

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

_____	)	
UNITED STATES OF AMERICA	)	
	)	
V.	)	Crim. No. 99-10471-RGS
	)	
JAMES J. BULGER	)	
_____	)	

**DEFENDANT’S MEMORANDUM SUPPORTING**  
**DEFENDANT’S MOTION FOR RECUSAL OF JUDGE RICHARD G. STEARNS**

**I. Introduction**

Judge Richard G. Stearns was the Chief of the Criminal Division during a time when information about the defendant’s criminal conduct was known to the Department of Justice. Many of the facts and pieces of evidence that are being used in the present indictment were learned during the time Judge Stearns was a prosecutor and while he served as the Chief of the Criminal Division. Therefore, Judge Stearns would have knowledge of evidentiary facts that will be in dispute during the proceedings, 28 U.S.C. § 455 (b)(1). Moreover, he served as a supervising attorney, and in such capacity, would have participated as counsel concerning evidence in this proceeding. 28 U.S.C. § 455 (b)(3).

The defendant intends to file a motion to dismiss based upon an immunity agreement between the defendant and the Department of Justice. The defendant will be requesting an evidentiary hearing on this motion. The defendant will show that a pattern of corruption and misconduct occurred at many levels of the federal government in an effort to enforce its immunity agreement with the defendant. This effort to enforce the immunity agreement extended over a considerable period of time, including when Judge Stearns held supervisory positions in that office.

Judge Stearns' supervisory role placed him squarely in a position to know about and be responsible for the investigation and prosecution of James Bulger. As Chief of the Criminal Division, discussions about prosecuting James Bulger must have included Judge Stearns. It will be crucial for some of these discussions to be explored in this case. On the other hand, if Judge Stearns was not part of discussions about known criminal activity related to the defendant, he will still need to testify about other activities within the United States Attorney's Office during the relevant time frame.

Decisions by the United States Attorney's Office to refrain from prosecuting the defendant mandate Judge Stearns' recusal because the failures to prosecute underscore and support the

immunity agreement between the parties and thus, render him a witness in both an immunity hearing and in the defense at trial.

Further, law enforcement's efforts to protect the defendant are well documented and well known. The defense is unaware at this time of any effort by the Criminal Division at that time to investigate the illicit relationships between the defendant and the Department of Justice, including the FBI, during this critical time. Subsequent efforts such as the "Prouty" report and the selective prosecution of simply one agent again reinforce the continued effort to hide the true nature of the immunity agreement from the public. A partial overview of the protected immunity relationship and the Department of Justice's failure to prosecute is detailed as follows:

1. Members of the Department of Justice, including Jeremiah O'Sullivan, and members of the FBI, knew that the defendant, James Bulger, was alleged to have been involved in organized crime since on or about 1972.
2. At the time Judge Stearns was in the United States Attorney's Office, it was widely believed that the defendant's alleged involvement in organized crime included violent crimes including murder.
3. The FBI had an interest in refraining from investigating and promoting prosecution against the defendant for his organized crime activities.

4. FBI Headquarters was on notice that the defendant was not producing evidence helpful for prosecution.
5. The defendant reached an agreement with the Department of Justice through its agent during the 1970s. The immunity agreement fully protects the defendant from prosecution for all of the crimes currently under indictment.
6. After the defendant was immunized, the United States Attorney's Office did not prosecute him for any of his alleged criminal conduct between the years of 1978-1994.
7. Instead, members of the Department of Justice, including the FBI, consistently provided information to the defendant in an effort to further his criminal enterprise.
8. Based on the assistance of the Department of Justice, including Jeremiah O'Sullivan, the defendant became arguably the most powerful organized crime figure in Boston.
9. The agreement between the Department of Justice and the defendant intersected with the tenure of a number of United States Attorneys, prosecuting attorneys, FBI agents at many levels, and other members of the Department of Justice.

10. Judge Stearns was in the United States Attorney's Office and a supervisor during a significant period of time this immunity agreement was being enforced.
11. The Criminal Division's failure to indict the defendant during Judge Stearns' supervision was a factor in allowing the defendant to enjoy immunity and to allegedly participate in the most serious of organized crime activities.
12. Jeremiah O'Sullivan and other members of the Department of Justice had an interest in keeping the immunity relationship from the public. Any exposure of the defendant would effectively expose the Department of Justice. In consequence, members of the Department of Justice disseminated information about threats to this secret relationship and in consequence the threats were eliminated for the benefit of both the defendant and members of the Department of Justice.
13. When the United States Attorney's Office indicted the defendant for alleged past crimes, they directly violated the immunity agreement that the defendant had bargained for, had relied upon, and had been promised.
14. In consequence, the relationship between the parties, namely the defendant and various members of the Department of Justice, must no longer be hidden.

15. The time has come to identify the participants in making and upholding the immunity agreement between the parties.
16. Numerous witnesses must be called to establish evidence, both direct and circumstantial, to prove the issue of immunity. This includes former members of the Department of Justice, including former members of the United States Attorney's Office and the FBI.
17. Prosecutors also never prosecuted the FBI's corrupt relationship with the defendant during this time period. This clear failure to act is part of the evidence that will illustrate the immunity agreement.
18. The defendant intends to call Judge Stearns as a witness at the immunity hearing since he was responsible in part for the criminal investigations undertaken by the office.
19. The trier of fact determining the issue of immunity will need to have a thorough inquiry that must include persons who were participants or worked with participants in the granting and protecting the immunity agreement.
20. A court must hear Judge Stearns' answers to questions at this hearing, such as, "Why, when you were Chief of the Criminal Division, did you not indict the defendant for

these crimes or open an investigation into the FBI's relationship with the defendant?"

21. A person in Judge Stearns' position would have a personal interest in ensuring that the conduct of the United States Attorney's Office in the 1980s is not explored because it could expose his fellow prosecutors and others in law enforcement regarding their corrupt practices.
22. The best way for a person in Judge Stearns' position to prevent exploration of the immunity issue (and thereby the conduct of his colleagues and his office) would be to deny the defendant an evidentiary hearing on his motion to dismiss.
23. This appearance of a vested interest in ensuring that government corruption with respect to this case not be exposed mandates the recusal of Judge Stearns. 28 U.S.C. § 455(b).

## **II. Legal standard**

The defendant has brought this motion to recuse pursuant to the following provisions of 28 U.S.C. § 455:

- (a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
- (b) He shall also disqualify himself in the following circumstances:

- (b)(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding.
- (b)(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.
- (b)(5)(iv) He...[i]s to the judge's knowledge likely to be a material witness in the proceeding.

The First Circuit has not adopted a presumption of judicial impartiality and thus, the movant's burden of proof on partiality is not an onerous one. See United States v. Kelley, 712 F.2d 884, 887 (1st Cir. 1983) (facts supporting recusal are sufficient if they create reasonable doubt concerning judge's impartiality in mind of reasonable man). On close questions, doubts should be resolved in favor of recusal. In re U.S., 158 F.3d 26, 30 (1st Cir. 1998).

Personal knowledge of the facts in the case from an extrajudicial source can provide the basis for actual personal bias or prejudice under § 455(b). Liteky v. U.S., 510 U.S. 540 (1994). Involvement as a former government lawyer in the case at issue is a ground for recusal. See United States v. Arnpriester, 37 F.3d 466, 467 (9th Cir. 1994) (recusal required when judge was U.S. Attorney for part of time defendant was investigated for crimes for which later indicted). Finally, close personal

relationships with witnesses - especially where a judge must judge their credibility - are grounds for recusal. See United States v. Weeks and O'Neil, No. 99-10371-EFH (Judge Harrington's Order of Recusal, dated December 20, 1999) (attached as Exhibit 1).

