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Sunday, January 9, 2005

Kyle O'Dowd, Legislative Director
National Association of Criminal Defense Lawyers
1150 18th St., NW, Suite 950
Washington, DC 20036

Re: House Judiciary Committee Solicitation — Investigation of FBI Informant Practices

Dear Mr. O'Dowd:

Attorney David Schoen has forwarded to me Calli Schiller's solicitation, on behalf of the House Committee on the Judiciary, of information concerning instances of "misconduct or unethical behavior by FBI agents [as] they relate to confidential informants."

In my capacity as an economist,¹ I became interested in the issue of FBI misconduct, especially as it involves informants, in the late 1990s in the course of a consulting assignment on behalf of a major New York law firm (insurance defense). That assignment required intensive examination of certain business transactions (centered in Oklahoma) which involved significant political corruption (state and federal) which had been investigated by the FBI. My Oklahoma inquiries led to tangentially related FBI investigations in Hawaii and California. When FBI misconduct became a focus of my inquiries, a colleague brought to my attention an entirely unrelated but pervasive nexus of corruption centered in the Eastern District of New York, and this latter has absorbed much of my effort over the last three years.

At the outset I would note that, in the following discussion of these instances of FBI mal-, mis- and nonfeasance in the handling of informants, I use the term "informant" inclusively, to include not only "criminal informants" (subjects of criminal investigations who are "recruited" to provide information to law enforcement) but also others who happen to come into possession of information concerning criminal activity and/or into contact with persons involved in criminal activity and who agree to assist law enforcement. Thus, "informant," here, embraces the occasionally distinguished category of "cooperating witness."

Full elaboration of these cases would require extensive treatises. Here I will attempt to provide relatively brief summaries. Should you or the Committee desire further information, corroborating evidence, etc., I will be happy to provide it.

While each of these cases involves evident misconduct in the FBI's handling of informants, the situations differ in significant respects. Although several originated rather far in the past, each has continuing aspects and consequences which are unacknowledged by the FBI.

¹ As background, I have been associated, at various points in my career, with the National Bureau of Economic Research, the Ford Foundation, Yale University, the Institute for Demographic and Economic Studies, the International Institute for Applied Systems Analysis and Michigan Technological University, and have served as an elected member of the Michigan House of Representatives (1991-2).

- In Oklahoma, an entirely innocent businessman, **Ronald G. Miller**, discovered in 1992 that his small gas-pipeline company had been victimized by political corruption and volunteered to serve as an informant to FBI agents who were conducting an investigation which had been initiated in 1988 when newly-elected **Corporation Commissioner** (utility regulator) **Bob Anthony** reported to the U.S. Attorney illegal cash contributions made by utility lawyer **William L. Anderson**.

Inter alia, in August 1997 Miller provided to **FBI Special Agent John Hippard** several hundred audio tapes of telephone conversations and meetings with persons who were subjects of the investigation. Later that month Miller was contacted by and began to provide information to the House Committee on Government Reform, to which he promised to provide the audio tapes as soon as they were returned to him by the FBI.

Miller's appearance before the Committee had been scheduled for late October 1997, but early that month he suddenly became ill and died of unknown causes ("adult respiratory distress syndrome of *unknown* etiology" [emphasis added]). FBI SA Hippard and other agents closely monitored the Oklahoma Chief Medical Examiner's (OCME) inquiry into Miller's death, made false representations concerning their own investigation of his death, failed to provide requested assistance and strongly encouraged the OCME's finding that the "manner" of death was "natural," a determination which was only amended to "unknown" when, two years later, I appealed the initial determination. After the OCME reclassified Miller's death, Cleveland County (Norman) district attorney **Tim Kuykendall**, over the vigorous opposition of SA Hippard, opened a preliminary investigation.

After Miller's death the FBI refused the Government Reform Committee's request for access to the Miller tapes.

