI office.

Mr. Burton. Did you know that Mr. Deegan, was it not discussed in the FBI office that Mr. Deegan was going to be killed?

Mr. Rico. I believe it was discussed in a small group, probably the supervisor.

Mr. Burton. So it was discussed?

Mr. Rico. Yes.

Mr. Burton. I can't understand if it was discussed----

Mr. Rico. It probably was discussed as to who should notify the police or who should try to contact him.

Mr. Burton. If you knew that there was going to be this hit on Mr. Deegan, would you not have discussed who the proposed assassins were going to be? You knew of Barboza and you knew of the others, Mr.----

Mr. Rico. Vincent Flemmi.

Mr. Burton. Vincent Flemmi. You knew of them. Did you not know they were out planning the killing? If you knew and the FBI office up there knew enough to send this memo to the FBI Director, would you not have known who was going to be involved in this?

Mr. Rico. I'm not sure.

Mr. Burton. Let me go to exhibit No. 10 real quickly and I'll yield to my colleagues. OK. Exhibit No. 10. It says,

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, Flemmi and Joe Barboza walked over to 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 that they were capable individuals and that is why they wanted to hit Deegan. Flemmi indicated that what they did was an awful sloppy job.

[Exhibit 10 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.051

[GRAPHIC] [TIFF OMITTED] T6507.052

Mr. Rico. All right.

Mr. Burton. That was written by you?

Mr. Rico. Right, right.

Mr. Burton. So you had firsthand knowledge about all of these individuals?

Mr. Rico. I did at that time, right. But I didn't know Barboza at that time. I'm talking about from the standpoint of----

Mr. Burton. Did you have dealings with him after that?

Mr. Rico. Yes. Oh, yes.

Mr. Burton. And you knew that he was involved in this murder?

Mr. Rico. Yes.

Mr. Burton. And you used him as an informant?

Mr. Rico. No, I never had him as an informant.

Mr. Burton. Who did?

Mr. Rico. I don't think anyone had him as an informant. We had him as a witness.

Would you like me to tell you how he became----

Mr. Burton. Yes, while we're looking for exhibit No. 4, and then I'll yield to my colleagues. But go ahead.

[Exhibit 4 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.040

[GRAPHIC] [TIFF OMITTED] T6507.041

[GRAPHIC] [TIFF OMITTED] T6507.042

Mr. Rico. He was arrested and was held on \$100,000 bail. And the organized crime people in New England told the bondsmen not to give him the bail money. So they told two of his associates if they can collect the money if they need a little money to finish it off, to come to a nightclub and they would make up the difference so that he could get bailed. When they showed up at the nightclub they waited until closing time, they counted out the money, it was \$85,000 of money, money that they had collected. This is allegedly. And they killed Barboza's people that were collecting the money. The bodies were found over in south Boston and eventually--the Boston police went to the nightclub and found a mirror being repaired and they went behind the mirror and found where a shot had gone into the wall. They matched the bullet that had gone through the glass and into the wall and fallen down with the bullet in one of Barboza's associates. So that's why when we went to Barboza he was interested in trying to find a way to help us and probably hurt organized crime. That was his reason for becoming a witness.

Mr. Burton. Because he wanted to hurt organized crime.

Mr. Rico. Well, he felt that that was his money, the \$85,000 was his money. I thought he would be more concerned about the two people that were killed. But he was more concerned about the \$85,000.

Mr. Burton. It seems incredulous that anybody would think this guy was concerned about getting rid of organized crime when he was a major----

Mr. Rico. No, what he was concerned about----

Mr. Burton. Was his money.

Mr. Rico. Is that he had been told that they were going to make up the difference, the bail money, that he was going to get bailed out.

Mr. Burton. Let me make one more statement. Then I will yield to my colleague. The Justice Task Force search determined that around the time Deegan was murdered Vincent James Flemmi was an FBI informant. According to the file maintained in the FBI, efforts to develop Flemmi as an informant focus on Flemmi's potential as a source began about March 9, 1965. So you folks were working with him well before the murders?

Mr. Rico. I don't recall working with Vincent Flemmi at that time.

Mr. Burton. Do you remember anybody talking about that, working with him before the murder? I mean how did they find out there was going to be a hit on Deegan and Flemmi did it and you guys had him as an informant if somebody in the FBI didn't know about it?

Mr. Rico. There's two brothers, Steven Flemmi and Vincent Flemmi.

Mr. Burton. Yes, but Jimmy Flemmi was an informant before this?

Mr. Rico. Well, he wasn't my informant. He wasn't my informant. He might have been Dennis Condon's informant.

Mr. Burton. But the point is you guys did talk; it wasn't that big of an operation that you didn't confide in each other?

Mr. Rico. No, that is true.

Mr. Burton. But you didn't know Jimmy Flemmi was an informant?

Mr. Rico. Because that is a clerical matter whether a guy, you write him down as an informant or you don't write him down as an informant.

Mr. Burton. Mr. Delahunt.

Mr. Delahunt. Thank you, Mr. Chairman. Mr. Rico, I am going to direct you to exhibit 6. It's entitled U.S. Government Memorandum and it's to SAC, and then there's a redaction and it's from Special Agent H. Paul Rico. The date is March 15, 1965.

[Exhibit 6 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.044

Mr. Rico. Yeah, all right.

Mr. Delahunt. Do you see that, Mr. Rico?

Mr. Rico. Yes. And may I inquire a moment maybe of counsel and the Chair, but I can't understand why all of the material from the FBI has substantial redactions. I would again respectfully request the Chair and counsel to inquire of the FBI to determine whether this committee should receive, in my opinion, but could receive the original materials without redactions. It seems earlier in a question posed by Chairman Burton that there was some confusion on the part of Mr. Rico as to whether he was the author of an error, and this is very important obviously.

Mr. Rico. Right.

Mr. Delahunt. But I am just going to ask you just one question. I want you to read thoroughly the body of the report.

Mr. Burton. Which exhibit?

Mr. Delahunt. This is for my colleagues exhibit 6. It is a so-called 209, and it is authored by the witness before us and it is to the Special Agent in Charge in Boston whose name was somehow redacted. For what reason I fail to comprehend. The date of the report is March 15, 1965. The date of the contact presumably with the informant is March 10, 1965, 2 days prior to the murder of Mr. Deegan. And I would ask Mr. Rico to read that, take a moment, reflect, because I'm just going to ask him several questions.

Mr. Rico. All right.

Mr. Delahunt. You have read it and you have had an opportunity to digest?

Mr. Rico. Yes.

Mr. Delahunt. The question I have for you is, and let me read the first sentence. ``Informant advised that he had just heard from Jimmy Flemmi, that Flemmi told the informant that Raymond Patriarca had put the word out that Edward ``Teddy'' Deegan is going 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.''

My question is who is that informant, Mr. Rico?

Mr. Rico. I can't tell.

Mr. Delahunt. You can't tell?

Mr. Rico. I mean, I don't know.

Mr. Delahunt. Well, you authored this report, is that correct?

Mr. Rico. Right, I did.

Mr. Delahunt. I would suggest that this is information that is significant. Would you agree with that?

Mr. Rico. Yes.

Mr. Delahunt. Is it reasonable to conclude that if you received this information, even albeit back in 1965, that this is something that would stick with you?

Mr. Rico. I would have known who it was in 1965, I'm sure, but I don't know who that is right now.

Mr. Delahunt. If I suggested Stevie Flemmi.

Mr. Rico. I don't think Stevie Flemmi would give me his brother as being----

Mr. Delahunt. You're sure of that, you're under----

Mr. Rico. I'm under oath and I am pretty confident that Steve would not give me his brother.

Mr. Delahunt. Mr. Chairman, could I request a recess of some 4 or 5 minutes.

Mr. Burton. Yes, I think that all of the members of the committee and the guests here can discuss this real quickly. Can you come up here to the front? We will stand in recess for about 5 minutes.

[Recess.]

Mr. Burton. Mr. Rico, we're now back in session and we want to make absolutely sure that you understand everything thoroughly. Do you understand that if you knowingly provide this committee with false testimony you may be violating Federal law, including 18 U.S.C. 1001, and do you also understand that you have a right to have a lawyer present here with you today?

Mr. Rico. Yes.

Mr. Burton. You understand all that?

Mr. Rico. Yes, yes.

Mr. Burton. And you prefer to go on answering questions with your testimony? You're subpoenaed here?

Mr. Rico. I have had advice of counsel and I'm not taking my counsel's advice. I am going to explain to you whatever you want to know.

Mr. Burton. Let me make sure I understand. Your counsel has advised you what?

Mr. Rico. My counsel advised me to take the fifth amendment until you people agree to give me immunity. I have decided that I have been in law enforcement for all those years and I'm interested in answering any and all questions.

Mr. Burton. Very well.

Mr. Meehan. Mr. Rico, have you consulted with your lawyer in terms of changing your mind and testifying? Have you consulted with your lawyer?

Mr. Rico. Since this hearing has begun?

Mr. Meehan. Since you decided to testify.

Mr. Rico. I am not going to get my lawyer to change his mind. His opinion was that I should not testify.

Mr. Burton. And take the fifth?

Mr. Rico. And that I should take the fifth.

Mr. Meehan. But have you consulted with him?

Mr. Rico. No.

Mr. Burton. But you consulted with him prior to that?

Mr. Rico. I used to have Jack Irwin.

Mr. Burton. But you consulted him and he advised you to do that prior to you coming here today?

Mr. Rico. He advised me to take the fifth.

Mr. Burton. And you have decided to testify?

Mr. Rico. Right.

Mr. Burton. Very well.

Mr. Rico. And also I would like to say that in relation to the question that Mr. Delahunt had asked about whether Flemmi had provided information on that case, if Steven Flemmi had

provided the information, I think that before Judge Wolf in Federal Court, Steven Flemmi had admitted that he was an informant, I took the stand and admitted he was an informant and we produced every FD 209 that I had during the period of time I was in contact with Steven Flemmi and I don't think this was in there. So that's one of the bases for my answering you that I don't think Steven Flemmi would provide the information about Jimmy Flemmi.

Mr. Delahunt. But let me just revisit that.

Mr. Rico. All right.

Mr. Burton. Go ahead.

Mr. Delahunt. Thank you, Mr. Chairman. You don't think but you're not certain?

Mr. Rico. Well, I don't have formal certitude, but I am pretty sure that this is not Steven Flemmi.

Mr. Delahunt. OK. If you look back on your career, I'm sure you developed a number of informants----

Mr. Rico. That's right.

Mr. Delahunt [continuing]. That would have information regarding activities of Mr. Deegan and others?

Mr. Rico. Right.

Mr. Delahunt. You have had some time, maybe 20 minutes, have you given any more thought to----

Mr. Rico. I don't know who that is. I really can't tell you right now. I don't know. I really don't know.

Mr. Delahunt. You really can't tell us?

Mr. Rico. No, I don't know.

Mr. Delahunt. Well, when you got the information, which would have been 2 days before the murder, and again I'm referring to that one page, Mr. Rico.

Mr. Burton. This is exhibit No. 6.

Mr. Delahunt. This is exhibit No. 6.

Mr. Burton. Excuse me, let me interrupt here, Mr. Delahunt. Exhibit No. 6, the date on the top is March 16 and the date of contact is March 10. It's down at the bottom. It says exhibit 6.

Mr. Rico. Right.

Mr. Burton. Go ahead.

Mr. Delahunt. Obviously at that point in time you had information through this informant whose name you can't remember?

Mr. Rico. Right.

Mr. Delahunt. That Edward Deegan was going to be hit?

Mr. Rico. Right.

Mr. Delahunt. What did you do with that information at any time on the 10th.

Mr. Rico. I believe that the supervisor would have had the person handling Chelsea Police Department disseminate the information.

Mr. Delahunt. What did you do, Mr. Rico?

Mr. Rico. I would bring it to the attention of my supervisor and we would discuss how we could handle this without identifying the informant and provide the----

Mr. Delahunt. Let me go back a bit. You would discuss it. Did you discuss it with your supervisor?

Mr. Rico. I would think I did, yes.

Mr. Delahunt. Who was the supervisor?

Mr. Rico. I think it was Jack Kehoe.

Mr. Delahunt. Jack Kehoe. Is it the same Mr. Kehoe that after he left the FBI became the Commissioner of the Massachusetts State Police.

Mr. Rico. Yes, yes.

Mr. Delahunt. And what was his capacity in the FBI at that time as your supervisor?

Mr. Rico. That was his capacity. He was my supervisor.

Mr. Delahunt. Was he in charge of the Organized Crime Unit?

Mr. Rico. Yes.

Mr. Delahunt. What was the conversation you had with Supervisor Kehoe relative to this information?

Mr. Rico. It's a long time ago and I don't remember. I don't remember the conversation in any detail. I just know that this is the type of information that----

Mr. Delahunt. It was good information, wasn't it, Mr. Rico?