**III. Judge Stearns' role in the United States Attorney's Office intersects with facts and evidence leading to these indictments.**

**A. Factual history of Judge Stearns related to these indictments**

The defendant submits the following recital of facts based upon the current discovery provided by the government and independent research.

Judge Richard G. Stearns was an Assistant United States Attorney (AUSA) in Boston from 1982-1990 during the so-called intensive investigations of the defendant, Steven Flemmi, the Winter Hill, "The Bulger Group," and the LCN. Judge Stearns was Chief of the General Crimes Unit from 1982 to 1984. Judge Stearns was Chief of the Criminal Division from 1984 to 1986. See <http://umdglobalconference.com/speaker-bios/richard-g-stearns>. Judge Stearns rose to the position of First Assistant United States Attorney and also served as Senior Litigation Counsel. See [http://www.massprosecutorsguide.com/welcome/about\\_the\\_author](http://www.massprosecutorsguide.com/welcome/about_the_author).

Judge Stearns would have worked under the following United States Attorneys during his time working at that office: William Weld (1981-1986), Robert Mueller, Acting U.S. Attorney (1986-1987), Frank McNamara (1987-1989) and Jeremiah O'Sullivan, Acting U.S. Attorney (1989). President Bill Clinton nominated Judge Stearns to be FBI director in 1993, but Judge Stearns withdrew from that nomination. See [The Threat Matrix: The FBI at War](#) (Chapter 6) by Garrett Graff.

Four counts of the one hundred and eleven page federal indictment against the defendant allege thirty-one racketeering acts. These racketeering acts include six murders, extortion, money laundering, narcotics distribution and numerous overt acts - all of which occurred between 1982 and 1990 while Judge Stearns worked in a supervisory role for part of this time in the Boston United States Attorney's Office. By virtue of his supervisory positions, Judge Stearns assumed the role of "counsel" and "adviser" during the investigation of this "particular case in controversy" as described in 28 U.S.C. § 455(b)(3). As Chief of the Criminal Division, he supervised criminal investigations pursued through the Criminal Division which would have included investigations of the defendant and other gang members. According to the United States Attorney Office's website (May 2012):

The Criminal Division is responsible for **all criminal investigations and prosecutions** handled by the United States Attorney's Office for the District of Massachusetts. It is also responsible for advising the United States Attorney on criminal law related matters and is a liaison with other Department of Justice components regarding criminal cases. As directed by the U.S. Attorney, **various members of the Criminal Division provide a liaison between this office and various other law enforcement agencies, federal, state and local.** [emphasis added]

See <http://www.justice.gov/usao/ma/divisions.html#criminal>  
[Division](#).

Thus, as Chief of the Criminal Division, his interaction with the FBI and former United States Attorney William Weld, Judge Stearns' role was critical in overseeing the investigation of facts intimately involved in these indictments from 1984 to 1986. Knowledge of this case is at a minimum imputed to him as a result of his supervisory positions.

**i. Alleged Crimes Before Judge Stearns Became An AUSA In 1982.**

Many of the defendant's alleged crimes were committed before Judge Stearns became an AUSA in 1982. These acts constituted the defendant's alleged criminal enterprise as characterized by the United States Attorney's Office (i.e., "The Bulger Group"). The criminal history, reputation and knowledge of the defendant's alleged organized crime activity were well known to those in higher, equal and lesser positions to Judge Stearns. The crimes that the defendant allegedly committed

before Judge Stearns became an AUSA are as follows according to the indictment:

- The enterprise known as "The Bulger Group" formed "in or about 1972." By "approximately 1979, Bulger and Flemmi assumed control of the activities of this criminal organization...and maintained that control through 1999."
- The enterprise committed "among other things, earning money through extortion, loansharking, bookmaking, trafficking in narcotics and other controlled substances and committing crimes of violence including murder, attempted murder and assault."
- The following murders in 1973-1974 in connection with disputes with rival gangs, the Notorangeli Group, the McLaughlin Gang and the Mullins Gang: Michael Milano, Dianne Sussman, Louis Lapiana, Al Plummer, Hugh Shields, Frank Capizzi, William O'Brien, Ralph DiMasi, James Leary, Joseph Notorangeli, Al Notorangeli, James O'Toole and Paul McGonagle.
- The following murders of former criminal associates in 1974-1975: James Sousa, Edward Connors, Thomas King and Francis "Buddy" Leonard.
- Murder of Richard Castucci (1976).
- Unindicted Murder of Louis Litif (1980).

- Conspiracy to Murder Roger Wheeler (1981)
- Murder of Debra Davis (1981).
- Supporting Joseph McDonald and James Sims as fugitives from justice in 1975 to 1982.

**ii. Alleged Crimes Occurring After Judge Stearns Became An AUSA In 1982**

Many of the defendant's alleged acts were committed during Judge Stearns' tenure in the office, beginning in 1982. These crimes also constituted an ongoing practice of the defendant's enterprise (i.e. "The Bulger Group") as alleged and characterized by the United States Attorney's Office. The criminal history, reputation and knowledge of the defendant's organized crime activity continued to be well known to Department of Justice employees in higher, equal and lesser positions than Judge Stearns. The crimes that the defendant allegedly committed during this period are as follows according to the indictment:

- Between 1984 and 1999, the Bulger Group conducted money laundering at the South Boston Liquor Mart and obtained money through extortion and "other racketeering activities." These included threats, murder and attempted murder, as well as illegal possession and brandishing of firearms and obstruction of justice through violence.

- Murders of Brian Halloran and Michael Donahue (May 1982).
- Conspiracy to Murder John Callahan (August 1982).
- Murder of Arthur "Bucky" Barrett (July or August 1983).
- The illegal shipment of arms and ammunition to the Irish Republican Army on the Valhalla fishing vessel. John McIntyre was one of the crew members/co-conspirators on this vessel. (Fall 1984).
- Murder of John McIntyre (Nov. 1984).
- Murder of Deborah Hussey (Early 1985).
- From 1979 to 1996, extortion and extortion conspiracy through "force, violence and fear" of the following eleven people: Paul Moore, William Shea, John Cherry, Thomas Cahill, John "Red" Shea, Joseph Tower, Anthony Attardo, David Lindholm, Richard O'Brien, Richard "Jay" Johnson and Kevin Hayes. The conspiracy also involved obtaining "rent" payments from these people.
- From around 1980 to 1990, extortion conspiracy ("fines") of the following six people: Michael Solimando (1982-1983), Stephen Rakes (December 1983 - May 1984), Julie Rakes (December 1983 - May 1984), Richard Bucheri (August 1986 - September 1986), Raymond Slinger (1988) and Timothy Connolly.