Notwithstanding substantial evidence of the payment of bribes by major utilities and the receipt of bribes by state and federal officials (including a member of Congress and a member of the President's cabinet), prosecution was limited to three relatively minor participants, and the underlying investigations were terminated by **U.S. Attorney Patrick Ryan**.²

The cause of Miller's death remains unknown.³ I cannot assert that agents of the FBI were responsible for or had knowledge of the circumstances of Miller's death. However, the FBI clearly was responsible for the subsequent sequestering of evidence of criminal activity which Miller had assembled. Similarly, evidence provided over a period of years by Bob Anthony (who wore a wire, taped telephone conversations, etc.) was essentially buried by the FBI. Both informants made significant sacrifices in assisting FBI investigations, but those sacrifices were rendered pointless by the failure of the FBI to pursue investigations and by its refusal even to release the information which it had been given to other appropriately interested parties, including the House Government Reform Committee.

2 Interestingly, immediately after the OCME's December 1999 reclassification of the manner of Miller's death (from "natural" to "unknown") and the district attorney's opening of a preliminary investigation, SA Hippard suddenly retired from the FBI and became employed as an investigator for the law firm of former U.S. Attorney Ryan, who had resigned several months earlier. Prior to his appointment as U.S. Attorney Ryan had represented Southwestern Bell vice president Dave Miller, who had been a central target of the investigation.

3 Expert medical inquiry into the cause of Miller's death is continuing.

- In Hawaii in the late 1980s **FBI Special Agent Calvin D. Uhlig** was investigating political corruption, especially bribery of state and local officials by real estate developers. In the course of that investigation he recruited as an informant **Charles D. Chidiac**, who had used **Nora and Eugene Lum** as conduits for the payment of bribes to prominent political figures.⁴ Fearing the Lums because of their self-proclaimed ties to the yakuza (Japanese organized crime), Chidiac had cooperated only with the promise that he would eventually be entered into the witness protection program.

When the investigation was summarily terminated in 1993, after Chidiac's role as an informant had become publicly known, Uhlig's request that Chidiac be entered into witness protection was denied by the Department of Justice. To meet his commitment Uhlig prevailed on foreign counterparts to provide protection to Chidiac under their equivalent of witness protection. The FBI then leveled trumped-up charges of misconduct (misuse of a government credit card) against Uhlig. While Uhlig prevailed, his career was at an end, and he elected to retire.

Chidiac remains under protection abroad. When I required information from him, my questions were transmitted through Uhlig, as were Chidiac's responses to me.

In this case, both the informant, Chidiac, and his FBI recruiter, Uhlig, were victims of the FBI, which failed to meet its obligations to a seriously at-risk informant and persecuted the agent who insisted that those commitments be kept. Because the investigation was terminated without prosecution, their sacrifices were entirely in vain.

- In southern California in the mid 1980s **Peter Fitzpatrick** was employed by **South African trade attaché Gideon Bouwer**. In the course of his employment Fitzpatrick had occasion to observe Bouwer's meetings with U.S. citizens **Larry C. Ford, M.D.**, and **Jerry D. Nilsson, M.D.** When Fitzpatrick became aware of Ford's assistance to and participation in the South African Defense Force's chemical and biological weapons program, Project Coast, headed by **Wouter Basson, M.D.**, he volunteered as an informant to the FBI. On at least one occasion Fitzpatrick provided very specific information concerning the planned shipment of bioweapons materials from the U.S. to South Africa, but the FBI failed to act on this information. When Bouwer was recalled to South Africa, Fitzpatrick's role as an informant ended.

In February 2000 an attempt was made on the life of James Patrick Riley, Ford's partner in a company called Biofem. Ford became an immediate suspect, and the case was highly publicized. Three days after the attempt on Riley's life Ford was an apparent suicide victim. Fearing risks to investigators, Fitzpatrick made numerous, futile attempts to warn the FBI of Ford's bioweapons expertise. **Detective Lieutenant Victor Ray** of the Irvine Police Department also became aware of Ford's bioweapons involvement. An FBI-directed search of Ford's home resulted in the discovery of numerous toxic biological materials, weapons and explosives caches. While the FBI's CIA liaison initially denied any Ford association with the

⁴ The Lums were also targets of the Oklahoma investigation discussed above. They and their associates had been central subjects of the information which had been provided to the FBI by Ronald G. Miller, and Chidiac also provided information concerning the Lums which was relevant to the Oklahoma investigation. The Lums, their daughter and Michael Brown, son of late Secretary of Commerce Ron Brown, were later convicted of related criminal violations of federal campaign finance laws, and Eugene Lum was convicted of criminal federal tax evasion.