Mr. Rico. I think it was.

Mr. Delahunt. I think it was proven 2 days later that it was very good information?

Mr. Rico. Yeah, yeah. Unfortunately, right.

Mr. Burton. Excuse me. If I could interrupt. The date of this memorandum is March 15, after Deegan was killed. But the date of the contact was March 10. So when you sent this memorandum it was after the fact, after Mr. Deegan had been killed. It seems to me that it would really ring a bell if you had the contact with your informant who in this memo was Jimmy Flemmi and then 2 days later he is killed and the memo is then sent on the 15th to your supervisor. It seems like that would all resonate, one, because you had an informant tell you someone is going to be killed. They're killed 2 days later and you're sending the memo 3 days after that and you can't remember?

Mr. Rico. Well, I don't know whether these dates are accurate or not. I don't know right now whether or not this is an actual correct reflection of what happened or not.

Mr. Delahunt. Mr. Rico, did you type up this memorandum?

Mr. Rico. No.

Mr. Delahunt. Did you dictate it?

Mr. Rico. I think I did.

Mr. Delahunt. Would that account for the date of March 15 that you dictated it or was that the day that whomever typed it would have memorialized it as we now see this copy?

Mr. Rico. I can't truthfully answer that. I have no way of knowing that.

Mr. Delahunt. You don't know?

Mr. Rico. No.

Mr. Burton. Can we come back to you, Mr. Delahunt, and we'll go to Mr. Barr and come back to you in just a minute?

Mr. Barr.

Mr. Barr. Mr. Rico, the Department of Justice in January 1999 created a joint task force, a Justice Task Force. Are you aware of that?

Mr. Rico. Yes.

Mr. Barr. Have you spoken with them?

Mr. Rico. No.

Mr. Barr. Have they attempted to speak with you?

Mr. Rico. I'm not sure whether they have or not. I mean they may have contacted my attorney. I don't know.

Mr. Barr. Would he be obligated to tell you that?

Mr. Rico. My attorney? I would think so.

Mr. Barr. Has he?

Mr. Rico. I don't recall. I don't recall him specifically telling me that.

Mr. Barr. Have they sent any letters?

Mr. Rico. No, not that I'm aware of.

Mr. Barr. This fellow Barboza, did you ever meet him?

Mr. Rico. Yes, I did.

Mr. Barr. Did either you or Mr. Condon receive awards or letters of commendation for your work with him?

Mr. Rico. I don't know, I don't know.

Mr. Barr. You don't know?

Mr. Rico. No. It's possible, it's possible. I don't know.

Mr. Burton. Would the gentleman yield real quickly? Did you

ever receive any gifts or money or anything from Mr. Barboza, Mr. Flemmi or any of those people?

Mr. Rico. No, no.

Mr. Burton. I thank the gentleman.

Mr. Barr. Did Mr. Condon receive an award or any commendation or his work on the Deegan case?

Mr. Rico. I don't know.

Mr. Barr. The communications that we have seen here for; example, exhibit 15, I think 7 and 8, but these are what are called Airtels between the FBI field offices and headquarters here in Washington, DC, and some of these, such as 15, indicate that Mr. Hoover himself was aware of this murder before it happened and who the suspects and likely perpetrators were after the fact. Were you also aware of this murder before it happened and who the apparent perpetrators were almost immediately following the murder?

[Exhibits 15, 7 and 8 follow:]

[GRAPHIC] [TIFF OMITTED] T6507.062

[GRAPHIC] [TIFF OMITTED] T6507.063

[GRAPHIC] [TIFF OMITTED] T6507.064

[GRAPHIC] [TIFF OMITTED] T6507.045

[GRAPHIC] [TIFF OMITTED] T6507.046

[GRAPHIC] [TIFF OMITTED] T6507.047

Mr. Rico. You say it's exhibit 15?

Mr. Barr. That's one of them.

Mr. Rico. Yeah.

Mr. Barr. No. 7 and No. 8 also.

Mr. Barr. They're the same ones we have looked at earlier today. Let me just ask you the question.

Mr. Rico. All right.

Mr. Barr. You were aware of the fact that Mr. Deegan was going to be murdered, correct?

Mr. Rico. Yes.

Mr. Barr. Did you take any steps to prevent that murder from occurring?

Mr. Rico. I believe the office did something to try to do something, whether they had called the local police or whether they tried to make an anonymous phone call to him, I don't know.

Mr. Barr. Is there any record of that?

Mr. Rico. I don't know, I don't know. But that's normal procedure, although we've had procedures where we've gone out and actually told people that they're going to get hit. I have done that.

Mr. Barr. But that didn't happen in this case?

Mr. Rico. Not in this case, no.

Mr. Barr. Some of these documents also indicate very clearly that FBI headquarters was aware of who the perpetrators of the murders were. Were you aware of that?

Mr. Rico. Aware that headquarters was aware or was I aware who the perpetrators were?

Mr. Barr. That headquarters was aware of that.

Mr. Rico. If I sent them the information, I suppose they would be aware of that, yes.

Mr. Burton. Could I followup on that, please? Were you aware who the murderers were; who were the people who participated in the hit?

Mr. Rico. After it happened?

Mr. Burton. Yes.

Mr. Rico. Well, I know that we had versions from informants and then we had the Joe Barboza version.

Mr. Burton. Well, here before us on this March 19, exhibit 15 that we're talking about--can you help him find exhibit 15, please--it states very clearly to FBI Director Hoover, it states very clearly that the people who were involved in the killing are named. And what I can't understand is if this was known by the FBI office, you and the other people there, then why was Mr. Salvati tried and convicted and went to jail for 30 years and was convicted and supposed to be electrocuted? Why didn't somebody at the FBI say in every report that we had there was evidence that Mr. Salvati had nothing to do with this? I mean you had all these FBI agents, obviously they knew all this information. They went to J. Edgar Hoover at the Bureau's head office and yet this innocent man and some other people innocent of this crime went to jail for life and some of them died in prison.

Mr. Rico. Well, informant information is difficult to handle and it depends on a lot of different circumstances as to how to handle it. It's very easy if you just take whatever comes in and you immediately disseminate it.

Mr. Burton. Let me just interrupt to say that Mr. Barboza was a known killer.

Mr. Rico. Oh, yes, right, he was.

Mr. Burton. He was the only person who testified at the trial that put these people in jail for life and they were going to get the death penalty. The FBI had information, you had information that other people were involved in the killing and yet that never came out in the trial.

Mr. Rico. That was disseminated to the Chelsea Police Department.

Mr. Burton. Wasn't there an FBI agent that testified there? Mr. Condon.

Mr. Rico. I didn't testify in the case and witnesses were sequestered. I never saw Mr. Salvati before today.

Mr. Burton. You didn't know Mr. Salvati was innocent of that crime because of the information that you had in your office?

Mr. Rico. We come up with a witness that's going to provide information to local law enforcement. We turn the witness over to local law enforcement and let them handle the case. We don't have any jurisdiction.

Mr. Burton. Was this memo turned over to the local police along with the informant, Mr. Barboza?

Mr. Rico. I can't tell you that the information was furnished to----

Mr. Burton. This is exculpatory information. This could have kept Mr. Salvati out of jail. I think this alone would have created doubt in the mind of the jury that he would have gone to jail for 30 years.

Mr. Rico. Do you think we can send people away on informant information alone?

Mr. Burton. You certainly sent him away on Barboza and he was a hitman?

Mr. Rico. That's not an informant. That's a witness.

Mr. Burton. He's also a killer who didn't have much credibility.

Mr. Rico. I'm not one of his biggest boosters.

Mr. Burton. I'm sorry. I took your time. Did you have more questions, Mr. Barr?

Mr. Barr. No.

Mr. Burton. Let me go to Mr. Shays. Do you have questions? I was talking about the gentlelady.

Mrs. Morella. I do, but I will defer to Mr. Shays.

Mr. Shays. This is just the first round. And Mr. Rico, I have been watching you for the whole day. I have known about you for 20 years. You are a person who basically worked for the FBI and then worked, in my judgment, for organized crime when you worked for World Jai Alai. That is my view of you. My view of you is that you sent an innocent man to jail.

Mr. Rico. Your what?

Mr. Shays. My view is that you sent an innocent man to jail and you knew it. I'm just telling you what I believe. You can tell me anything you believe that you want to. I'll tell you what I believe. You have been a person on my radar screen for years. I never thought you would come before this committee. Now you have been here all day long. You have heard what the Chelsea police knew. You heard what the Boston police knew, you heard what the State police knew. You heard what the FBI, and I'm assuming it was you, but frankly I don't even care, told Hoover, and I want to know how you think you fit into all of that.

Mr. Rico. I think we supplied the information that we had available to the local police department and I think that should be our way of disseminating the information.

Mr. Shays. Let me ask you this. What does it feel like to be 76 years old, to have served in the FBI and know that you were instrumental in sending an innocent man to jail and you knew it. What is it like? What do you feel? Tell me how do you feel. I asked what it was like for Mr. Salvati to be in jail. I asked what it was like for his wife to know her husband was in jail. I want to know what it's like for you.

Mr. Rico. I have faith in the jury system and I feel that the jury should be able to decide the innocence.

Mr. Shays. This is what's fascinating.

Mr. Rico. Why? You think you can make a decision as to who's innocent?

Mr. Shays. What's fascinating to me is that if I were you I would get down on bended knee in front of this family and ask for eternal pardon because even if you somehow didn't know about the report of the local police, of the Boston police, of the State police, of some documents in the FBI that are extraordinary since they come from your office, even if you didn't know that then, you know it now, and you don't seem to give a shit. Excuse me. You don't seem to care.

Mr. Rico. Is that on the record?

Mr. Shays. You know what? I'm happy to have what I said on the record. I just hope everything you say is on the record.

Mr. Rico. Sure, sure.

Mr. Shays. Because the one thing is you don't seem to care. I have been looking at you. You have no remorse about your involvement even if you think you weren't guilty. Where is your remorse?

Mr. Rico. I have been in position where I have taken people out of jail and to me----

Mr. Shays. You don't care. Tell me how you feel about Mr. Salvati and his wife. I would like to know.

Mr. Rico. How do I feel about what?

Mr. Shays. You hold on a second. Let me explain why I'm asking. You can shake your head. You can just wait. I wanted to know how a retired FBI agent feels about the facts that you learned today. Let's assume you didn't know anything about it.

Mr. Rico. I didn't.

Mr. Shays. OK.

Mr. Rico. I never----

Mr. Shays. I'll make that assumption for this moment in my question. I learned about it in the past few weeks. I know what it does to me. Why doesn't it affect you the same way? Why wouldn't you feel incredible remorse that you had a role to

play, and you're saying it's ignorance but you had a role to play in the fact that an innocent man spent 30 years of his life in jail. Why no remorse?

Mr. Rico. I feel that we have a justice system and however it plays out it plays out. I don't think we convict everybody that is guilty and I don't think we let everyone go that is innocent.

Mr. Shays. You don't care. Does it bother you that this man was in jail for 30 years?

Mr. Rico. It would probably be a nice movie or something.

Mr. Shays. So you don't really care about this guy. I'm getting to learn a lot about you right now. You don't really care that he was in jail for 30 years. Do you care about his wife, that she visited him for 30 years?

Mr. Rico. I do not know everything that Joseph Salvati has done in his lifetime. I do not know that he is completely innocent of everything. I don't know.

Mr. Shays. What I didn't understand was that I thought that if you were a law enforcement officer and you had that training and you carried the badge of an FBI agent, I thought that you would care about the fact that you could be guilty of something he feels but if you weren't guilty of that crime then you're not guilty of that crime. And you're seeming to imply that somehow maybe there's something else in his past which is typical of what we heard about this case.

But I'm going to get right back. I'm not going to give up quite yet. I just still want to understand. Do you have any remorse that Mr. Salvati spent 30 years of his life in jail?

I can't hear your answer.

Mr. Rico. There isn't an answer.

Mr. Shays. You have no remorse. Do you have any remorse that his wife spent 30 years visiting him in prison even though he was innocent of the crime? I want a word. I want something we can put down on the transcript. I don't want ``nods'' or something. I want a word from you. Do you have any remorse that his wife had to visit him for 30 years in jail even though he was an innocent man and even though he was framed by someone who testified who was trained by the FBI, was the FBI's witness?

Mr. Rico. Joe Barboza was not trained by the FBI.

Mr. Shays. I'll retract that. I'll get to that in a second. Do you have any remorse about Marie?

Mr. Rico. Well, I feel sorry that anything like that ever happened to anybody.

Mr. Shays. So you don't feel sorry for the husband?

Mr. Rico. I feel sorry for anybody that went away----

Mr. Shays. Do you have any remorse?

Mr. Rico. Remorse for what?

Mr. Shays. For the fact that you played a role in this.