- From around 1980 to 1990, a narcotics distribution conspiracy, which involved obtaining "rent" payments from drug dealers and others including the following eleven people: Joseph Murray, Michael Murray, Michael Caruana, Frank LePere, David Lindholm, William Shea, Paul Moore, John "Red" Shea, Joseph Tower, John Cherry and Hobart Willis.
- From 1984 to 1999, a money laundering conspiracy involving Stippo's Liquor Mart, South Boston Liquor Mart, various real properties at Old Colony Avenue in South Boston, Rotary Variety Store and 337 West 4<sup>th</sup> Street in South Boston. This conspiracy was funded by "rent" payments through extortion.
- Extortion of Stephen and Julie Rakes to purchase Stippo's Liquor Mart (1983-1984).
- In 1989, money laundering (sale of 295 Old Colony Ave. from the defendant to the defendant).
- Funding John Martorano's flight as a fugitive of justice from 1978 through 1995.
- From around 1980 until 1993, extortion of Richard O'Brien.

**B. Judge Stearns' supervisory role placed him in a position as counsel relative to facts in this proceeding and in a position where he should have knowledge of disputed evidentiary facts related to the indictments.**

Special consideration must be given to a judge's role as a former prosecutor. "Though the duty to vacate the bench is absolute in a situation where the judge was a United States attorney at the time when the case before him began, ... this rule applies only when the case before him is the same as or is related to the case which was within his jurisdiction as prosecuting attorney." This is precisely the situation presented by Judge Stearns' position as former supervising prosecutor and subsequently the judge assigned to this case. Jenkins v. Bordenkircher, 611 F.2d 162, 166 (6th Cir. 1979), citing United States v. Amerine, 411 F.2d 1130 (6th Cir. 1969). During much of the relevant period in which the defendant was investigated for ultimately *this* case, Judge Stearns was the head of the Criminal Division.

Judge Stearns was in a central role as Chief of the Criminal Division during the heart of many of the investigations that ultimately led to the defendant's indictments. Although discovery review in this case is far from complete, discovery reviewed to date reveals numerous examples of investigations of the defendant, overseen by Judge Stearns, leading to the instant indictments.

For example, in 1984 and 1985, former AUSA Gary Crossen applied for Title III warrants for electronic surveillance in which the defendant and Steven Flemmi were major targets. This particular investigation is also known as "Operation Beans." Crossen later told investigators that he would have discussed this warrant with Judge Stearns since Judge Stearns was his direct superior at the time. See Exhibit 2 (filed under seal). Crossen further stated that he probably discussed the warrant with Robert Mueller, then-Chief of the Criminal Division. Id. Crossen and Judge Stearns were co-counsel in at least one case during the 1980s. United States v. Modarressi, 720 F. Supp. 16 (D. Mass. 1988).

AUSA Crossen spoke with FBI investigators on July 25, 1997 about what the United States Attorney's office knew about the defendant and Flemmi and the knowledge about their relationship with the FBI. Crossen told them that he had heard rumors that the defendant had a relationship with the FBI. See Exhibit 3 (filed under seal). See also Crossen testimony at Salemme hearing (May 12, 1998), Exhibit 4. DEA Agent Steven Boeri confirmed that he discussed with Crossen these rumors that the defendant and Flemmi were informants. See Exhibit 3 at p. 1 (filed under seal). William Weld stated he also suspected that the defendant had a relationship with the FBI, but claimed that he never confirmed this suspicion. See Exhibit 3 at p. 2 (filed

under seal). Despite knowing these rumors, neither Crossen in his application nor Boeri in his supporting affidavit revealed in the Title III application that the defendant and Flemmi were informants or had any special relationship with the Government. Crossen knew or should have known that FBI agents were compromising state and DEA investigations by tipping off the defendant. See Boeri testimony at Salemme hearing (May 14, 1998) at p. 128, Exhibit 5.

Judge Wolf found that Crossen's and Boeri's failure to reveal their shared belief in the Title III applications that the defendant was an FBI informant constituted a "reckless disregard for the truth." Salemme, 91 F. Supp. 2d at 373-374. "...Boeri and Crossen believed that Flemmi and Bulger were FBI informants whom the Bureau would seek to protect rather than prosecute." Id. These transgressions occurred in part during Judge Stearns' supervisory role as Chief of the Criminal Division.

In addition, Crossen, Judge Stearns' subordinate, was deeply involved from 1984-1987 in the Valhalla/Ramsland investigations. See Exhibit 6 (filed under seal). Crossen was also assigned the case of Arthur "Bucky" Barrett's murder. See Exhibit 7 (filed under seal). He also assisted in the investigations of the Brian Halloran and Michael Donahue murders. See Exhibit 8 (filed under seal). These three murders

are part of the basis for the indictments presently pending against the defendant. Moreover, numerous Title III applications relative to the defendant were sought and obtained while Judge Stearns held this supervisory position.

This case is far different from Judge Wolf's recusal decision in Salemme, 164 F. Supp. 2d 86 (1998). First, in Salemme, the government - not the defendant - filed a submission regarding recusal limited to 28 U.S.C. § 455(a) with an express waiver of any objection under 28 U.S.C. § 455(b). As Judge Wolf aptly pointed out, a former prosecutor's bias will favor the government far more than the defendant:

In essence, it is necessary to determine whether a reasonable person would have a significant concern that I would violate my duty as a judge and decide the motions to suppress and/or the motion to dismiss in favor of the defendants, who are accused of crimes including murder and blowing-up a lawyer, not on the merits, but because of some hostility I harbor to Condon and/or Morris. I find that a reasonable person would not have this concern.

Salemme, 164 F. Supp. 2d at 104.

Second, one of the primary disqualifying issues was that while Judge Wolf was an AUSA, the Assistant Attorney General called him to complain about AUSA Crossen's draftsmanship of the 1984 Title III application. Salemme, 164 F. Supp. 2d at 108. Judge Wolf found that this conversation was limited to stylistic issues and that he "did not participate in the process of preparing the application for the 1984-85 electronic

surveillance." Id. Thus, he had no personal knowledge of any disputed evidentiary fact and neither party indicated it wished to call him as a witness.

By contrast, Judge Stearns served as AUSA Crossen's supervisor when the Title III was submitted to the Court. Judge Stearns' responsibility relative to the subject application is clear regardless of whether or not Judge Stearns recalls reviewing or approving the affidavit. Given Judge Stearns' position in addition to Crossen's statements to OPR investigators in 1997 that he would have discussed this warrant with Judge Stearns since he was Crossen's superior at the time, the connection cannot be separated.

"[W]hen a district judge considers recusal, he must consider his potential conflict with regard to the overall case, not just his potential conflict for each separate issue or each stage of the litigation." Murray v. Scott, 253 F.3d 1308, 1310-11 (11th Cir. 2001). In Murray, the 11th Circuit Court of Appeals held that the district court judge should have recused himself based on the fact that, while serving as a government attorney, he had appeared as counsel of record in an action in which the corporation was a party, possibly giving him knowledge of disputed facts. Murray, 253 F.3d at 1312-13.

The indictments in this case span a lengthy period of time, allege numerous racketeering acts committed either by the

defendant or various co-conspirators in the Bulger Group, and assert that some of the murders resulted from the victims' becoming informants in other investigations. Thus, the facts and events necessarily intersect with Judge Stearns' role in the office. Judge Stearns' inherent conflict presents itself even more so than the judge in Murray.