CIA or other U.S. agencies, this denial was later retracted. In an effort to prevent the public disclosure of Ford's U.S. and South African bioweapons activities, Ray was isolated from the investigation, and the FBI has refused to release further information.

In this case, informant Fitzpatrick, at significant risk to himself, provided information to the FBI which was not effectively used, and his later effort to warn the FBI of the risks which would be encountered in the investigation of Ford were ignored. The efforts to neutralize both Fitzpatrick and Det. Lt. Ray appear to have been motivated by the FBI's desire to prevent Ford's involvements in U.S. and South African bioweapons activities from becoming publicly known.

There exist circumstantial grounds to suspect that Ford may have been involved in the Oklahoma death of Ronald G. Miller (discussed above), but investigation of this possibility has been thwarted by the FBI's blackout of information concerning Ford. Similarly, several people, including **Tami Tippit**, **Shane Gregory** and **Ian Schein**, suffer serious, continuing and poorly understood illnesses which appear to be traceable to Ford, and their treatment might well be facilitated if the FBI were to release the results of its investigation of Ford.

- Brooklyn mobster **Gregory Scarpa, Sr.**,⁵ associated with the Colombo family, was first recruited as an informant in the early 1960s. At the direction of **FBI Special Agent Anthony Villano**, Scarpa successfully performed various illegal services for the FBI, generally involving interrogation of participants in civil-rights crimes in the South.

By the early 1980s Scarpa, Sr., was handled personally by **Supervisory Special Agent R. Lindley DeVecchio**, and this arrangement continued until Scarpa, Sr.'s death in 1994. Over this period Scarpa, Sr., was actively and continuously engaged in criminal activity (including murder), but he was rarely prosecuted and was imprisoned only briefly (just prior to his death).

There is evidence that, at least by the mid 1980s, SSA DeVecchio was an active "partner" in the criminal activities of Scarpa, Sr. In exchange for information concerning law-enforcement operations (including copies of surveillance tapes, advance notice of indictments of members of Scarpa, Sr.'s "crew," allegations concerning Scarpa, Sr., made by other informants), DeVecchio received gifts, entertainment, travel and cash from Scarpa, Sr. In some cases it appears that DeVecchio directly participated in Scarpa, Sr.'s crimes, e.g., by serving as "lookout" for a bank robbery.

At least by 1990 testimony indicates that Scarpa, Sr., and DeVecchio had devised a plan by which Scarpa, Sr., would assume control of the Colombo family, specifically by fomenting dissension within the family, initiating a "war" in the course of which Scarpa, Sr.'s enemies and potential competitors within the family would be killed.

As a result of the protection provided to Scarpa, Sr., by DeVecchio (and earlier by Villano), it had long been rumored in organized-crime circles that Scarpa, Sr., was an FBI informant.

⁵ The account of this case draws heavily on the transcript of "Hearing on motion to vacate judgment pursuant to Rule 60 (b)," PASQUALE AMATO and VICTOR ORENA, Petitioners, against UNITED STATES OF AMERICA, Respondent, CV-96-1461 and CV-96-1474, Hon. Jack B. Weinstein, United States District Court (Eastern District of New York), January 7, 2004, at which Gregory Scarpa, Jr., Lawrence Mazza, Joseph Simone and the present author appeared as witnesses.

However, because Scarpa, Sr., continued to commit serious criminal acts, including murder, while the official policy of the FBI was known to prohibit the use as informants of persons who continued to be engaged in serious crime, these rumors had been discounted. But, in the late 1980s and early 1990s these rumors intensified and even appeared in newspaper reports.

Probably as a result of the informant rumors, in November 1991 an attempt was made on Scarpa, Sr.'s life. It appears that this attempt became the pretext for initiating the plan to foment an intrafamily war, and by 1992 Scarpa, Sr., was actively engaged in killing members of one faction (the "Orena faction") within the family. Through DeVecchio, Scarpa, Sr., attributed many of these murders to other, uninvolved, persons.