Mr. Rico. I believe the role I played was the role I should have played. I believe that we supplied a witness and we gave them to the local police and they're supposed to be able to handle the case from there on. That's it. I cannot----

Mr. Shays. So you don't really care much and you don't really have any remorse. Is that true?

Mr. Rico. Would you like tears or something?

Mr. Shays. Pardon me?

Mr. Rico. What do you want, tears?

Mr. Shays. No, I want to understand a little more about an FBI agent who served his country. I just want to know how you feel. It will teach me something about the FBI. You're going to be a representative of the FBI. And so there's really no remorse and no tears; is that correct?

Mr. Rico. I believe the FBI handled it properly.

Mr. Shays. Why don't you tell me why you think they handled

it properly?

Mr. Rico. Because they take whatever information they have that is pertinent and they furnish it to the local law enforcement agency that has the jurisdiction and let them handle it.

Mr. Shays. You just made a claim that I just don't believe is true. How did you disclose this to all the public--how do we know and tell me how you disclosed this to the courts and the public officials?

Mr. Rico. Not me, not me personally.

Mr. Shays. Let me ask you this. The witness on behalf of the FBI against this individual, you and your partner Mr. Condon, you were both partly responsible for having this witness, isn't that true?

Mr. Rico. For what?

Mr. Shays. Pardon me?

Mr. Rico. I'm responsible for what?

Mr. Shays. Aren't you responsible for the witness that testified against Mr.----

Mr. Rico. We supplied a witness, right.

Mr. Shays. You supplied a witness.

Mr. Rico. We supplied a witness.

Mr. Shays. And that witness didn't tell the truth, did he?

Mr. Rico. Well, it's easy to say now but it wasn't that easy then.

Mr. Shays. But the witness didn't say the truth, right, the witness you supplied did not tell the truth; isn't that correct? That's not a hard question to answer.

Mr. Rico. No, but it's easy to say that now. It's not that easy to say that when it was happening.

Mr. Shays. But you haven't answered the question. Answer the question first.

Mr. Rico. What question?

Mr. Shays. The question was simply that you have supplied a witness who did not tell the truth? Isn't that true.

Mr. Rico. We supplied the witness. And now that everything is said and done it appears that he didn't tell the whole truth.

Mr. Burton. Mr. Shays, can we come back to you?

Mr. Shays. You sure can. I'm waiting.

Mr. Burton. Mr. Clay, before I yield to you could I ask a question or two?

Mr. Clay. Yes.

Mr. Burton. The two attorneys we had up here, Mr. Bailey and Mr. Balliro, they testified that the FBI had taped a great many phone conversations by reputed members of organized crime in the Boston and north Boston area. Is that true?

Mr. Rico. I would imagine it would be true. If anyone knows about organized crime, it would be Joe Balliro.

Mr. Burton. I am asking you, did the FBI tape any phone calls of organized crime figures up in the northern Boston area?

Mr. Rico. I was not in the Boston area at that time.

Mr. Burton. You were not?

Mr. Rico. No. I was in Boston in 1970. I left in 1975.

Mr. Burton. Well, I'm talking about back when----

Mr. Rico. You're talking about 1980, when they were involved in----

Mr. Burton. I'm talking about back during the time that these crimes took place, when Mr. Deegan was killed, when Mr. Barboza was killing these people, when Mr. Flemmi was killing people. Were there any wiretaps that the FBI was conducting? Do you know of any wiretaps that were conducted?

Mr. Rico. You're talking about legal wiretaps?

Mr. Burton. Legal wiretaps. You don't know?

Mr. Rico. You're asking the wrong agent.

Mr. Burton. Do you know if there were any wiretaps by the agency out of that office? Do you know of any wiretaps out of that office by the FBI.

Mr. Rico. During which period of time? When I was there?

Mr. Burton. No, during the time when Flemmi and Barboza were there and Deegan was killed, do you ever remember any wiretaps?

Mr. Rico. I don't know whether we had a wiretap at that time. I don't know. I have no idea. I wasn't involved in the wiretapping.

Mr. Burton. You don't know if there were any wiretaps out of that office for organized crime up in that area? J. Edgar Hoover, nobody ever authorized wiretaps in that area? We'll find out if anybody authorized wiretaps.

Mr. Rico. I'm not trying to tell you if there wasn't any. I just don't know myself personally the timing of wiretaps.

Mr. Burton. But you don't know if there were any wiretaps out of that office? Do you know if there were any? You don't have to be involved. Do you know if there were any?

Mr. Rico. I can't remember the timing. This is 35 years ago. I can't remember whether they had the wiretaps in 1963 or 1964 or when.

Mr. Burton. This isn't the Stone Age we're talking about. They did have wiretaps back then.

And you don't recall the FBI ever using a wiretap to try to nab organize crime figures?

Mr. Rico. The FBI used some wiretaps for intelligence information during the period of time that I was in the Boston office.

Mr. Burton. OK. Was it being done on any individuals out of the Boston office?

Mr. Rico. I would think that it's the timing. I cannot understand the timing. I cannot comprehend----

Mr. Burton. Well----

Mr. Rico [continuing]. The timing of why it----

Mr. Burton. Well, I think you do comprehend.

Mr. Rico. Well.

Mr. Burton. And it was pretty well known, according to legal counsel we had and others, that wiretaps were taking place, because they were trying to nab organized crime figures, and Barboza and Flemmi were two of the biggest contract killers in that place, and yet you guys had him as a witness to put innocent people in jail, and you're saying you didn't know anything about it. You thought that Barboza was a legitimate witness at that time.

Mr. Rico. I'm not a big supporter of Joe Barboza, and I've never been a big supporter of Joe Barboza, but he was the instrument that we had. He was a stone killer, and he was put in a position where he decided he wanted to testify. So we let him testify.

Mr. Burton. Mr. Clay.

Mr. Clay. Thank you, Mr. Chairman. Mr. Rico, what an incredulous story. This is truly amazing just sitting here listening to some of the details and facts. Just to followup on Mr. Shays' questioning, first, did you know beforehand that Teddy Deegan had been targeted to be killed?

Mr. Rico. Evidently, I did.

Mr. Clay. Evidently?

Mr. Rico. From the informant.

Mr. Clay. You did know. And did you know also that Mr. Salvati was not involved in the murder itself?

Mr. Rico. I had never heard of Salvati being involved in this case, and so----

Mr. Clay. That he----

Mr. Rico. Until he was indicted, right. I never heard of him.

Mr. Clay. You had never heard of him?

Mr. Rico. I had never----

Mr. Clay. But you also knew that he did not play a role in the murder; correct?

Mr. Rico. I can't say that.

Mr. Clay. You cannot say that. Is this standard operating procedure for the FBI to withhold evidence from a court of law, to know that someone is going to trial and is going to face criminal incarceration and to withhold that evidence? Is that standard operating procedure?

Mr. Rico. Standard operating procedure is to take whatever information you have and supply it to the local police that have the authority in whatever manner is coming up.

Mr. Clay. But think about the circumstances of Mr. Salvati going to trial, facing, I assume, murder charges and being convicted, and all the while, the local FBI office, you in particular, knowing that this man did not commit that crime. I mean, did that ever cross your mind that maybe we should intercede to ensure that justice prevails?

Mr. Rico. There is a time when you're involved in a case and you know what's happening, but there are many cases, many things happening, and I would say that thinking of Salvati on a day-to-day basis probably did not happen.

Mr. Clay. Well, I'm going to stop there, Mr. Chairman, and if I can, can I yield the remainder of my time to Mr. Delahunt? Is that permissible?

Mr. Barr [presiding]. The gentleman from Massachusetts.

Mr. Delahunt. We thank you, Mr. Chairman. Let's talk about bugs for a minute, Mr. Rico.

Mr. Rico. Sure.

Mr. Delahunt. And let's use a timeframe of 1960 to 1970.

Mr. Rico. OK. That's when I was there.

Mr. Delahunt. Right. Are you familiar with a bug that was placed in the office of Raymond Patriarca, Jr.?

Mr. Rico. Absolutely not. I was familiar with a bug placed in Raymond Ellis Patriarca, Sr.

Mr. Delahunt. Senior. I thank you for correcting me.

Mr. Rico. Right.

Mr. Delahunt. Did you have anything to do with placing that bug there?

Mr. Rico. No.

Mr. Delahunt. No. Do you know who did?

Mr. Rico. No.

Mr. Delahunt. You don't know. But you knew that there was a bug?

Mr. Rico. Oh, yes. Oh, yes. I knew that.

Mr. Delahunt. Was that particular bug authorized by a court order?

Mr. Rico. I can't tell you that. I don't know. I don't know whether it was a court order or not. I can tell you when it was removed.

Mr. Delahunt. When was it removed?

Mr. Rico. Oh, God. A new attorney general came in, and they removed them all across the country. I don't remember who it was right now.

Mr. Delahunt. So a new attorney general could very well have made the decision that it was a black-bag job, it was an illegal wiretap?

Mr. Rico. I think that the new attorney general wanted nothing to do with these bugs.

Mr. Delahunt. These bugs. I'd request counsel to--if he could, to supply us with what available documents the FBI has regarding the Raymond Patriarca, Sr. bug and who was

responsible for planting this bug within that office.

You know, in terms of the--you're right, and I think there's some misunderstanding relative to terms that we're using here today. Barboza was not an informant----

Mr. Rico. No.

Mr. Delahunt [continuing]. For you?

Mr. Rico. No.

Mr. Delahunt. But Barboza was--I think your words were, you supplied the witness, and the witness was Joseph Barboza.

Mr. Rico. Right.

Mr. Delahunt. Now----

Mr. Barr. Excuse me. The time of the gentleman from Massachusetts has expired. We'll come back to Mr. Delahunt in just a few minutes. The chair recognizes the gentlelady from Maryland for 5 minutes.

Mrs. Morella. Thank you, Mr. Chairman.

Mr. Rico, I've been looking at some of the evidence that has been put together in some of the booklets that we have, and I was noting that on exhibit 10, there is a memorandum from you, which describes the Deegan murder and identifies the killers. Were you satisfied that the informant provided accurate information to you? I'll give you a chance to look at that, sir. 65.

Mr. Chairman, don't count that on my time.

[Exhibit 10 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.051

[GRAPHIC] [TIFF OMITTED] T6507.052

Mr. Rico. Yes. Yes. I consider that accurate.

Mrs. Morella. You do.

Mr. Rico. Right.

Mrs. Morella. You do not? You do consider that accurate?

Mr. Rico. I consider--it seems to be accurate information. Right.

Mrs. Morella. Do you believe that the informant correctly identified Deegan's killers?

Mr. Rico. The problem with being absolutely certain on the informant information is that the informant may be telling you exactly what he learned. You see, the informant advised that Jimmy Flemmi contacted him and told him, when you get into Jimmy Flemmi telling something to an informant, you're now a step away from having the certitude that you would have if the informant learned this from somebody else. Jimmy Flemmi, I would say, would not be that reliable an individual and has a propensity to put himself involved in crimes.

Mrs. Morella. But because of the information that you had received since October 1964 regarding Vincent Flemmi wanting to kill Deegan, was there any doubt in your mind that Flemmi was involved in Deegan's death?

Mr. Rico. I'm sorry. I don't understand.

Mrs. Morella. I just wondered was there any doubt in your mind that Flemmi was involved in Deegan's death because of the information you received after October 1964? I mean, did you have any doubt----

Mr. Rico. It seemed logical to be involved, yeah.

Mrs. Morella. OK. Right. So you really didn't have any doubts that Flemmi was involved.

Mr. Rico. Well, I always had some doubts when Flemmi was involved in anything.

Mrs. Morella. Remote. Few doubts. Did you have information at this time that Joe Salvati was involved in Deegan's murder?

Mr. Rico. I never received any information that Salvati was involved in the Deegan murder.

Mrs. Morella. Did you or anyone else in the FBI office question any of the individuals that were identified as participants in Deegan's murder?

Mr. Rico. I'm sorry. I'm not getting it.

Mrs. Morella. Now, did you or anyone else in the FBI office question any of the individuals that were identified as participants in Deegan's murder?

Mr. Rico. Let me see.

Mrs. Morella. Did you question any of the individuals that were identified as participants?

Mr. Rico. Only Joe Barboza.

Mrs. Morella. Page 2 of the memorandum you wrote, you wrote that this information was passed to Captain Robert Renfrew of the Chelsea Police Department.

Mr. Rico. Right.

Mrs. Morella. Did you did pass this information to Captain Renfrew?

Mr. Rico. No, Don Shannon did that.

Mrs. Morella. So he did that. Was Captain Renfrew given any additional information that was not included in this exhibit 10?

Mr. Rico. Was he given any additional information?

Mrs. Morella. Right, additional information that was not included.