Importantly, an assessment by Judge Stearns determining that he has no actual personal knowledge or memory of the investigation of the defendant or alleged co-conspirators will not suffice to avoid recusal. Judge Stearns should still recognize that knowledge is imputed to him by virtue of his supervisory roles in the United States Attorney's office. In United States v. Arnpriester, the 9th Circuit Court of Appeals held that the judge's recusal from the defendant's motion for new trial was mandatory since the judge began the case against the defendant as United States Attorney. "The attorney responsible for the precedent investigation of a person suspected of violation of the laws of the United States would reasonably be believed not to be impartial when that person was subsequently indicted, tried and convicted." Arnpriester, 37 F.3d at 467. "This analysis imputes to the United States Attorney the knowledge and acts of his assistants. Such 'vertical imputation' to the head of the office is what is done by the criminal statute governing employment of a former

government employee in any matter "which was under his official responsibility," [18 U.S.C. § 207\(a\)](#)." Id.

Other cases with similar circumstances have required recusal. See United States v. Pepper & Potter, Inc., 677 F. Supp. 123 (E.D.N.Y. 1988) (judge was disqualified from hearing criminal antitrust case based on "appearance of impropriety" arising from limited preindictment involvement in case while serving as United States Attorney); Mixon v. U.S., 608 F.2d 588, 591-592 (5th Cir. 1979) ("Here the record shows that the magistrate who reviewed Mixon's section 2255 motion appeared and participated as an Assistant United States Attorney in the consideration of Mixon's 1966 motion to reduce his 1962 sentence. His disqualification was thus clearly required."); and United States v. Amerine, 411 F.2d 1130 (6th Cir. 1969) (United States attorney, who is required to prosecute within his district for all offenses against the United States, is "of counsel" in any criminal prosecution in his district, within § 455, requiring trial judge to disqualify himself in any case in which he has been "of counsel.").

**C. Judge Stearns' impartiality will be suspect when he would need to assess the credibility of expected witnesses.**

Close personal relationships with potential witnesses whose credibility the judge must assess comprise a separate ground for

recusal. For this very reason, Judge Harrington recused himself from the Weeks and O'Neil case. Judge Harrington recognized:

The instant case is an outgrowth of the United States Attorney's decision to prosecute some former high echelon underworld informants in the case of United States v. Salemme, et al., Criminal No. 94-10287-MLW, and of the public disclosures made during the Salemme pretrial hearings of the identity of several such informants and of the federal agent-informant relationship.

Because of my personal friendships with some of the former federal agents involved in maintaining the agent-informant relationship and my respect for their extraordinary contribution toward the United States government's successful effort against the New England family of La Cosa Nostra, I recuse myself from this case.

United States v. Weeks and O'Neil, No. 99-10371-EFH (Judge Harrington's Order of Recusal, dated December 20, 1999) (Exhibit 1). Judge Stearns' overall involvement by virtue of his position with the United States Attorney's Office reflects the same impediment that precludes his remaining on this case.

Other district judges have recused themselves for similar reasons. See United States v. Ferguson, 550 F.Supp. 1256, 1260 (S.D.N.Y. 1982) (district court recused itself since a former law clerk's credibility was a "vital issue" in the case); Hadler v. Union Bank & Trust Co. of Greensburg, 765 F.Supp. 976, 978 (S.D. Ind. 1991) (district court recused itself, in part, because the credibility of a personal friend was at issue); and Orange v. Burge, 2004 WL 1794488 (N.D. Ill. Aug. 3, 2004) (district court judge recused himself because he knew many of

the witnesses and his personal closeness with some of those witnesses was substantial).

In this case, former members of the Department of Justice and former colleagues of Judge Stearns will be witnesses at the immunity hearing. See Appendix A for a preliminary list of potential witness and a partial synopsis of their expected relevance.

The issue of immunity is initially heard by a judge. See United States v. McLaughlin, 957 F.2d 12, 16 (1st Cir. 1992). Thus, Judge Stearns would have to judge the credibility of his former colleagues and his own conduct during his period with the U.S. Attorney's Office. "[T]he requirements of § 455(a) become incrementally more stringent when the judge becomes the fact-finder." Hadler, 765 F.Supp. at 979.

In United States v. Mavroules, 798 F. Supp. 61 (D. Mass. 1992), Judge Tauro recused himself due to three contacts with the defendant, his relationship with two people named in the indictment, and his friendships with the chief prosecutor and defense attorney in the case. Judge Tauro noted that

"[j]udges often have friendly relationships with lawyers before them...But, given the extraordinary coincidences...here, I feel that [the U.S. Attorney's] pragmatic analysis [that the case will "receive an unusual amount of publicity and that these contacts will leave 'open to questioning...as to whether the playing field was a level one"] makes sense and should be adopted by me."

Mavroules, 798 F. Supp. at 62-63. Such a "pragmatic analysis" applies even more so in this case where the defendant has been indicted for such serious crimes and where the public interest in the case will be all-consuming by the time of hearings and trial.

**IV. Judge Stearns' supervisory role placed him squarely in a position to know about and be responsible for the investigation and prosecution of the defendant. Why Judge Stearns' office did not prosecute the defendant will be a critical topic at the immunity hearing.**

There was a long-standing failure by the United States Attorney's Office to prosecute the crimes now alleged in this indictment. The decision to refrain from prosecuting the defendant during Judge Stearns' supervision, and the failure to prosecute participants of the illicit relationships between members of the FBI and the defendant underscores the binding immunity agreement the Department of Justice promised the defendant. Judge Stearns' position and his management of his subordinates render him a witness in an immunity hearing.

The binding immunity agreement between James Bulger and the Department of Justice is demonstrated, in part, by the Department of Justice's systematic effort to ensure that the defendant be immune from prosecution. For example, in 1979, Strike Force Attorney Jeremiah O'Sullivan exercised his prosecutorial discretion in favor of the defendant by omitting

him from the horse race-fixing indictment. Any effort to explain to date has been wrought with inconsistencies and falsehoods.

Another of many examples took place in 1988 when an anonymous caller left messages for William Weld stating that she knew that the FBI was protecting the defendant and Flemmi and that she believed they were responsible for Brian Halloran's murder. These messages were typed up in short memos for Weld. On one memo, Weld handwrote his acknowledgment that he already knew of the information contained in the memo and expressed his opinion that the anonymous caller knew what she was talking about; and on another memo, Weld handwrote a note indicated he believed the caller's messages. See Exhibit 9 (filed under seal). The United States Attorney's Office received other messages about the defendant in 1988. See Exhibit 10 (filed under seal). Notably, the defendant was not indicted at that time.

The United States Attorney's Office's inexplicable inaction is not limited to time periods before and after Judge Stearns' responsibility vests. Instead, the same inaction is consistent while Judge Stearns is in command. For example, AUSA Crossen was deeply involved from 1984-1987 in the Valhalla/Ramsland investigations (the alleged genesis for the McIntyre murder), which led to indictments of Patrick Nee and Joe Murray, alleged associates of the defendant. See Exhibit 6 (filed under seal).

Crossen was also assigned the case of Arthur "Bucky" Barrett's murder. See Exhibit 7 (filed under seal). Crossen was present for interviews of witnesses in the Barrett case. See Exhibit 11 (filed under seal). Crossen also specifically requested evidence with respect to the Brian Halloran and Michael Donahue murders. See Exhibit 8 (filed under seal). Despite all of the evidence available to Judge Stearns' and his office, the defendant was not indicted for any of these murders at that time.