Particularly notable was Scarpa, Sr.'s murder, on January 7, 1992, of **Nicholas ("Nicky Black") Grancio**, a murder directly facilitated by DeVecchio. At the time, Grancio was under active surveillance by members of the organized crime taskforce headed by DeVecchio. When Scarpa, Sr., **Lawrence Mazza** and another member of the Scarpa crew located Grancio and observed the surveillance, an enraged Scarpa, Sr., called his "girlfriend" (code-name for DeVecchio) and demanded that the surveillance be withdrawn. A member of the surveillance team, **NYPD Detective Sergeant Joseph Simone**, has testified that DeVecchio's second-in-command, **SA Chris Favo**, unexpectedly ordered the team to return to Federal Plaza (taskforce headquarters), where, a short while later, they learned that Grancio had been killed.

The relationship between informant Scarpa, Sr., and his FBI handler, DeVecchio, was selfevidently corrupt, involving DeVecchio at least indirectly and on some occasions quite directly in the most serious crimes, including the murders and attempted murders of FBI informants providing information threatening to Scarpa, Sr., and DeVecchio. Victims of this DeVecchio-Scarpa, Sr., alliance included not only people such as Grancio, who were killed, but also Det. Sgt. Simone, who was prosecuted on fabricated charges that he had provided information to targets of the organized crime task force, when, in fact, it was SSA DeVecchio who was funneling information to Scarpa, Sr. It is evident that Simone was "framed" to protect DeVecchio. Although acquitted by the jury in his federal trial, Simone was summarily terminated without benefits by the New York Police Commissioner.

When finally confronted in court with questions concerning his corrupt relationship with Scarpa, Sr., DeVecchio first invoked his Fifth Amendment privilege against selfincrimination; granted immunity from prosecution, DeVecchio exhibited overwhelming memory loss. An investigation belatedly launched by the FBI's Office of Professional Responsibility was suspended because **Assistant U.S. Attorney (now FBI General Counsel) Valerie Caproni** (Eastern District of New York) refused to make available to investigators informants whom she planned to call as witnesses in pending criminal trials; when DeVecchio elected to retire from the FBI (with full benefits), the OPR investigation was terminated.

- **Gregory Scarpa, Jr.**,⁶ was first encouraged to follow his father's footsteps into organized crime by Scarpa, Sr.'s FBI handler, **SA Anthony Villano**. From the late 1960s until his prosecution, conviction and incarceration (for a term of 25 years) on RICO charges related to marijuana distribution in the late 1980s, Scarpa, Jr., worked as a member of his father's crew.

⁶ This section draws upon an April 5, 2004, submission by the present author and Angela Clemente to the National Commission on Terrorist Attacks Upon the United States.

In the mid 1990s, after his father's death, Scarpa, Jr., was indicted a second time on RICO charges, primarily on the basis of allegedly perjured testimony of other indicted members of organized crime who benefited from their cooperation with the government. While awaiting trial, Scarpa, Jr., was held in the Metropolitan Correctional Center (MCC) in Manhattan, where terrorist **Ramzi Yousef** and his codefendants were jailed pending and during their trial for plots against airliners and the 1993 bombing of the World Trade Center. Viewing members of organized crime, engaged in drug trafficking, money-laundering, etc., as possible allies in the terrorist war against the U.S. government, Yousef made overtures to Scarpa, Jr., which the latter encouraged. Through his attorney, **Larry J. Silverman**, Scarpa, Jr., informed the EDNY U.S. Attorney of his developing relationship with Yousef, and from early 1996 through early 1997 Scarpa, Jr., functioned as an informant to the FBI.

Through Scarpa, Jr., the FBI gave Yousef access to a "patch-through phone," permitting him to route calls through "mob-controlled" Roma Corp. (an FBI front) to associates abroad (including 9/11 mastermind Khalid Sheikh Mohammed, Yousef's uncle); unfortunately, the FBI found it impossible to translate or decipher Yousef's conversations with his fellow terrorists, and the patch-through phone was eventually deactivated.

The intelligence provided to the FBI by Scarpa, Jr., included specific threats to U.S. airlines, the identification of countries (e.g., England) through which terrorists were entering the United States and testing U.S. security procedures, instructions for smuggling explosive chemicals and detonators (including hiding these in the heels of shoes) onto airliners and schematics for the on-board assembly of bombs, and formulas for explosives and for the production of phosgene and mustard gases. Yousef revealed to Scarpa, Jr., his strong interest in obtaining blank U.S. passports which "his people would only use for one trip to board the planes to be hijacked." Further intelligence laid out a plan to videotape the killings of hijacking victims, with distribution of these tapes to the media.