Mr. Rico. I don't know. I don't know whether he was or not, because if Shannon gave it to him, he might have given him other information----

Mrs. Morella. The FBI office in Boston has recently claimed that your statement proves that the FBI shared this information with local law enforcement. Do you agree with this statement?

Mr. Rico. Yes. I think that pretty well covers it.

Mrs. Morella. Exhibit 11 is a Chelsea police report about the Deegan murder. On Page 3, the report identifies seven men who left the Ebb Tide Restaurant around 9 p.m. on the night of the murder and returned around 11 p.m. One of those identified, Romeo Martin, allegedly said to Roy French, ``we nailed him.'' The report said, this information came from Captain Renfrew, who was also supposed to have received the information from the FBI. Have you seen that report before?

Mr. Rico. I haven't seen the report before, and I wouldn't know if he is still in the Chelsea Police Department or not.

Mrs. Morella. So did you mention anything about the Ebb Tide to Captain Renfrew?

Mr. Rico. I'm aware of the Ebb Tide. We used to--it was there when I was around, but I don't--can't tell you about Renfrew and the Ebb Tide.

Mrs. Morella. Did you talk to Captain Renfrew that Francis Imbuglia, Nicky Femia or Freddy were with the others the night of the murder?

Mr. Rico. I have seen Captain Renfrew on a number of occasions, but I don't recall having any discussion about this case with him.

Mrs. Morella. I wanted to kind of set up that list of questions, and I'll get back to you, Mr. Rico, but I do want to say from having been here at the beginning, that I wish we could give back 30 years of life to a happily married couple, and my heart goes out to them----

Mr. Rico. Sure.

Mrs. Morella [continuing]. For--they represent the old school virtues that I think I grew up with, too: that you make the best with what you've got and always remember family. Thank you. I yield back.

Mr. Barr. The gentleman from Massachusetts is recognized for 5 minutes.

Mr. Delahunt. Thank you, Mr. Chairman. I asked you earlier

about the fact that you stated that Barboza was not your informant?

Mr. Rico. Right.

Mr. Delahunt. But that you did cultivate him as a witness?

Mr. Rico. Actually, that's true. We----

Mr. Delahunt. That's fine----

Mr. Rico. Comes from a period of time where he wants to be an informant. We don't want him as an informant. We want him as a witness.

Mr. Delahunt. Right. I understand that, and you were successful in convincing him to be a witness?

Mr. Rico. Right.

Mr. Delahunt. What induced him to become a witness?

Mr. Rico. The fact that they banged out two of his partners and stole \$85,000. They had collected for his bail. He stopped by the Night Light for them to make up the difference, and they counted it out and killed them.

Mr. Delahunt. And that was the exclusive motive for his cooperation with law enforcement?

Mr. Rico. Well, I thought he was going to be angry because they killed his two friends, but----

Mr. Delahunt. But it was the money?

Mr. Rico. But he was angry, because it was his money----

Mr. Delahunt. It had nothing to do with the fact that he seemed to escape prosecution for a variety of crimes?

Mr. Rico. Well, he wasn't really being held on a very serious crime, because it was--the bail was \$100,000, but I don't think----

Mr. Delahunt. Did he do----

Mr. Rico. I don't remember what the crime was.

Mr. Delahunt. But given his record, in fact, he--let me suggest this.

Mr. Rico. Yeah.

Mr. Delahunt. That at one point in time, the Suffolk County district attorney's office brought--before filed a charge, charging him with being a habitual offender.

Mr. Rico. Could have been, yeah.

Mr. Delahunt. Now, you know and I know, Mr. Rico, that that carries with it a substantial penalty.

Mr. Rico. Sure.

Mr. Delahunt. Did you ever have any conversations with Joe Barboza, relative to recommending that he not be prosecuted, or at least he serve no time for crimes that he had been charged with?

Mr. Rico. On that matter, Gary Byrne, as you know, is the district attorney of Suffolk County at that time.

Mr. Delahunt. Uh-huh.

Mr. Rico. Told me that I could tell him that whatever cooperation he gives will be brought to the attention of the proper authorities.

Mr. Delahunt. Right.

Mr. Rico. He says you can't tell him anything more or anything less. That's exactly what you can tell him, and that's what I told him.

Mr. Delahunt. And that's what you told him?

Mr. Rico. Yes.

Mr. Delahunt. Was Dennis Condon with you?

Mr. Rico. I am sure he was.

Mr. Delahunt. Because the practices of the FBI is such that there are always two agents working together.

Mr. Rico. Hopefully right.

Mr. Delahunt. In terms of interviewing witnesses.

Mr. Rico. Right.

Mr. Delahunt. Well, you did supply the witness to the appropriate authorities?

Mr. Rico. I didn't----

Mr. Delahunt. The Commonwealth of Massachusetts, Suffolk County district attorney's office?

Mr. Rico. Right. Right.

Mr. Delahunt. Did you supply the report that you and I discussed earlier that you filed as a result of a contact on March 10th? Did you provide that report to the appropriate authorities?

Mr. Rico. I think we did. I think we notified Chelsea. I think that was the appropriate authority at that time.

Mr. Delahunt. Well, let me go back to a question that I posed to Mr. Balliro earlier. While the Suffolk County district attorney's office was prosecuting the case, given the very high profile of that case, it was a headliner back in the mid 1960's, because it obviously had charged a number of individuals alleged to be major organized crime figures. You played, and Dennis Condon played, and State police played, and Chelsea Police played, and Boston Police played an active role in the investigation at preparation for trial?

Mr. Rico. No.

Mr. Delahunt. No?

Mr. Rico. We were not involved in the--to my knowledge, in the preparation of the trial or in the investigation. I had never been to the scene of the homicide. I had never----

Mr. Delahunt. When you say we, do you mean yourself and Dennis--Mr. Condon?

Mr. Rico. Right.

Mr. Delahunt. Are you aware that Mr. Condon testified at the trial?

Mr. Rico. Oh, yes. Yes.

Mr. Delahunt. And you're telling me and members of this committee that he wasn't involved in the preparation and the trial of the case? Why don't you take a moment and refresh your memory.

Mr. Rico. Well, it depends on what you're talking about preparation. I think that we made Barboza available at a time when they came to interview him, we would be there, but it wasn't as if we're directing the investigation----

Mr. Delahunt. But you heard----

Mr. Rico. It's a----

Mr. Delahunt. I----

Mr. Rico. And we're trying to be cooperative with him.

Mr. Delahunt. I understand it's their investigation, but let's be very candid. The FBI and the director of the FBI, Mr. Hoover, had a major interest in organized crime in New England?

Mr. Rico. Eventually, he did. Right.

Mr. Delahunt. And the people that were indicted, with the exception of Mr. Salvati, were alleged to be major organized crime figures. Is that a fair statement?

Mr. Rico. They were organized crime figures.

Mr. Delahunt. They were organized crime?

Mr. Rico. Right.

Mr. Delahunt. And you mean to tell myself and members of this committee that you followed this case from a distance, and you really weren't intimately involved in one of the cases that the Director of the FBI had prioritized?

Mr. Delahunt. And, Mr. Rico, you were a well-known agent. You were decorated. You spent your career with organized crime figures, developing information.

Mr. Rico. In a different way than Bear did, right.

Mr. Delahunt. Well, I'm going to ask that that statement be struck from the record and expunged, because the Bear isn't here.

Mr. Rico. Right.

Mr. Delahunt. I'm asking you the questions----

Mr. Rico. Right. OK.

Mr. Delahunt [continuing]. Mr. Rico, OK?

Mr. Rico. I am not----

Mr. Barr. Excuse me, Mr. Rico. Statements can't just be struck.

Mr. Rico. What's that?

Mr. Barr. I'm saying that statements just can't be struck from the record. Just because somebody isn't here who's name is mentioned. Your time is expired, and we'll now turn to the gentleman from Ohio. Mr. LaTourette is recognized for 5 minutes.

Mr. LaTourette. Thank you, Mr. Chairman. Mr. Rico, I want to pick up where my friend from Massachusetts left off, and that is, not only did--and Mr. Condon--Special Agent Condon testify, but also Special Agent Bolin testified at the trial of these defendants. Are you aware of that?

Mr. Rico. What trial?

Mr. LaTourette. The trial that brings us all together here, the Salvati trial, the trial involving the murder of Deegan. Did you know a Special Agent Bolin?

Mr. Rico. No.

Mr. LaTourette. Apparently----

Mr. Rico. I think I do.

Mr. LaTourette. Apparently he's credited with discrediting the alibi of one of the co-defendants in the case, and that letter, I think, after everyone is convicted on July 31st, a report goes up to headquarters, recommending commendations for you, Special Agent Condon, and Special Agent Bolin. Does any of that ring a bell to you?

Mr. Rico. Well, I can remember Special Agent Bolin now, but I didn't know what degree he was involved in the case.

Mr. LaTourette. OK. There came a time when you and Special Agent Condon went up to--is it Walpole prison?

Mr. Rico. Yes.

Mr. LaTourette. To interview Mr. Barboza?

Mr. Rico. Yes.

Mr. LaTourette. And that was before the trial of Mr. Salvati and the defendants in the Teddy Deegan murder, was it not?

Mr. Rico. Yes.

Mr. LaTourette. And during the course of that interview, you wrote a report back to your superiors, and in that report, you indicated that Mr. Barboza, as kind of a valuable witness, or could be, because he knows anything on any murder that's occurred in the minority east but he makes clear to you and your partner during the course of that interview that he's not going to give up Jimmy Vincent Flemmi. Do you remember that?

Mr. Rico. Yes.

Mr. LaTourette. OK. And the question I have to you is, then, that at the time that Mr. Salvati and his co-defendants go to trial, you have, as a result of your investigation, the information that you have received--and if not you personally, I assume that you just didn't gather information as a special agent and keep it to yourself. There would be dialog in Boston office, wouldn't there? You and Mr. Condon certainly talked, did you not, Special Agent Condon?

Mr. Rico. Yes.

Mr. LaTourette. OK. At the time these fellows went to trial, you had received confidential information from an informant that James Vincent Flemmi wanted to kill Deegan. Isn't that correct? Or said that he wanted to kill him. Right?

Mr. Rico. Yes. Yes.

Mr. LaTourette. OK. You also had information that Vincent Flemmi--or the claim was that Vincent Flemmi did, in fact, participate in the killing of Teddy Deegan.

Mr. Rico. Yes.

Mr. LaTourette. You also had information in your position or the office did that Joe Barboza participated in the homicide of Teddy Deegan?

Mr. Rico. Yes.

Mr. LaTourette. Prior to the trial. And then you also had information from this interview at Walpole Prison that Barboza would never give up Jimmy Flemmi.

Mr. Rico. Right.

Mr. LaTourette. OK. Given all that information--and I understand what you said that you handed it over to the local police and the prosecuting agencies and so on and so forth, but going back to Mr. Delahunt's question, or maybe it was Mr. Barr, certainly the FBI office in Boston is not just a casual observer of this--you know, it's not--while it's interesting that there's a trial going on and we'll get back to you, it was so interesting that the minute it's over on July 31st, a report goes to headquarters saying that all are convicted.

Given all of those things that were within your knowledge, I mean, did you have any qualms back in 1968 about putting Joe Barboza or knowing that Joe Barboza was going to be the sole and only testimony against Joe Salvati, and potentially put him on death row? Did that cause you any--I'm not talking today. I'm talking back in 1968.

Mr. Rico. I was not aware of all of the ramifications of the case itself.

Mr. LaTourette. Maybe not, but you were aware of all of the things I went through--the five or six things I just went through with you.

Mr. Rico. Right. Right.

Mr. LaTourette. And none of that caused you any concern or qualm about the witness that you supplied--not you personally, but your office, and you were the handler, that this was the only testimony against not only the other court defendants but Mr. Salvati, who we now know had nothing to do with it?

Mr. Rico. Uh-huh.

Mr. LaTourette. That he could go on death row on the basis of this testimony? As an experienced law enforcement officer, isn't that shaky, even by confidential informant standards?

Mr. Rico. Well, there isn't any good answer to that.

Mr. LaTourette. I don't think there is a good answer to that, because I think that the answer is that it was real shaky. The last thing I want to ask you is that I think I saw you sitting here during the course of the hearing today, and you're pretty much aware of the theory of this hearing, if you will, or the observations that people are making, and that is that the FBI office in Boston, MA was willing to sacrifice 33 years of a man's life, separate him for 33 years from his wife and his children, to protect a guy nicknamed ``the Animal,' ' a cold-blooded killer, so that the mob could be penetrated and brought down. And I just would like to have your observation as to the accuracy of that theory.

Mr. Rico. I don't think that the FBI was interested in saving Joe Barboza from anything. Joe Barboza was an instrument that you could use. If he was involved in a crime and it was something that could be prosecuted, that was fine, but there was no--we didn't think he was a knight in shining armor.

Mr. LaTourette. I know you don't but----

Mr. Rico. We did not think he should have been in the foreign service or anything. We just tried to use him----

Mr. LaTourette. Right.