In 1985, Crossen knew about the written allegations from Attorney John Loftus, who represented John McIntyre's estate and who demanded a full investigation into his death. See Exhibit 12 (filed under seal). In July 1985, Crossen met with Loftus to discuss whether he would testify at the grand jury regarding the Valhalla investigation. Id. at p. 3. Crossen knew from Philip Brady, a Customs agent deeply involved in the Valhalla investigation, that McIntyre was missing and that Brady needed to speak with him. See Exhibit 13 (filed under seal). Crossen even speculated at the time that Patrick Nee, an alleged associate of the defendant, had killed McIntyre. See Exhibit 14 (filed under seal). Yet there was no apparent effort by the FBI or the United States Attorney's Criminal Division led by Judge Stearns to indict anybody relative to the McIntyre disappearance.

The decision to refrain from indicting the defendant and exposing his relationship with the FBI can be adequately explored for the court only while Judge Stearns is in front of the defendant in the witness box, not above him on the bench.

**V. Judge Richard G. Stearns must also recuse himself under 28 U.S.C. § 455(a).**

Under the circumstances set forth above, there is no possibility that Judge Stearns can avoid the appearance of partiality. Similarly, a reasonable member of the public cannot be assured that Judge Stearns would appear to be impartial in all matters relative to the litigation and trial of this case.

The Supreme Court has mandated recusal under 28 U.S.C. § 455(a) under the following circumstances:

If it would appear to a reasonable person that a judge has knowledge of facts that would give him an interest in the litigation then an appearance of partiality is created even though no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible. The judge's forgetfulness, however, is not the sort of objectively ascertainable fact that can avoid the appearance of partiality.

Liljeberg v. Health Services Acquisition Corp., 486 U.S. 847, 860-61 (1988). The First Circuit has interpreted 28 U.S.C. § 455(a) as "automatic, mandatory and self-executing." United States v. Chantal, 902 F.2d 1018, 1023 (1st Cir. 1990). Even if Judge Stearns has no actual recollection of the investigation of the defendant while he was an AUSA, any reasonable person would

believe that he would be partial to the government in this case. The defendant's claim of immunity necessarily involves the need for an independent judge to determine the manner in which Judge Stearns, his office, and his former colleagues operated. Subjectively, Judge Stearns may be "pure in heart and incorruptible," Liljeberg, 486 U.S. at 861. Objectively, however, Judge Stearns would appear to have every reason to protect his former colleagues in the United States Attorney's Office to the detriment of a full exposure of the truth.

#### **VI. Hearing**

The defendant requests a hearing on this motion.

#### **VII. Conclusion**

The defendant moves that Judge Richard G. Stearns recuse himself from this case pursuant to 28 U.S.C. § 455.

JAMES J. BULGER  
By His Attorneys,

CARNEY & BASSIL

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Dated: June 25, 2012

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on or before the above date.

J. W. Carney, Jr.

J. W. Carney, Jr.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

\_\_\_\_\_  
UNITED STATES OF AMERICA )  
 )  
 )  
V. ) Crim. No. 99-10471-RGS  
 )  
 )  
JAMES J. BULGER )  
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**DEFENDANT'S APPENDIX IN SUPPORT OF MOTION FOR RECUSAL OF JUDGE  
RICHARD G. STEARNS**

Appendix A - Preliminary list of potential witnesses and non-testifying individuals whose credibility must be assessed by the Motion Judge.

a) Former Assistant United States Attorneys/Strike Force Attorneys

1. Jeremiah O'Sullivan - former Chief of the Organized Crime Strike Force and former acting United States Attorney. O'Sullivan was one of Bulger's key advocates at the Strike Force and U.S. Attorney's Offices, and exercised prosecutorial discretion in Bulger's favor in 1979 and the 1980s.
2. William Weld - former United States Attorney. When an anonymous caller left messages alleging corruption

between the FBI and Bulger, Weld handwrote on the internal memoranda that he knew some of this information. Weld was also approached by a concerned FBI Assistant Special Agent in Charge shortly before Halloran's murder about placing Halloran in witness protection after O'Sullivan refused to do so.

3. Frank McNamara, Jr. - former United States Attorney from 1987 to 1989. McNamara asked SAC Ahearn whether Bulger was an FBI informant.
4. Wayne Budd - United States Attorney serving from 1989 until 1992. U.S. Attorney Budd requested that the FBI confirm or deny Bulger's informant status in February 1992; the FBI refused.
5. Gary Crossen - former Chief of the General Crimes Unit and former AUSA assigned to "Operation Beans" DEA investigation in 1985-1985. Crossen did not pursue cases against Bulger and Flemmi in connection with the Valhalla incident.
6. Robert Mueller - former Chief of the Criminal Division. In 2001, President George W. Bush named Mueller director of the FBI.
7. David Margolis - Chief of the Organized Crime and Racketeering Section of the Department of Justice in Washington D.C. O'Sullivan told Margolis that Twomey

was suspected of leaking information to Lepere, an associate of Bulger's. Margolis was also copied on the internal memos to Weld about the anonymous caller who alleged that FBI agents Connolly and Newton were selling information to Bulger and Flemmi.

8. Jack Keeney - acting Assistant Attorney General of Department of Justice in Washington D.C. Keeney was also copied on the internal memos to Weld about the anonymous caller who alleged that FBI agents Connolly and Newton were selling information to Bulger and Flemmi.
9. Judge Diane Kottmyer - former Strike Force attorney, signed immunity agreement with Boston Police Lieutenant Cox, prepared documents for roving Title III for LCN induction ceremony.
10. George Proctor - Former Deputy Chief of Organized Crime and Racketeering Section of Department of Justice in Washington D.C. Former Strike Force Attorney Diane Kottmyer's immediate supervisor in Washington D.C.
11. Judge Janis Berry - former Chief of the Organized Crime Drug Enforcement Task Force, reviewed Crossen's Title III application targeting Bulger and Flemmi.

12. Gerald McDowell - former Chief Attorney for Boston Organized Crime Strike Force.
13. Martin Boudreau - former Assistant U.S. Attorney, handled the Operation Lobster prosecution. Former ASAC Fitzpatrick alleged that former SAC Greenleaf had leaked information to Boudreau.
14. Jeff Martin - Assistant U.S. Attorney, supported AUSA Crossen in the Valhalla prosecution.
15. R.J. Cinquegrana - former Assistant U.S. Attorney, applied for Title III targeting Bulger, Weeks and several other individuals in 1988 and 1989.
16. Kevin Driscoll - Assistant U.S. Attorney, applied for Title III targeting Bulger and others in 1988.
17. Judge Joseph Walker III - Assistant U.S. Attorney, applied for Title III targeting Bulger, Flemmi, Weeks, and others in 1989.
18. Robert Ullmann - former First Assistant U.S. Attorney, and former Chief of the Criminal Division of the U.S. Attorney's Office. Applied for a Title III in 1993.
19. Martin Healey - former Assistant U.S. Attorney, applied for a Title III targeting Bulger, Weeks, and others in 1989.
20. William Kettlewell - Chief of the Organized Crime and Drug Task Force for New England, and was Chief of the

Criminal Division of the U.S. Attorney's Office.

Kettlewell applied for a Title III targeting John Shea, Paul Moore, and others in 1988.