Scarpa, Jr., secured Yousef's agreement to a meeting in New York between Scarpa's "mob associates" (who would have been disguised FBI agents) and four active (unincarcerated) terrorists. This meeting never took place because the cognizant FBI agents and assistant U.S. attorneys refused to agree to Yousef's demand that \$3,000 be provided to the terrorists.

By mid 1996 Scarpa, Jr., questioning the seriousness with which the FBI was taking his intelligence and concerned that he might not derive any eventual benefit from his services to the FBI, expressed his desire to terminate his informant role. However, when TWA Flight 800 crashed on July 17, 1996, James Kallstrom, Special Agent in Charge of the New York FBI office, appealed to Silverman to prevail on Scarpa, Jr., to continue his relationships with Yousef and the FBI. Thus, Scarpa, Jr.'s informant role continued throughout the period that he and Yousef were incarcerated together at MCC.

It should be noted that Scarpa, Jr., provided this assistance to the FBI at considerable risk not only to himself but also to members of his family, whose address he was compelled to provide to Yousef to enhance his credibility.

The information provided by Scarpa, Jr., was fully documented, especially in Forms 302 prepared by the New York office of the FBI and in Scarpa, Jr.'s contemporary hand-written notes (copied by the FBI). It has been reported that **AUSA Patrick Fitzgerald (SDNY, now U.S. Attorney in Chicago [NDIL])**, in a later (sealed) court filing, attested to the credibility, accuracy and value of the terrorism intelligence provided by Scarpa, Jr.

Nonetheless, at the time of Scarpa, Jr.'s sentencing **EDNY AUSA Valerie Caproni** denigrated his credibility as an informant and refused to provide a Section 5K1.1 letter confirming Scarpa, Jr.'s service as an FBI informant, which would have permitted a downward departure in sentencing. Apparently, Scarpa, Jr.'s credibility was perceived to pose a threat in the context of serious questions which had been raised concerning the informant relationship of Scarpa's father, Gregory Scarpa, Sr., with FBI Supervisory Special Agent R. Lindley DeVecchio (discussed above), the credible revelation of which might place in jeopardy a number of convictions secured by the office of the U.S. Attorney (EDNY) in which Scarpa, Sr., had been the primary direct or indirect source of incriminating information. As a result, Scarpa, Jr. was sentenced to more than 40 years in prison.⁷

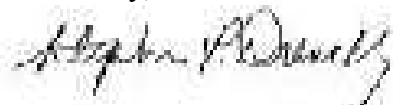
Notwithstanding the value of the informant services which Scarpa, Jr., provided to the FBI, he is currently incarcerated in the Administrative Maximum Security Prison (ADMAX) in Florence, Colorado, where he is in 23-hour-per-day "lock-down." Because his children and other family members are in New York, his only family contacts are by telephone. With a projected release date of October 17, 2035, he will be 83 years old if he survives to be released.

While Scarpa, Jr., is a clear victim of abuse by the FBI and the EDNY U.S. Attorney, the FBI's failure to effectively exploit the intelligence provided by Scarpa, Jr., has created a much larger class of victims — all those who have been victims of terrorist acts which may have been prevented if the Scarpa, Jr., intelligence had been effectively exploited.

As a footnote to this case, when, after his sentencing, Scarpa, Jr., was transferred to Florence ADMAX, he was rejoining Ramzi Yousef, who, with other convicted Islamic terrorists, had been transferred to Florence previously. Shortly after his arrival, Scarpa, Jr., received an unsolicited delivery of books from the prison library, and in the spines of the books he found a "welcoming" note (with a code key for further communication) from Yousef. Scarpa, Jr., immediately provided these communications to Bureau of Prisons security and was assured that the FBI would be informed. The FBI has never contacted Scarpa, Jr., concerning this correspondence.⁸

I trust that the NACDL and the Committee on the Judiciary will find the foregoing relevant and helpful, and I stand prepared to assist the Committee in any appropriate manner.

Sincerely,



Stephen P. Dresch, Ph.D.

⁷ Prior to trial Scarpa, Jr., had been offered a plea bargain which would have entailed only a 17 year sentence.

⁸ Recent requests of the History Channel and author Peter Lance to interview Scarpa, Jr., have been denied by Florence ADMAX for reasons of "security."