Mr. Rico [continuing]. For obtaining information and evidence of crimes.

Mr. LaTourette. If Mr. Barr would just let me complete this thought. But when you say ``weren't interested in protecting

him from anything,' the testimony before the panel is that the Witness Protection Program in the U.S. Government was established and begun for Mr. Barboza.

Mr. Rico. Well, the--also I'd like to clear up that Santa Rosa situation. We did go out there and testify that he had been a witness. That's all we testified to.

Mr. LaTourette. Thank you. Thank you, Mr. Barr.

Mr. Barr. The gentleman from Connecticut, Mr. Shays, is recognized for 5 minutes.

Mr. Shays. I don't understand a lot of things, Mr. Rico. I don't understand your lack of remorse. It just seems cold. It's kind of what I think in other people, not an FBI agent. But with Mr. Salvati, because of your star witness, your prized witness, he was found guilty of a crime he didn't commit, and you ended up deciding to go to California, you and Mr. Rico and Mr. Harrington and Mr. Condon. Why did all three of you go to California?

Mr. Rico. We were subpoenaed.

Mr. Shays. You all three were?

Mr. Rico. We were subpoenaed and the Attorney General of the United States authorized us to testify.

Mr. Shays. OK.

Mr. Rico. And that's what----

Mr. Shays. What was your testimony? Are you under oath telling us that you just went to say he was a witness, or were you here to say he was a good witness? Did you characterize him in any way at that hearing?

Mr. Rico. I think we indicated that he had been a witness in three separate trials back in Massachusetts, one of which everyone was found not guilty.

Mr. Shays. Right. And isn't it true that besides saying that he was a witness, you were also saying that he was a reliable witness?

Mr. Rico. No. No, no.

Mr. Shays. So you didn't, in any way in California, characterize the quality of his testimony?

Mr. Rico. My memory is that we just testified that he was a witness on three different cases back in Massachusetts.

Mr. Shays. Tell me what you thought of him as a witness.

Mr. Rico. As a witness?

Mr. Shays. Yeah.

Mr. Rico. Well, the case that we're interested in here, I was not----

Mr. Shays. Just in general. Just in general, tell me what you thought of Mr. Barboza as a witness.

Mr. Rico. I thought that he was convincing, that he was there at the scene of a crime. If he was a participant in the crime.

Mr. Shays. What would have convinced you that he would have told the truth? I mean, he was a notorious contract killer. That you knew. Correct? You knew he was a contract killer?

Mr. Rico. He testified to that.

Mr. Shays. And you knew that he was a--see, the thing is even though he--if he testifies to that, I don't know if you're willing to acknowledge he knew it. You knew he was a contract killer?

Mr. Rico. I don't know if I knew he was a contract killer before he testified. I knew he was a killer, but I knew he was a contract killer till after he testified.

Mr. Shays. Did you have any doubts that he was a contract killer?

Mr. Rico. Not after he testified, no. Convincing----

Mr. Shays. And what you're saying to us is that when you all--didn't you have conversations with Mr. Barboza before he testified?

Mr. Rico. Sure. Yes.

Mr. Shays. Of course. Of course you did.

Mr. Rico. Yes.

Mr. Shays. And you're not a naive FBI agent. That's the one thing I'll give you credit for.

Mr. Rico. I'm not a what?

Mr. Shays. You're not a naive FBI agent. You're a pretty wily guy and you knew a lot of stuff, so I'll give you credit for that and so did Mr. Condon. So in the course of your conversation, you were testifying to us that in all your conversations with Mr. Barboza, you did not know that he was a contract killer until he testified under oath?

Mr. Rico. Well, no. When he told us the contract that he was asked to execute for Raymond Patriarca, that's when I became aware.

Mr. Shays. So you knew before he testified that he was a contract killer?

Mr. Rico. Yes. Right.

Mr. Shays. But before you said you didn't know until he testified. And so I just want to see which story----

Mr. Rico. It was until----

Mr. Shays. No. Which story----

Mr. Rico. Came up.

Mr. Shays. I didn't say when the subject came up. I didn't do that. You're starting to say things that I didn't say. I asked you a question.

Mr. Rico. Right.

Mr. Shays. Of whether you knew he was a contract killer, and under oath. You said you didn't know until he testified. And now you're saying something different. Now you're saying you knew before, and the reason you're saying you knew something before is because I happened to ask you the question, and it conflicts with what you said earlier. The fact is, you had many conversations with this gentleman; correct?

Mr. Rico. I had some conversation with him. Yeah. Right.

Mr. Shays. More than two or three?

Mr. Rico. Right.

Mr. Shays. He was a witness that you turned against organized crime and be supportive of going after organized crime. He was one of the witnesses you turned. He was a crook, and now he was going after crooks. Isn't that true?

Mr. Rico. Yes.

Mr. Shays. OK. And the FBI took some pride in the fact that they had this witness who was now--we had successfully turned to go after organized crime, and the fact is, Mr. Rico, you knew he was a contract killer before he testified. Isn't that true?

Mr. Rico. From interviewing him, I knew, yes.

Mr. Shays. Yes. OK. Well, it's just good to have you say that. So I should believe that testimony, not the part when you answered the question and said you didn't know until after he testified. So OK.

Mr. Rico. After he agreed to testify?

Mr. Shays. Pardon me?

Mr. Rico. After he agreed to testify. After he agreed that--to testify, then----

Mr. Shays. So now you're----

Mr. Rico. The debriefing him comes out----

Mr. Shays. So you knew he was a contract killer, and you knew this contract killer was--had testified against Mr. Salvati; correct? You knew he testified and five other individuals. Isn't that correct?

Mr. Rico. Right.

Mr. Shays. OK. So you knew he had testified--you knew this contract killer was testifying against these six witnesses.

What made you think he was telling the truth?

Mr. Rico. Because I think the--I thought that the fear of perjury----

Mr. Shays. Excuse me. You need to get close to the mic.

Mr. Rico. I would think that the fear of perjury would prevent him from lying.

Mr. Shays. Why would you think the fear of perjury would prevent him from lying?

Mr. Rico. I don't know. I had to think something. So that's what I thought.

Mr. Shays. No. I think that's an honest answer. I think your character is coming through. You think you had to say something. So in fact you really couldn't be certain he was telling the truth?

Mr. Rico. No. I don't think I could be certain that he's ever telling the truth.

Mr. Shays. Right. OK. But he was a witness, and you and Mr. Condon were involved in turning this witness around; correct? Turning him against the mob, whereas before he worked for the mob?

Mr. Rico. I don't think it was us as--that turned him. I think the fact that they killed his associates and took his money.

Mr. Shays. Right, but you----

Mr. Rico. Turned. But I happened to be there when----

Mr. Shays. Were you the FBI agents that basically were responsible for convincing Mr. Barboza that he would be better off testifying against organized crime?

Mr. Rico. All we're trying to convince a lot of people that, yes, and he was one of them.

Mr. Shays. I know that and he was one of them and you succeeded with him and failed with others. Isn't that true?

Mr. Rico. Well, we succeeded with some others too.

Mr. Shays. OK you succeeded with some others too. In the end, the answer to the question--the answer to the question is, yes, you succeeded----

Mr. Rico. Yes.

Mr. Shays [continuing]. In turning him around? OK. What made you feel comfortable that the testimony that he gave against these six individuals was accurate, given the fact that you had information that it was people other than these six? Or at least four of them weren't guilty. Given the fact you knew of information that never brought Mr. Salvati into this case and three others, what made you think that he was telling the truth?

Mr. Rico. I had no way of knowing he wasn't telling the truth, except informant information.

Mr. Shays. No. No, but----

Mr. Rico. And informant information, I don't know whether that's true.

Mr. Shays. So--but you acknowledge that you had informant information, not Mr. Barboza, but informant information that conflicted with what Mr. Barboza said on the trial----

Mr. Rico. I can tell you--I'm under oath and can tell you that I have known some informants that have supplied information that hasn't been true.

Mr. Shays. I understand that. I understand, but that's not what I asked. So you answered something you wanted to answer, but you didn't answer the question.

Mr. Rico. What's the question?

Mr. Shays. The question was that you had information from informants that conflicted with the testimony of Mr. Barboza?

Mr. Rico. Right. Right.

Mr. Shays. Why did you decide to go along with Mr. Barboza and not with the testimony from--excuse me, the information you

had from your informants?

Mr. Rico. I was not handling the case. This was a local case that was being handled by the local authorities.

Mr. Shays. You're not testifying under oath, are you, Mr. Rico, that you had no conversations with Mr. Barboza about this case? So your testimony, you had no discussion with Mr. Barboza about this case?

Mr. Rico. About this case?

Mr. Shays. Yes.

Mr. Rico. I had conversations in the past about this case.

Mr. Shays. October. You had many conversations.

Mr. Rico. Right?

Mr. Shays. Isn't that true? So when you say you weren't involved in this case, you had conversations with Mr. Barboza about the case informing Mr. Salvati and five other witnesses. You had conversations. So you can't say you weren't involved in the case. How can you say that? This is your witness. So tell me how you can make that claim?

Mr. Rico. Because we indicate to the Boston Police Department that we have this witness, and they come and interview him.

Mr. Shays. No. But you also told me something more. You told me something more. You told me that you had a witness that had spoken to you about this case. Correct?

Mr. Rico. I have a witness that spoke----

Mr. Shays. Mr. Barboza talked to you about this case?

Mr. Rico. Yes.

Mr. Shays. Yes? Correct? And then you supplied this witness to the local authorities and the State authorities. Isn't that true?

Mr. Rico. We----

Mr. Shays. I want an answer to my question.

Mr. Rico. I didn't hear the whole question.

Mr. Shays. Well, I'll say it again.

Mr. Rico. All right. Say it again.

Mr. Shays. You spoke with Mr. Barboza about this case involving Mr. Salvati and five other witnesses. You had a number of conversations with Mr. Barboza about this case. You've already said that's correct. And I am asking you the question now, isn't it true that you then contacted local authorities and State authorities and said you had a witness who had information about this case?

Mr. Rico. Yes.

Mr. Shays. OK. What I want to know is why were you willing to supply only that part of the information and not the part to the State and local authorities about the informants you had?

Mr. Rico. I'm not sure we didn't say something about that also. We might have said something about that.

Mr. Shays. You might have said it. Is that your testimony that you did?

Mr. Rico. What?

Mr. Shays. Is your testimony that you did notify them about the informants who had a different story than the witness? You've got an informant and you've got a witness. What----

Mr. Rico. I have no--I actually have no clear recollection of telling the local authorities of that informant information----

Mr. Shays. Why not? Why didn't you tell them about what the informant said that conflicted with what your witness said?

Mr. Burton [presiding]. Would the gentleman yield? Well, the thing is, he has, as you know, selective memory loss.

Mr. Shays. But----

Mr. Burton. But he's continuing to say that, you know, he doesn't remember, that he can't remember----

Mr. Shays. No. But what he did say under oath is very

clear. He said that he had information about what the informant said and he had information about what the witness said. He had both two different stories, and I want to know why you decided to give the local police, the State police information that your witness had and not provide information about what the informant had that you knew of. It conflicted----

Mr. Rico. Because the informant told me that 2 years--2-1/2 years before, this witness arrives on the scene.

Mr. Shays. So what?

Mr. Rico. So----

Mr. Shays. So I would believe their story more. You've already told me that your witness is a notorious criminal. You acknowledge the fact that he killed people. You acknowledged the fact that he was a hit person. He, in fact, even told you that. You told me that you couldn't be sure he--no. Hold on. You already told me you couldn't be sure he would tell the truth, and yet you decided to only supply some information to the authorities that were going to prosecute. And then you give this incredible lame comment that the informants told you 2 years earlier. To me, that's even more important. They told you 2 years earlier. Why didn't you give them that information 2 years earlier?

Mr. Rico. 2 years earlier we supplied that information to the Chelsea Police Department. They had jurisdiction over this case.

Mr. Shays. Well, the bottom line is, you have no remorse. You didn't provide information you should have. I think you should be prosecuted. I think you should be sent to jail. That's what I think. I'd like to ask a few more questions, if I might. I'll be happy to take my time.

Mr. Burton. OK. You said a minute ago that you did supply this information to the Chelsea Police Department----

Mr. Rico. Right.

Mr. Burton [continuing]. About the informant as well as the witness. Right?

Mr. Rico. Yes. It was supplied by Don Shannon to Robert Renfrew.

Mr. Burton. So you're saying that the Chelsea Police had information that would have created doubt in a jury's mind about whether or not Mr. Salvati was guilty? I mean, if they had that information from the informant as well as the witness, obviously there would have been some conflicts there, and it would have created doubt. Why is it--can you explain to me and to the committee why is it that the Chelsea Police didn't use that in the trial? Why it wasn't brought up in the trial?