21. Paul Coffey - Chief, Organized Crime and Racketeering Section. Coffey spoke with Flemmi and his attorney after Flemmi's indictment in Judge Wolf's chambers; Flemmi told Coffey that he received favors from people, including SSA Morris, and that he and Bulger were tipped off to the indictments in this case.
22. Todd Newhouse - Assistant U.S. Attorney, prepared the application for the Title III roving wiretap used against LCN members at the Hilton Hotel.
23. A. John Pappalardo - former Chief of the Criminal Division; First Assistant U.S. Attorney from 1989-1992; acting United States Attorney from 1992-1993.

b) Former Federal Agents

24. John Connolly - FBI special agent. His actions, along with others in the Strike Force, USAO, and FBI, allowed the defendant to avoid prosecution from the 1970s until the present.
25. James Connolly - DEA agent involved in the Valhalla/Joe Murray investigation, John Connolly's brother.

26. John Morris - FBI supervisory special agent, provided the defendant with tips on ongoing investigations. His actions, along with others in the Strike Force, USAO, and FBI, allowed the defendant to avoid prosecution from the 1970s until the present. Morris admitted under a grant of immunity to taking money from the defendant. Morris also breached FBI protocol by telling the Boston Globe that Bulger was an FBI informant in the late 1980s.
27. James (Jim) Ring - former FBI supervisory special agent, reportedly told Connolly that Connolly was treating his informants unprofessionally; that he should be learning information from informants, informants should not be learning information from the agent.
28. H. Paul Rico - former FBI special agent, was Flemmi's first handling agent. Rico was able to deliver on numerous promises to Flemmi, including that his attempted murder and first degree murder charges would be dismissed and bail would be set. After retiring from the FBI, Rico worked for Roger Wheeler's company, World Jai Alai.

29. Dennis Condon - former FBI special agent, was invited to a dinner at supervisory special agent Morris's house with Bulger, Flemmi, and John Connolly.
30. Tom Daly - FBI special agent, was the case agent assigned to the 1979 horse race fixing case, in which O'Sullivan dropped Bulger from the indictment.
31. James (Jim) Ahearn - former special agent in charge; reportedly approached Bruce Ellavsky in the late 1980s about pursuing Bulger and Flemmi as targets.
32. Jim Moody - former FBI Chief of Organized Crime Section in Washington D.C.
33. Robert Fitzpatrick - former FBI assistant special agent in charge, alleges that he was brought to Boston to address the corruption in that office. He was told that he would never close Bulger as an informant, and his recommendations that the Bureau discontinue its relationship with Bulger were ignored.
34. Roderick Kennedy - FBI special agent, was the FBI's liaison to the DEA in 1983 and 1984, during the time the D Street warehouse was searched by federal law enforcement in South Boston. Bulger appeared to have been tipped off to this raid. Kennedy was also AUSA Crossen's case agent, and a named defendant in the McIntyre civil lawsuit.

35. James Greenleaf - former FBI special agent in charge. Former ASAC Fitzpatrick alleged that Greenleaf had leaked information to former AUSA Martin Boudreau.
36. Steven Boeri - DEA special agent, worked on Operation Beans investigation targeting Bulger and Flemmi.
37. Albert (Al) Reilly - DEA special agent, worked on Operation Beans investigation targeting Bulger and Flemmi.
38. Philip Brady - Customs special agent, worked on the Joseph Murray/Valhalla investigation and attempted to locate John McIntyre.
39. Donald DeFago - Customs special agent, worked on the Joseph Murray/Valhalla investigation.
40. Christopher Nelson - Customs Special Agent in Charge, oversaw the Joseph Murray/Valhalla investigation.
41. Sean McWeeney - FBI Chief of Organized Crime Section, attended meetings where Bulger and Flemmi were discussed. When he received word that they were targets of a DEA investigation, he called the Boston FBI office and asked something to the effect of "Aren't these our guys?"
42. Lawrence (Larry) Sarhatt - former FBI Special Agent in Charge. Sarhatt asked O'Sullivan's opinion about keeping Bulger open as an informant. O'Sullivan

expressed the opinion that Bulger was extremely valuable and should not be closed, regardless of his current activities.

43. Brendan Cleary - FBI special agent, knew that John McIntyre was providing information. Cleary also assisted in the investigation of Arthur (Bucky) Barrett. Cleary was also involved in the D Street warehouse case.
44. Steven Crogan - Customs special agent, involved in the Joe Murray/Valhalla investigation.
45. George Corcoran, Jr. - Assistant Commissioner, Enforcement, U.S. Customs Service, Washington D.C.
46. Bob Carroll - Customs special agent, involved in the Joe Murray/Valhalla investigation.
47. Martin Ward - attorney for Customs Service. Ward wrote a letter to the Regional Counsel about the Valhalla seizure, and spoke with AUSA Crossen and others about the Valhalla investigation and Ward's recommendation that a warrant was not required.
48. James Rafferty - Customs Group Supervisor, Strategic, involved in the Joe Murray/Valhalla investigation.
49. Rick Carter - FBI special agent, brought in with SA Brian Rossi to assist the DEA and Quincy Police Department's 1984-1985 Title III targeting Bulger and

Flemmi. Carter and Rossi were brought in because they were new to the FBI and did not know of Bulger and Flemmi's relationship with the Bureau. In the early 1990s, Carter was doing surveillance at the South Boston Liquor Mart, which was owned by Bulger, Flemmi, and several others. Carter saw Connolly enter the store or saw his car parked outside and did not enter this observation in the surveillance log. SA Buckley also alleged that Rick Carter was leaking Strike Force information to John Connolly.

50. Robert Stutman - former Special Agent in Charge of the DEA. In the late 1980s, the DEA was investigating Bulger and Flemmi. Many in the DEA assumed that Bulger and Flemmi were FBI informants, and it is unclear whether Stutman was advised of a relationship between the FBI and Bulger and Flemmi. Stutman's agents suspected that the FBI had compromised DEA investigations.

51. James Blackburn - FBI supervisor, one of his primary assignments was to investigate Hobart Willis. Blackburn overheard conversation about an extortion attempt where the victim was extorted for \$20,000 but still thought Bulger was a good guy. Blackburn became the FBI Informant Coordinator in 1997, and was

assigned to review Bulger and Flemmi's informant files. He was struck by the lack of information that the files contained.

52. Edward (Ed) Quinn - a former FBI special agent, participated in the interview of Joseph Murray about his allegations against agents Connolly and Newton.
53. Larry Potts - former FBI Assistant Special Agent in Charge. Potts performed a review of Bulger's informant file and recommended continuing Bulger as an informant.
54. Edward (Ed) Clark - former FBI supervisory special agent; entered as a special agent in September 1964 and retired in February 1995. Clark participated in the Operation Lobster investigation, and interviewed Joseph Murray about his allegations against agents Connolly and Newton.
55. Bruce Ellavsky - FBI senior special resident agent, was the case agent on a case where the goal of the investigation was to induce a subject to cooperate against Flemmi. The subject refused to cooperate. Ellavsky also supervised the investigation of the Raymond Slinger complaint. He also reportedly told SA Cronin that "we [the FBI] don't do bookmaking" after Cronin developed a case targeting bookmakers paying

rent to Ferrara or Bulger and Flemmi. Ellavsky reported that SAC Ahearn approached him about targeting Bulger and Flemmi in the late 1980s.

56. Nick Gianturco - FBI special agent, was the undercover agent on Operation Lobster whose life was reportedly saved by a tip. Gianturco reportedly exchanged gifts and had meals, including at his house, with Bulger and Flemmi on several occasions. Gianturco at one point was an Informant Coordinator for the Boston FBI office.
57. Michael Buckley - FBI special agent, attended a dinner with Bulger and Flemmi at Gianturco's home. Buckley had been a member of the Boston FBI's Organized Crime Squad since the summer of 1978, and reportedly, Connolly mentioned Buckley taking over his informants when Connolly retired. Buckley interviewed Mercurio in 1997 about his knowledge about the LCN induction ceremony wiretap in 1989.
58. John Newton - FBI special agent; Newton was a friend of Connolly's and allowed Connolly to use his apartment to meet with Bulger and Flemmi after Connolly was told by his supervisor not to meet with his "sources" at his own apartment. Newton also was

one of the case agents who interviewed Raymond Slinger regarding his complaint against Bulger.

59. James Lavin - FBI special agent, was told by a source in 1987 that Boston city employees had erected a fence or guardrail in front of one of Bulger's businesses. Lavin's source provided Lavin with photos of the city employees building this structure. Lavin shared this information with SA Connolly, and within a month, Lavin's source told Lavin that the rail or fence had been removed.

c) Former and Current State and Local Police Officers

60. Richard Bergeron - Quincy Police Department detective, involved in interviewing John McIntyre. Bergeron was later involved in Operation Beans with the DEA.
61. Richard (Rick) Fraelick - Massachusetts State Police lieutenant, was allegedly told during Operation Lobster that Bulger was an FBI source. Fraelick also worked on the compromised Lancaster Street Garage investigation.
62. John O'Donovan - Massachusetts State Police colonel; thought that the FBI was compromised. For example, O'Donovan told O'Sullivan he believed Morris was going

to tell Bulger about the Lancaster Street Title III surveillance.

63. Robert (Bob) Long - Massachusetts State Trooper, suspected during Operation Lobster that Bulger had a relationship with the FBI, and asked O'Sullivan if the MSP could run the Lancaster Street investigation with the DEA or ATF. O'Sullivan insisted that the FBI be involved.
64. Edward (Eddie) Walsh - Boston Police Deputy Superintendent. Walsh was one of the potential targets of LCN threats according to an FBI informant.
65. Jack O'Malley - Massachusetts State Police lieutenant, worked on the Lancaster Street Garage investigation. O'Malley supervised the Special Services Section of the State Police, which was involved in investigating Bulger and Flemmi for several years.

JAMES J. BULGER  
By His Attorneys,

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Dated: June 25, 2012

Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on or before the above date.

J. W. Carney, Jr.

J. W. Carney, Jr.

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

KEVIN J. WEEKS and  
KEVIN P. O'NEIL

CRIMINAL NO.: 99-10371-EFH

ORDER OF RECUSAL

December 20, 1999

HARRINGTON, D.J.

The United States of America has moved for recusal of the Court in the above-captioned case. The Court grants said Motion. On November 18, 1999, the Court issued a Notice which stated as follows:

This is to advise the parties in the above-entitled case that I have been involved in the investigation and prosecution of an alleged criminal organization known by various names, such as "Winter Hill" and "South Boston" in my prior capacities as an Assistant United States Attorney from March 29, 1965 to January 30, 1969; as Deputy Chief of the United States Department of Justice's Strike Force Against Organized Crime from May 5, 1969 to October 16, 1970; as Chief Attorney of the United States Department of Justice's Strike Force Against Organized Crime from October 16, 1970 to March 31, 1973; and as United States Attorney for the District of Massachusetts from August 1, 1977 to October 31, 1981.

This Notice is issued so that the parties might move for my recusal if they deem it appropriate.

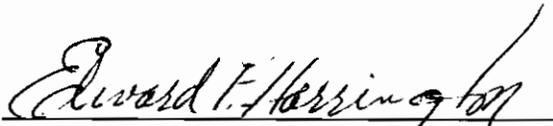
In January, 1963 I first became involved in the investigation and prosecution of organized crime as a Trial Attorney for the U. S. Department of Justice under the leadership of Attorney General Robert Kennedy. As set forth in the Notice above, I continued to be involved in the government's fight against organized crime in various capacities until October 31, 1981. During those years I was involved in the successful prosecution of Raymond L. S. Patriarca; the development of major gangland accomplice witnesses, including Joseph Baron, John J. Kelly and Vincent C. Teresa; the establishment of the Witness Protection Program; the installation of the first court-authorized wiretap in this District; and the planting of the court-authorized "bug" in the Angiulo faction's headquarters.

During those years it was the Department of Justice's policy to direct its investigative and prosecutive resources towards the elimination of La Cosa Nostra and, in this region, toward the elimination of its New England family. To that end it was the policy of the Department of Justice to establish and maintain a program of high echelon underworld confidential informants in order to develop the criminal intelligence and evidence necessary for the successful prosecution of the leaders of the organized criminal syndicate in this area of the country. It was also the policy of the Department of Justice to maintain and protect the confidentiality of the identity of such high echelon informants. As a result of the Department of Justice's policy and program, the New England family of La Cosa Nostra has been virtually eradicated.

The instant case is an outgrowth of the United States Attorney's decision to prosecute some former high echelon underworld informants in the case of United States v. Salemme, et al., Criminal No. 94-10287-MLW, and of the public disclosures made during the Salemme pretrial hearings of the identity of several such informants and of the federal agent-informant relationship.

Because of my personal friendship with some of the former federal agents involved in maintaining the agent-informant relationship and my respect for their extraordinary contribution toward the United States government's successful effort against the New England family of La Cosa Nostra, I recuse myself from this case.

SO ORDERED.

  
EDWARD F. HARRINGTON  
United States District Judge

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Pages: 1-164  
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UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs.

Docket No.  
CR 94-10287

FRANCIS P. SALEMME, ET. AL.

BEFORE THE HONORABLE MARK L. WOLF  
UNITED STATES DISTRICT JUDGE

APPEARANCES: (As previously noted.)

Courtroom No. 5  
USPO & Courthouse  
Boston, MA 02109

May 12, 1998

1 question. I don't have it clearly in mind.

2 MR. FISHMAN: I'll withdraw it.

3 Let me ask you this question.

4 Q. Isn't it fair to say that you were  
5 conveying to the interviewing agents back in July  
6 of 1997 that you had heard rumors that Mr. Bulger  
7 was indeed an informant working for the FBI?

8 A. Yes.

9 Q. Because, indeed, you had heard those  
10 rumors, isn't that right?

11 A. Those and many others, but, yes,  
12 absolutely.

13 Q. But that's a rumor you were telling.  
14 You weren't telling every rumor you ever heard  
15 about every subject, were you?

16 A. No, they were asking about Mr. Bulger  
17 and Mr. Flemmi.

18 Q. That's right. And that's why you told  
19 them about your awareness of those rumors?

20 A. Yes, sir.

21 Q. And those are rumors that you had heard  
22 prior to the filing of the application and  
23 affidavit in the Beans operation case, isn't that  
24 right?

25 A. Yes.

1 Q. And you made a conscious decision, did  
2 you not, not to include those rumors in the  
3 affidavit, is that right?

4 A. I made a conscious decision not to  
5 include any rumors in the affidavit.

6 Q. What about my question? Did you make a  
7 decision not to include this rumor?

8 MR. KELLY: Objection.  
9 Argumentative.

10 THE COURT: Overruled.

11 A. I did not -- I do not recall today  
12 making a specific conscious decision about this  
13 rumor.

14 Q. And, in fact, that's because, as you  
15 said in response to Mr. Cardinale's questions,  
16 that you only put facts in an affidavit, not  
17 suspicions, is that right?