Mr. Rico. I don't know.

Mr. Burton. Well, your partner, who was your partner, he was your partner. As I understand it, you two worked very closely together. Your partner testified as to the veracity of what Mr.--of what Barboza said at the trial. He testified that he thought he was a credible witness. Now, you were his partner. You had to know that the informant said something else and Mr. Condon had to know that as well. So why in the world didn't they say that at the trial? Why didn't Mr. Condon, as an FBI agent--he's your partner. Come on. Don't tell me you didn't know--you didn't talk about this stuff. You had dinner together and everything else. Why didn't he just say, look, here's what Mr. Barboza is saying, but we have information contrary to that from an informant? This exculpatory evidence, why in the heck wasn't that brought up? Why did Mr. Condon not say that at the trial?

Mr. Rico. I don't know. I don't know if Mr. Condon said that at the trial or not. I don't know. I wasn't there at the trial.

Mr. Burton. And you guys never talked about that? You

weren't partners? I mean, you weren't together a lot?

Mr. Rico. I don't know what he said at the trial, but I have a transcript here, if I can find it. Do you think he testified----

Mr. Burton. He did testify.

Mr. Rico [continuing]. That this is a credible witness?

Mr. Burton. He testified at the trial and----

Mr. Rico. He testified he was a credible witness? What page is that on?

Mr. Burton. Well, we'll get the exact language for you, Mr.-----

Mr. Rico. Yeah. If you would. Sure. I appreciate that.

Mr. Burton. We'll get that for you. We'll come back to that.

Mr. Rico. I know you wouldn't want to mislead me.

Mr. Burton. No. I wouldn't mislead you. We'll come back to that. Who's next? Mr. Delahunt, do you have any questions?

Mr. Delahunt. Thank you, Mr. Chairman. Going back to the conversation you had with Jack Kehoe, is Jack Kehoe still alive?

Mr. Rico. The last I knew, he was. That's fairly recently.

Mr. Delahunt. OK. I would suggest that the committee, Mr. Chairman, should interview Mr. Kehoe, relative to the conversation he had with Mr. Rico.

Would it be fair to say that you would have disclosed the name of that informant to Mr. Kehoe?

Mr. Rico. It would be fair to say that Jack Kehoe would know the identity of the informant.

Mr. Delahunt. Thank you.

Mr. Rico. Without my disclosing it to him, because of this stuff that's blocked out here. He would recognize who it was.

Mr. Delahunt. So Jack Kehoe would. Would it be fair to infer, given the fact that you and Mr. Condon were partners-- and, by the way, how long did you and Mr. Condon work together as partners?

Mr. Rico. Oh, probably 8 years to 10 years.

Mr. Delahunt. And you were close?

Mr. Rico. Yes.

Mr. Delahunt. And you still are?

Mr. Rico. Yes.

Mr. Delahunt. You're close personal friends?

Mr. Rico. Yes.

Mr. Delahunt. Is it a fair inference that Mr. Condon, if he read the report that was authored by you, would know the name of that informant?

Mr. Rico. I don't think so. I mean, I don't know the name. I can't tell you who it is. I don't know who it is. Right now I can't remember who that would be. I have----

Mr. Delahunt. As we were discussing earlier in terms of your role in cultivating in Barboza as a witness and discussing the Deegan murder, did you supply any information from any source about the murder?

Mr. Rico. Absolutely not.

Mr. Delahunt. Not at all? Before he was to testify, did either you or Mr. Condon, working with the assistant district attorney in charge of the case or with local law enforcement, review his testimony?

Mr. Rico. I don't recall doing that, and I don't know whether Dennis did. I don't think so.

Mr. Delahunt. So your memory is that you never participated----

Mr. Rico. I can't recall--I can't recall that.

Mr. Delahunt. Now, one of the problems that I have, Mr. Rico, is that when you develop a witness and as you said, you supply a witness, particularly a high profile thug like Joe

Barboza, the key to having him as an effective witness is to establish his credibility. Is that a fair statement?

Mr. Rico. It sounds good.

Mr. Delahunt. I mean, use an agent, myself as a former prosecutor, particularly when you're dealing with somebody like a Barboza----

Mr. Rico. Right.

Mr. Delahunt [continuing]. Your biggest concern is, he's going to be impeached. They're going to get him on the stand and they're going to supply documents as to his convictions, review bad acts. You know the drill and I know the drill.

Mr. Rico. Right.

Mr. Delahunt. See, what I find difficult is to vet his credibility, is to establish his credibility, when you're the author, you, Paul Rico, are the author of a report that implicates neither Salvati nor Greco nor Limone nor Tameleo, why wouldn't you, because he's your witness, you cultivated him, you flipped him, why wouldn't you and Dennis, working with Jack Kehoe, because he was considered an FBI witness, and he ended up being responsible for the genesis of the Federal Witness Protection Program, why wouldn't you conduct an exhaustive and an intensive investigation to evaluate and assess his credibility?

Why wouldn't you go and have interviewed all of the players that were around in that point in time, determine whether Barboza was lying or telling the truth?

Mr. Rico. It's because in our interviews with him, we were discussing who might have done different crimes, mostly he had swayed a lot of hits in the Boston area, as you remember. And he was on the money on--from the standpoint of--from----

Mr. Delahunt. Let me----

Mr. Rico. What we knew and what he knew.

Mr. Delahunt. He was responsible or the prime witness who testified in three different cases?

Mr. Rico. Right.

Mr. Delahunt. Earlier you indicated on one case that everyone was found not guilty.

Mr. Rico. His----

Mr. Delahunt. Correct?

Mr. Rico. His first case.

Mr. Delahunt. Everyone found not guilty?

Mr. Rico. Right.

Mr. Delahunt. And on this case, he managed to put four innocent people in jail. How did he do on the third case, Mr. Rico?

Mr. Rico. Well, the first case was handled----

Mr. Delahunt. I'm asking about the third case.

Mr. Rico. Well, I just----

Mr. Delahunt. Did he ever----

Mr. Rico. This is the third case. This is the third case.

Mr. Delahunt. Well, I'm not asking you to go chronologically. The second--please, because----

Mr. Rico. He went State, Federal and State.

Mr. Delahunt. Right.

Mr. Rico. He got a not guilty on everything in State court.

Mr. Delahunt. OK.

Mr. Rico. Guilty in Federal court, and then this was the third case.

Mr. Delahunt. OK. He got a guilty--and the third case, of course, is--what we know now is a horrible injustice?

Mr. Rico. Right. Right.

Mr. Delahunt. And on the Federal case, what happened then?

Mr. Rico. Guilty.

Mr. Delahunt. Guilty. And what were the sentences that were meted out?

Mr. Rico. Small.

Mr. Delahunt. So in all this----

Mr. Rico. What?

Mr. Delahunt. With all the effort, the resources----

Mr. Rico. Yeah.

Mr. Delahunt [continuing]. And the time devoted to cultivating this witness.

Mr. Rico. Uh-huh.

Mr. Delahunt [continuing]. We get a couple of soft sentences in the Federal court. That's it. But you still haven't answered the question that I posed to you earlier. You had to know that guys like Bear and others that were there were going to attack his credibility, and if you supplied the witness----

Mr. Rico. Right.

Mr. Delahunt [continuing]. But you didn't supply the report that would have devastated his credibility, that's the problem.

Mr. Rico. Yeah.

Mr. Delahunt [continuing]. Isn't it, Mr. Rico?

Mr. Rico. That's probably true.

Mr. Delahunt. It's probably true.

Mr. Rico. Right.

Mr. Burton. Then why didn't you supply it?

Mr. Rico. What?

Mr. Burton. Why didn't you supply the report?

Mr. Rico. Why didn't I supply it?

Mr. Burton. Yeah. Why wasn't the report supplied? I mean, you just admitted to Mr. Delahunt that if it had been supplied, it would have changed the whole outcome. Why wasn't it supplied? You guys had it. Why did you choose to keep that?

Mr. Rico. I assume that they must have had it. They must have had it. We had given it to Chelsea. Chelsea is the original crime scene----

Mr. Burton. But you guys were involved in the case when you gave the information to the Chelsea Police. You knew what was going on. It was in the newspapers. You had to know. Why would you not make sure that kind of evidence was given to them? And your partner testified at the trial. We're getting that evidence right now--that information right now. But he testified you guys knew all this stuff and you didn't give it to him.

Mr. Rico. Has he given me the--what do you say that he indicated?

Mr. Burton. We'll get that.

Mr. Rico. OK.

Mr. Burton. We'll have that. Mrs. Morella.

Mrs. Morella. Thank you, Mr. Chairman. Back to that police report that was discussed. There's a report that we have, from the Boston Police Department on the Deegan murder. Did the FBI share any information on the Deegan murder with the Boston Police Department? I guess I could also expand that, too, and add, did you see any of the police reports from either the Boston Police Department or the Chelsea Police Department during the time of the Deegan murder?

Mr. Rico. I cannot tell you right now.

Mrs. Morella. Uh-huh.

Mr. Rico. Up.

Mrs. Morella. There's a report--city of Boston report on exhibit 12.

[Exhibit 12 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.056

[GRAPHIC] [TIFF OMITTED] T6507.057

Mr. Rico. Exhibit 12.

Mrs. Morella. Roy French was questioned by the Chelsea Police the day after the murder. Besides French, do you know if any of the other individuals identified, either in your report or the Chelsea report, who were questioned about the Deegan murder? For instance, was Vincent Flemmi questioned?

Mr. Rico. I don't know. I have no knowledge of that.

Mrs. Morella. You don't remember, or you just don't know whether any of them were questioned?

Mr. Rico. I don't know whether--other people were questioned at that time.

Mrs. Morella. Was Vincent Flemmi ever questioned by anybody about the Deegan murder?

Mr. Rico. I don't know. I didn't question him.

Mrs. Morella. You don't know. Around the time of the Deegan murder, what evidence had you developed, either on your own or from other law enforcement agencies, regarding Joe Salvati's role in the Deegan---

Mr. Rico. I never received any mention that was derogatory on Joe Salvati ever.

Mrs. Morella. You never have?

Mr. Rico. I have no information on Joe Salvati. I don't think I ever heard the name before.

Mrs. Morella. You know, I understand that FBI Director Louis Freeh has issued a statement saying that there is a task force that is ongoing that is looking at this issue. It's called a Justice Task Force. It's now been in operation since, I think, early 1999.

Mr. Rico. Uh-huh.

Mrs. Morella. Mr. Rico, have they ever questioned you?

Mr. Rico. No.

Mrs. Morella. They have not questioned you at all about this?

Mr. Rico. No.

Mrs. Morella. Have you received any communication from them about it?

Mr. Rico. What?

Mrs. Morella. Have you gotten any communication?

Mr. Rico. No.

Mrs. Morella. From the FBI that they're interested at all? Don't you think----

Mr. Rico. I appeared before Judge Wolf in Federal court about a year and a half ago, and I think that's part of the whole system.

Mrs. Morella. Were you asked about the Deegan----

Mr. Rico. No. At that time I was asked about Flemmi, Steve Flemmi, not----

Mrs. Morella. Not Vince?

Mr. Rico. Not Vincent.

Mrs. Morella. Very interesting. I would guess you would expect that we'd be asking you some questions.

Mr. Rico. Fine.

Mrs. Morella. Maybe as a result of this hearing.

Mr. Rico. Sure.

Mrs. Morella. I think we certainly think they should. Well, Mr. Chairman, I'm going to yield back to you the remainder of my time.

Mr. Barr [presiding]. I thank the gentlelady. Mr. Shays, we'll conclude with 5 minutes from you.

Mr. Shays. I may just go slightly over, but I'll try to be as punctual as possible. Mr. Rico, when did you join the FBI?

Mr. Rico. What?

Mr. Shays. When did you join the FBI?

Mr. Rico. I think it was 1951, beginning of 1951.

Mr. Shays. And when did you retire?

Mr. Rico. 1975.

Mr. Shays. And when you--during that time that you were in the FBI, how long were you in the New England area?

Mr. Rico. I was there from the early 1950's to 1970.

Mr. Shays. Is that unusual for someone to be in one place basically for most of their time?

Mr. Rico. Not really, no. Well, it could be.

Mr. Shays. So the bottom line is you spent a good--maybe almost 20 years of your experience in the New England area?

Mr. Rico. That's right. That's right.

Mr. Shays. What did you do after you retired?

Mr. Rico. I went to work for World Jai Alai.

Mr. Shays. Did you know at the time that there were concerns that World Jai Alai was--well, let me ask you this. Who hired you?

Mr. Rico. I was hired by a head hunting group. Well, I was interviewed by a head hunting group, and eventually was hired by John Callahan.

Mr. Shays. Right. Now, did you have any information that John Callahan was involved in organized crime?

Mr. Rico. Not till late in--not till later.

Mr. Shays. Later. Explain later.