18 A. Put evidence in affidavits.

19 Q. Didn't you use the words "evidence and  
20 facts"?

21 A. I think that's what I said.

22 Q. Things that you knew as opposed to  
23 things that you suspected?

24 A. Well, these affidavits are by nature  
25 evidence and facts leading to conclusions.

1 Q. And by nature include a whole raft of  
2 information obtained from a variety of sources,  
3 isnt' that right?

4 A. Yes.

5 Q. And some of that information is very  
6 general source information about which you have no  
7 problem including in a sworn affidavit, isn't that  
8 right?

9 A. If it's deemed reliable, yes.

10 Q. And do you make that determination  
11 before you include it in an affidavit, or did you  
12 in this case -- I won't ask you generally -- did  
13 you in this case make a determination as to  
14 whether it was deemed reliable or not?

15 A. As to whether what was deemed reliable?

16 Q. The source information that you included  
17 in these affidavits -- in these affidavits, excuse  
18 me.

19 A. I made a determination that the agents  
20 working on the case, specifically the one who  
21 would be signing the affidavit, was satisfied that  
22 the source information was reliable.

23 Q. And if you look at, for example, page  
24 35, paragraph 60, you were satisfied that it was  
25 -- the information contained in that paragraph

1 was sufficiently reliable to have Mr. Boeri swear  
2 to it, that being that he has received information  
3 from a variety of law enforcement sources about  
4 Bulger and Flemmi and their activities, is that  
5 right?

6 A. Yes.

7 Q. And that included the fact that they  
8 were purportedly in control of the organized crime  
9 group known as the Winter Hill Gang?

10 A. Yes.

11 THE COURT: Excuse me, what  
12 paragraph, please?

13 MR. CARDINALE: Paragraph 60, your  
14 Honor, page 35.

15 Q. And that they occupied a control  
16 position as a result of the imprisonment of Howie  
17 Winters since 1982?

18 A. Yes.

19 Q. And that the same sources have indicated  
20 that George Kaufman is a long-time criminal  
21 associate of Howard Winter and is a long-time  
22 front man for the Winter Hill Gang?

23 A. Yes.

24 Q. And this kind of generalized information  
25 indicating that -- without identifying the

1 particular law enforcement sources from whom Mr.  
2 Boeri had heard -- was the kind of thing that you  
3 deemed reliable enough to include in this  
4 affidavit, is that right?

5 A. Yes.

6 Q. Nevertheless, you made a decision not to  
7 include information relating to -- call it rumors  
8 or whatever -- anything you had heard with regard  
9 to Mr. Flemmi and Mr. Bulger being informants for  
10 the FBI?

11 A. I made a determination not to include  
12 rumors in the application.

13 Q. Particularly that rumor?

14 A. As I said to you a few minutes ago, I  
15 don't remember making a determination with respect  
16 to that specific rumor.

17 Q. Well, you had a rumor. Did you make any  
18 -- and it was a rumor about which you knew before  
19 you filed this application, is that correct?

20 A. I had a host of rumors, Mr. Fishman.

21 Q. You knew that you also -- you had a  
22 specific rumor about the status of Mr. Bulger and  
23 Mr. Flemmi as informants for the FBI?

24 MR. KELLY: Objection. Misstates  
25 his testimony and argumentative.

1 THE COURT: Overruled.

2 A. I had a host of rumors about Mr. Bulger  
3 and Mr. Flemmi and their status.

4 Q. One of the rumors was that they were  
5 informants for the FBI?

6 A. That's correct.

7 Q. And so did you make contact with the FBI  
8 to determine whether that rumor was in fact a  
9 fact?

10 A. No.

11 Q. Did you try to gather any evidence to  
12 determine whether there was any truth to that  
13 rumor?

14 A. I don't recall whether I did or didn't.  
15 Sitting here today, I don't recall doing anything  
16 on that score.

17 Q. Did you do anything to gather evidence  
18 to make it sufficiently reliable in your mind for  
19 inclusion in this affidavit?

20 A. Not that I recall.

21 Q. Did you contact anyone at the FBI about  
22 the rumor?

23 A. Not that I recall. I don't think so,  
24 Mr. Fishman.

25 Q. Did you talk to the FBI agents who were

1 assigned or agent or agents who were assigned to  
2 the Task Force about the rumors?

3 A. Again, I don't recall. I don't have a  
4 specific recollection of having done so, though.

5 Q. Did you ask people who had conveyed to  
6 you the rumor where they heard it?

7 A. No. I mean, it's something I had heard  
8 over five or six years, dating back to Lancaster  
9 Street.

10 Q. Did you ask any of the people from whom  
11 you had heard the rumor where they got -- where  
12 they had in fact heard it?

13 A. I don't recall. I don't even recall  
14 specific people as to whom I heard the rumor from.

15 Q. Was it part of your discussion with Mr.  
16 Burke back at the time of the failed Lancaster  
17 Street investigation that such a rumor existed?

18 A. The only recollection I have of my  
19 discussion with Mr. Burke was his informing me  
20 that in his view his wire -- his operation had  
21 been compromised. I don't recall anything beyond  
22 that.

23 Q. So, you don't even know today when it  
24 came to 1984 and you were preparing an affidavit  
25 and an application whether you made any effort to

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Exhibits: LL

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

vs.

Docket No.  
CR 94-10287

FRANCIS P. SALEMME, ET. AL.

BEFORE THE HONORABLE MARK L. WOLF  
UNITED STATES DISTRICT JUDGE

APPEARANCES: (As previously noted.)

Courtroom No. 5  
USPO & Courthouse  
Boston, MA 02109

May 14, 1998

1 meetings you had with Mr. Crossen?

2 A. How many? No. But lots.

3 Q. And this was in the course of the year  
4 or so --

5 A. About eight months prior to, yes, prior  
6 to, sure.

7 Q. At any time when you met with Mr.  
8 Crossen on those many, many times that you met  
9 with him, did you ever discuss with him the  
10 possibility that Bulger and Flemmi were FBI  
11 informants?

12 A. Just the rumors.

13 Q. So. You did have those discussions with  
14 him?

15 A. Sure.

16 Q. What do you remember telling him and  
17 what do you remember him telling you?

18 A. My recollection is some of the cops  
19 stated that they were informants for the Bureau.

20 Q. That's it?

21 A. Yeah. My recollection was pretty much  
22 that, yeah.

23 Q. And what did he say in response to that?

24 A. The same response -- my recollection?  
25 The same response that I had, you know: What?

1           You know? It's my same conversation that I had  
2           with Fraylick. You have a lot of suspicion, but  
3           there was no direct information.

4           Q.    So, did he ask you to do anything in  
5           connection with those rumors?

6           A.    No, I don't remember him asking anything  
7           with respect to the rumors, no.

8           Q.    Did he ask you to gather any additional  
9           information with respect to those rumors?

10          A.    No, I can't remember that, no.

11          Q.    Did he ask you for more details about  
12          the rumors?

13          A.    I don't remember. I mean, he may have,  
14          but I just don't remember whether he did or he  
15          didn't.

16          Q.    But what you do remember now telling him  
17          is that: Hey, some officers say they're  
18          informants for the FBI?

19          A.    Yes, sir.

20          Q.    Nothing more specific than that?

21          A.    No, sir.

22          Q.    And you don't recall him ever asking you  
23          to be more specific than that?

24          A.    I don't recall it. He may have. But I  
25          just don't remember.