Mr. Rico. Later was later, several years later.

Mr. Shays. 2 years later, 1 year later.

Mr. Rico. It was shortly before he left the company.

Mr. Shays. And so how long was that after he had hired you?

Mr. Rico. After he hired me?

Mr. Shays. Yeah.

Mr. Rico. 3 or 4 years probably.

Mr. Shays. Why wouldn't you have known that he was involved in organized crime?

Mr. Rico. Why wouldn't I know?

Mr. Shays. Yeah, you work for FBI.

Mr. Rico. Because there was nothing in the files of the FBI indicating that John Callahan was in any way connected with organized crime.

Mr. Shays. So we have a retired FBI agent who is hired to work at World Jai Alai and hired by an organized crime figure. Did any of your colleagues question the advisability of you working for an organized crime figure?

Mr. Rico. I don't think anyone knew he was an organized crime figure until later.

Mr. Shays. The State officials knew.

Mr. Rico. What?

Mr. Shays. The State officials knew in Connecticut. They were rather surprised that you would choose to work for someone involved in organized crime.

Mr. Rico. The reason he left was because he was seen with organized crime people. And I reported it to the board of directors, and he was asked to resign.

Mr. Shays. You weren't the one who reported it.

Mr. Rico. I wasn't?

Mr. Shays. You were the one who discovered he was involved with organized crime? Your testimony before this committee is that no one knew in the organization that he was involved in organized crime until you told them?

Mr. Rico. No one in my company knew that until I told them.

Mr. Shays. That is your testimony under oath?

Mr. Rico. No one in my company knew.

Mr. Shays. What is the company----

Mr. Rico. Huh?

Mr. Shays. Tell me the company.

Mr. Rico. World Jai Alai.

Mr. Shays. Your testimony under oath is that nobody in World Jai Alai knew that he was involved in organized crime?

Mr. Rico. That I knew of, yeah.

Mr. Shays. Who is Roger Wheeler?

Mr. Rico. He is the person who eventually bought World Jai

Alai.

Mr. Shays. And you worked for Roger Wheeler?

Mr. Rico. Yes.

Mr. Shays. What happened to Roger Wheeler?

Mr. Rico. Roger Wheeler was a homicide victim.

Mr. Shays. Who committed that crime? Who killed him?

Mr. Rico. I believe they have a witness that said he did it. I think his name is James Martorano.

Mr. Shays. John Vincent Martorano?

Mr. Rico. Martorano.

Mr. Shays. Have you ever heard of the individual?

Mr. Rico. Yes. He was with Callahan. It was like a St. Patrick's Day night. He was at the Playboy with John Callahan and two other people, Martorano was.

Mr. Shays. He was killed in a club, wasn't he, in Tulsa?

Mr. Rico. What?

Mr. Shays. He was killed in Arizona?

Mr. Rico. Oklahoma.

Mr. Shays. Oklahoma.

Let me just ask you another line of questions. In 1988 the Supreme Court of Rhode Island found that FBI Special Agent H. Paul Rico, you, suborned the perjury of John Kelley, the State's principal witness in the 1970 murder trial of Maurice Lerner. Apparently at your instigation, Mr. Rico, Kelley altered two facts directly dealing with the murder and the extent of the promises that you made in exchange for Kelley's testimony. When asked why he perjured himself, Kelley said my life was in the FBI's hands, and this is in brackets, Special Agent Rico, end of brackets, said I had no alternative.

Mr. Rico, why did you suborn the perjury of the State's main witness John Kelley in the gangland killing of Anthony Melei?

Mr. Rico. Anthony who?

Mr. Shays. Anthony Melei.

Mr. Rico. I don't know who that is.

Mr. Shays. Isn't it true that you were found, the Supreme Court of Rhode Island found you to have perjured--suborned the perjury of John Kelley? Weren't you cited in 1988?

Mr. Rico. I'm unaware of that.

Mr. Shays. You're unaware of any perjury, any order, any decision--I want you to be real careful about this because you did have a conversation with one of our staff. So I want you to think this through for a second. I just read you something that was pretty clear. I want you to tell me what your answer is to that.

Do you know who Maurice Lerner is?

Mr. Rico. Yes, oh yeah, Maurice Lerner.

Mr. Shays. Do you know who John Kelley is?

Mr. Rico. Yes.

Mr. Shays. You know who those two people are?

Mr. Rico. Yes.

Mr. Shays. Who are they?

Mr. Rico. John J. Kelley is an individual that's been involved in different forms of crime over a long period of time, including numerous bank robberies and armored car robberies on a national basis.

Mr. Shays. Right. And you have had contact with them, haven't you?

Mr. Rico. Yes.

Mr. Shays. And you had a circumstance where you spoke to him about the testimony he gave before the Supreme Court in Rhode Island--I mean, excuse me, before the court in Rhode

Island, not the Supreme Court.

Mr. Rico. I had a conversation with John over that?

Mr. Shays. John Kelley.

Mr. Rico. I'm not trying to be evasive. I think that John J. Kelley----

Mr. Shays. John. If it's John J. Kelley, I know it's John Kelley.

Mr. Rico. It's the person that was tried in the Plymouth mail robbery. He became a government witness.

Mr. Shays. Could you put the mic a little closer to you, please?

Mr. Rico. He was a principal in the Plymouth mail robbery, was tried and F. Lee Bailey represented him and he was found not guilty. He later became involved in another robbery of a Brinks truck and he was awaiting trial on that matter when he decided that he would become a government witness. And he became a government witness. And once his testimony was over and his sentencing was over he decided to change his testimony.

Mr. Shays. He perjured himself, and he claims that you were the reason he perjured.

Mr. Rico. That's right. That's what he claimed. That's true.

Mr. Shays. You just seem----

Mr. Rico. Because I thought you were saying that I had been found guilty of perjury. I wasn't involved in being convicted. He alleged it, that I did this?

Mr. Shays. Right. And weren't you cited by the Supreme Court?

Mr. Rico. I don't know if I was. I don't think so.

Mr. Shays. What was the claim that he made? How had he perjured himself?

Mr. Rico. You ask him, Maurice Lerner. Maurice Lerner had a shooting gallery in his basement and he was, according to Jack Kelley, this guy was a very competent killer and Jack was very afraid of him and I think that after Jack Kelley got his legal problems squared away that he decided he would help Lerner and he changed his testimony and said that he had only testified the other way because I had insisted on it.

Mr. Shays. I am going to ask you two questions. Mr. Rico, why did you suborn the perjury of the State's main witness John Kelley in the gangland killing of Anthony Melei.

Mr. Rico. Why did I do that?

Mr. Shays. Yes.

Mr. Rico. I did not suborn perjury.

Mr. Shays. Did you also perjure yourself in that case by corroborating Kelley's false statements concerning promises you made to Kelley in exchange for his testimony?

Mr. Rico. I have always been able to say to everybody that was a witness or a potential witness the same thing, that we will bring whatever cooperation you bring to the attention of the proper authorities. There's nothing else that I have ever said concerning eliciting testimony.

Mr. Shays. Two points. Isn't it true that Mr. Kelley perjured himself?

Mr. Rico. I don't know that.

Mr. Shays. You don't know if Mr. Kelley perjured?

Mr. Rico. If he changed his testimony from the first time and changed it to something else the second time, he obviously was wrong in one of those instances.

Mr. Shays. Isn't it true that he claims you were the reason that he had given false testimony the first time?

Mr. Rico. That's probably true. That's probably what he said.

Mr. Shays. No, not probably. Isn't it true?

Mr. Rico. It's probably true.

Mr. Shays. Don't use the word ``probably.'' Isn't it true that he said that you encouraged him to perjure himself and give false testimony?

Mr. Rico. Yes.

Mr. Shays. Well, you know I realize that he may be an unsavory character but why shouldn't I believe him more than you were willing to believe your star witness Joseph Barboza and send someone to jail for 30 years? Why should you be incredulous about my question?

Mr. Rico. No, no, no. He would be very interesting if you would talk to him.

Mr. Shays. This has been a fascinating day for me, Mr. Rico. I think the thing I'm most surprised about is that it's clear to me that the FBI became as corrupt as the people they went after and it's clear to me that you have the same insensitivity that I would imagine in someone who is a hard and fast criminal. No remorse whatsoever. Cold as can be. The fact that a man spent 30 years in jail, no big deal. No tears. No regret, and yet you were responsible for that man being in jail for 30 years. You have gotten just like the people you went after. What a legacy.

Mr. Barr. The Chair recognizes the counsel, Mr. Wilson.

Mr. Wilson. Mr. Rico, there are a number of questions that need to be answered but there's one that sticks out in my mind right now and it's this. We've learned that on many occasions you talked to Joe Barboza. He was a witness that you were handling, went into the Witness Protection Program. You worked with him after he was in the Witness Protection Program. When you asked him the question where was Vincent Flemmi on March 12, 1965, what did he tell you?

Mr. Rico. I don't think we ever asked him that question. We never asked him that question.

Mr. Wilson. The only reason I ask that is because it's the only question that you could not have failed to ask. It's inconceivable that you wouldn't ask that question. I'll tell you why it's inconceivable to me. In 1964 you learned that Vincent Flemmi wanted to kill Teddy Deegan. That was on October 19, 1964, you knew that Vincent Flemmi wanted to kill Teddy Deegan. On March 10 you learned from the informant that Deegan was going to be murdered. On March 13, 1965 you learned from an informant that Vincent Flemmi told people that the Deegan murder was committed by Joseph Barboza and himself. So in 1964 you knew Teddy Deegan was going to be killed and Vincent Flemmi wanted to kill him or at least you learned that Vincent Flemmi wanted to kill him. The following year you learned that Flemmi had said that he had killed him. A little bit later in April, April 5, 1965, you had your first reported contact with Vincent Flemmi trying to get information from him. We're told by the task force head that on April 15 you opened an informant file on Vincent Flemmi. You started working with Vincent Flemmi's brother in 1965 to obtain informant information. And then you finally start working with Barboza, with all this knowledge in the background of what Vincent Flemmi wanted to do with Teddy Deegan, and you had the perfect opportunity to ask Barboza where was Vincent Flemmi. I mean that's the only question that you would think you would want answered. You knew you testified that Vincent Flemmi was a killer, right?

Mr. Rico. Right.

Mr. Wilson. And here's the possibility that there's a murder to be solved and you have got information that Vincent Flemmi might be involved in the murder. Did you purposefully want to leave him on the streets?

Mr. Rico. No, no, no. I arrested Vincent Flemmi.

Mr. Wilson. Well, you had an opportunity to followup and at least ask the question of your principal witness about Vincent

Flemmi. Where was Vincent Flemmi on the day that Teddy Deegan was killed? That's to me the one question that you would have had to ask him.

Mr. Rico. Yeah.

Mr. Wilson. And you didn't ask him that?

Mr. Rico. I don't remember asking him that, no.

Mr. Wilson. Now the most important document I think in this whole series of documents we have is exhibit No. 24 in our book and if you would turn to that, take a moment to look at it, please. It's a two-page document. We talked about it in a previous panel. It was prepared by yourself and your partner, Dennis Condon. It's dated March 8, 1967. Apparently it's information that was obtained at Walpole, which is a prison in Massachusetts. And on the second page----

[Exhibit 24 follows:]

[GRAPHIC] [TIFF OMITTED] T6507.091

[GRAPHIC] [TIFF OMITTED] T6507.092

Mr. Rico. I don't find it.

Mr. Wilson. Do you have exhibit 24?

Mr. Rico. I have 25, OK. Coming up. 24. OK. This has to be 24.

Mr. Wilson. It's a two-page document. It's a write-up of your interview and Mr. Condon's interview with Joe Barboza, and on the second page the FBI has redacted most of the information on the second page so we don't know what's there, but it does say, the one bit of text that's left on the page, Baron, now Baron was Barboza's other name, ``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.''

Now, given the fact that you had all the information about Vincent Flemmi wanting to kill Teddy Deegan and then after the fact having killed Teddy Deegan, given the fact that you had that information and given that Joe Barboza told you that he wasn't going to give you any information about Vincent Flemmi, did you have any concern that Barboza was going to protect Vincent Flemmi in the trial for the Deegan murder?

Mr. Rico. I probably had concern over it at that time.

Mr. Wilson. What did you do, what concrete steps did you do to express your concern.

Mr. Rico. Well, I think I indicated to John Doyle the possibility that this guy would not provide information on Jimmy Flemmi because he's his friend and I think that should be borne in mind when you interview this guy.

Mr. Wilson. But now he's your witness. You're the one taking the interviews here. Why didn't you ask him the question for your own peace of mind? This was a death penalty case. You apparently were his handler.

Mr. Rico. Well, he'd already said that he will not tell us, right?

Mr. Wilson. Pardon.

Mr. Rico. He already said that he would not give us anything that would be harmful to Jimmy Flemmi.

Mr. Wilson. So that was it; you wouldn't even followup and say I need to know, I need to know to move forward? Tell me what happened. Well, let me just ask you a couple of other related questions because a trial took place, and in hindsight, obviously hindsight is helpful but there was this extraordinary testimony about a guy wearing a wig to make him look bald. Did you know that Vincent Flemmi was bald?

Mr. Rico. Yes, yes.

Mr. Wilson. OK. What did you think about the testimony at trial?

Mr. Rico. I didn't hear that testimony until today. That's the only time I ever heard that testimony was today.

Mr. Wilson. It seems to us that it had to have been as far-fetched in 1967 and 1968.

Mr. Rico. I don't remember it happening at that time, you know.

Mr. Wilson. Your partner testified at the trial, Barboza was your witness. Weren't you following what he was saying. That would have ramifications for Federal trials. You were going to put the guy on the stand in other trials. Didn't you need to know what he was saying in that trial?

Mr. Rico. No, that was the last trial.

Mr. Wilson. But he's still in the Witness Protection Program. Is that it? There was no possibility that he would ever be able to give up information again?

Mr. Rico. I think that was it. I didn't think he was going to give us information that we could use on anything else. He was cut loose.

Mr. Wilson. Did you ever debrief Barboza again? Did you ever talk to him about any other matter after?

Mr. Rico. Yeah, I did. I talked to him in Santa Rosa and he told me that somebody from Massachusetts had visited him, and I told him that person was really not a friend of his and he should be careful. And when he got out of jail he visited that person and when he walked out the front door he got hit with a shotgun. That was the end of Barboza.

Mr. Wilson. And that was in 1976, correct?

Mr. Rico. I don't remember the year. I just know that's what happened.

Mr. Wilson. Right. Now, one of the other things that's of some concern to us, and we'll just try to make sure we understand this fully, Vincent Flemmi was being used as an informant in 1965, correct?

Mr. Rico. I don't think I used him at all.

Mr. Wilson. I remember you said that before in answer to one of the Congressman's question. I think you said that you didn't know that Vincent Flemmi was an informant at all.

Mr. Rico. I don't think I had him as an informant. I had--

--

Mr. Wilson. The question is did you know he was an informant for the FBI?

Mr. Rico. Well, somebody could have opened him as an informant.

Mr. Wilson. But the question is did you know he was an informant for the FBI ever prior to today?

Mr. Rico. We're talking about somebody that most of the informants you have to certify their emotional stability and it would be difficult to certify James's emotional stability. So I don't know whether or not someone decided to open him. I don't think I did.

Mr. Shays. Could the gentleman yield for a second? I don't understand. You have to certify?

Mr. Rico. You want to make sure that whoever you have is emotionally stable. Not a nut.

Mr. Shays. You also want to make sure they tell the truth, too, right?

Mr. Rico. You want to make sure whether you can determine that they tell the truth.

Mr. Shays. I want to make sure I understand this. You care about a witness to make sure he's emotionally credible but you don't care about the other things that a witness might say?

Mr. Rico. Yes, of course you do.

Mr. Shays. Well, you didn't seem to--well, thank you.

Mr. Wilson. Well, I'm just a little concerned that we didn't get a clear answer to the question.

Mr. Rico. Well, do you have Vincent Flemmi as my informant?

Mr. Wilson. I don't, but that's not my question. My question is did you know that Vincent Flemmi was being used as an informant by anybody in the FBI?

Mr. Rico. At the present time I don't know whether he was being used as an informant. I doubt that he was being used as an informant.

Mr. Wilson. Did you know that anybody was considering using him as an informant?

Mr. Rico. If you work in organized crime the Bureau expects you to come up with sources and informants, so it's very possible that somebody could consider him. I don't know that.

Mr. Wilson. Well, that is the answer. You're saying you did not know that?

Mr. Rico. I can't recall that. OK.

Mr. Wilson. You did know, I believe you testified that Steven Flemmi was being considered as an informant.

Mr. Rico. I had him.

Mr. Wilson. Now one of the problems that we face here is when you interviewed Barboza and he said he wasn't going to give you any information that would--and I'm paraphrasing--but would lead his brother, would lead Vincent Flemmi to fry, at that time you have got knowledge that you've been using Steven Flemmi as an informant. It seems to me there is a terrible conflict there. If you had asked Barboza probing questions about Vincent Flemmi, which seems to me a fairly logical thing to have done, you would have put yourself into trouble with your informant Steve Flemmi. Did that ever occur to you?

Mr. Rico. That is a possibility.

Mr. Wilson. Well----

Mr. Rico. It wouldn't have prevented us from asking. We try not to be married to informants.

Mr. Wilson. But to try to put it as simply as possible, one of our concerns is that in order to keep your relationship with Steven Flemmi you're turning a blind eye to what Vincent Flemmi is doing.

Mr. Rico. No, no. I mentioned before I ended up arresting him, including with my partner Dennis.

Mr. Wilson. But not for the Deegan murder?

Mr. Rico. No.

Mr. Wilson. And you didn't ask any questions about Vincent Flemmi's possible participation in the Deegan murder, none at all?

Mr. Rico. Well, I think John, I think John Doyle was pretty much aware that Vincent Flemmi and Joseph Barboza were very close. And I think that was brought out in conversations between us, John Doyle, myself, Dennis, yeah.

Mr. Wilson. I guess this is a very important question that we've not asked yet. But in 1965, given that you knew there was a bald guy allegedly in the Deegan murder and that Barboza did commit the murder, did you suspect that that person was Vincent Flemmi? I'm asking whether you suspected that.

Mr. Rico. I can't answer that now. I can't answer that at the present time. I can't think of what I thought back then.

Mr. Wilson. Did----

Mr. Rico. Vincent was capable of doing anything though.

Mr. Wilson. Given what we now know, it's obvious to us but it would have been obvious to you in 1965 and 1966 and 1967. You told us you ultimately arrested Vincent Flemmi. But what you had in 1964 is information that Vincent Flemmi was going to kill Teddy Deegan and then you had informant information in fact that Vincent Flemmi was going to kill Teddy Deegan. In fact, you sent memos to the Director of the Federal Bureau of

Investigation, your ultimate boss, that Vincent Flemmi is going to kill Teddy Deegan and then there is a bald guy that ends up helping to kill Teddy Deegan and you told us you don't know about the testimony but you just don't remember. That's your testimony, that you just don't remember?

Mr. Rico. That's right, I don't remember.

Mr. Wilson. What your suspicion was?

Mr. Rico. And I don't think I sent a communication. Oh, yes, I did. OK.

Mr. Wilson. There are a number of memoranda----

Mr. Rico. I see it.

Mr. Wilson [continuing]. That you authored here. Some went to the Director.

Mr. Rico. Right.

Mr. Wilson. Did you have any verbal conversations, any conversations with the Director of the FBI about the Deegan case?

Mr. Rico. No.

Mr. Wilson. Did you know the Director of the FBI?

Mr. Rico. I only knew who he was. I didn't know him.

Mr. Wilson. If you could give us a little sense of memoranda that were being prepared. Did you prepare more than one memorandum a week for the Director of the FBI?

Mr. Rico. I don't think so. I don't think so. I don't even think it was, I don't recall it being my responsibility.

Mr. Wilson. From our perspective, looking at the documents we've been provided, it doesn't appear to be something that you did frequently. Is that fair to say?

Mr. Rico. Right, I would think it would be fair to say.

Mr. Wilson. I think you have had a chance to look a little bit through the binder here. Do you know of any other memoranda that you prepared that discussed Vincent Flemmi, and let me put that in context, Vincent Flemmi in the Deegan case?

Mr. Rico. I would like to take a break.

Mr. Wilson. OK.

Mr. Rico. Which way is the nearest men's room?

Mr. Barr. We'll stand in recess for 5 minutes.

[Recess.]

Mr. Barr. I think Mr. Wilson has finished his questions.

Mr. Delahunt, you had one other area of inquiry that you wanted to go into before we conclude?

Mr. Delahunt. Yes.

Mr. Barr. The gentleman from Massachusetts is recognized for 5 minutes.

Mr. Delahunt. Mr. Rico, you never inquired of or ever made any recommendation to the Massachusetts Parole Board on any matter relating to a commutation for either Mr. Salvati or anyone else who was convicted as a result in the Deegan murder case; is that correct?

Mr. Rico. That is correct.

Mr. Delahunt. You indicated that Steve Flemmi was your informant and you ran him as an informant until you left the Bureau?

Mr. Rico. I don't know the date. No, I think--no, I think that I ran him until he was indicted on--I think he was indicted on the bombing of John Fitzgerald's car, and I closed him then.

Mr. Delahunt. Let me ask you this. You closed him then but you introduced him to John Connolly, is that correct?

Mr. Rico. That is not correct.

Mr. Delahunt. That is not correct?

Mr. Rico. Right.

Mr. Delahunt. Did you participate in any way in encouraging, either directly or indirectly through Dennis Condon, Steven Flemmi to cooperate again with the FBI?

Mr. Rico. I think Dennis was the ultimate agent on with Stevie Flemmi. And I think when Stevie Flemmi was no longer under indictment I think Dennis may have handled him for a period of time.

Mr. Delahunt. OK. You're familiar that Frank Salemme-- you're familiar with Frank Salemme?

Mr. Rico. Yes.

Mr. Delahunt. You know Frank Salemme was arrested in New York City?

Mr. Rico. Yes.

Mr. Delahunt. By John Connolly.

Mr. Rico. Yes.

Mr. Delahunt. Are you aware of the details of how Mr. Connolly developed that information?

Mr. Rico. I believe that Dennis Condon sent a photograph of Frankie Salemme to New York City through John Connolly because he thought he was there and that the New York agents weren't paying much attention to it.

Mr. Delahunt. But Steve Flemmi never provided any information relative to the whereabouts of Frank Salemme in New York City.

Mr. Rico. I think Frank--excuse me, I think Steve Flemmi was a fugitive at the same time so that he wasn't available to provide anyone with information.

Mr. Delahunt. So it was simply a coincidence?

Mr. Rico. Lucky is what I think.

Mr. Delahunt. You know, just for a minute touching on the Wheeler case, and we all have coincidences in our lives, but the witness you referred to, John Martorano, who has admitted killing Wheeler----

Mr. Rico. Right.

Mr. Delahunt [continuing]. Has testified under oath that he was instructed or contracted for the hit by Steve Flemmi and Whitey Bulger.

Mr. Rico. I understand that.

Mr. Delahunt. It's a coincidence that you were the handler for Steve Flemmi and that Steve Flemmi ordered the hit on Mr. Wheeler, who was the CEO of a company that you were employed by.

Mr. Rico. Right.

Mr. Delahunt. That's just a coincidence.

Mr. Rico. You want to tie me into Bulger. I can tie myself into Bulger for you.

Mr. Delahunt. Go ahead.

Mr. Rico. Bulger.

Mr. Delahunt. Mr. Rico, I think I need full disclosure here because somebody will, I'm sure, discover that years and years ago I went to Saint Agatha's Parochial School with John Martorano.

Mr. Rico. I knew that.

Mr. Delahunt. I figured you did know that. So I really wanted to be forthcoming. And you should also know that John Martorano and I served mass together for Cardinal Cushing back in the eighth grade. So there are coincidences in life.

Mr. Rico. OK.

Mr. Delahunt. If you want to proceed, Mr. Rico.

Mr. Rico. The last time that Jimmy Bulger was arrested I arrested him. I arrested him for two bank robberies and he pled guilty to three bank robberies. And that's my Bulger experience.

Mr. Delahunt. Well, thank you for that information. We'll just conclude with a--to elicit a response from you to a statement that was made by your counsel that appeared in the Boston Herald dated January 10 of this year. ``Rico cannot be blamed for men--referring to the innocent individuals that were

convicted in the Deegan case.' ' Those are my parentheses. That's not part of the quotation. It goes on. The former agent's attorney said yesterday orders laid down by then FBI Director J. Edgar Hoover kept information in the murder of Edward Deegan locked away in FBI files all these years, Cagney said. He was bound by the hierarchy, Cagney said. All that went to Rico supervisor--all that, rather, went to Rico supervisors and he can't release that without permission of his supervisors.

Is that your position as well?

Mr. Rico. I don't know where that came from. I hear what you're saying but it doesn't sound--I'm sorry, I have got a cold. But it doesn't sound like Cagney and it doesn't sound plausible to me.

Mr. Delahunt. Thank you.

Mr. Delahunt. I yield back.

Mr. Barr. I thank the gentleman. That concludes this hearing. Thank you, Mr. Rico.

Mr. Rico. Thank you. Am I dismissed?

Mr. Barr. Yes, sir.

Mr. Rico. Thank you.

[Whereupon, at 5:34 p.m., the committee was adjourned.]

[Exhibits used for the hearing record follow:]

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