

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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UNITED STATES OF AMERICA)	
)	
)	
V.)	Crim. No. 99-10371-RGS
)	
JAMES J. BULGER)	
_____)	

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

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

Introduction

James J. Bulger was a notorious alleged criminal throughout the 1970s and 1980s. Federal, state, and local law enforcement considered him to be the head of organized crime in Boston, as noted in numerous magazines and newspapers during this period. Most of the alleged crimes are contained in the current indictment. Yet James Bulger never *once* was charged with a crime by federal prosecutors in these two decades.

The evidence at trial will show the reason. James Bulger was given immunity by an attorney of the United States Department of Justice: Jeremiah O’Sullivan. O’Sullivan was

employed by the Department of Justice in various positions in Boston. He was a member of the New England Strike Force, an assistant United States Attorney, the head of the Political Corruption Unit, the Chief of the New England Strike Force, and finally, the United States Attorney for the District of Massachusetts. His tenure began in 1973 and ended in 1989, when he went into private practice.

The defendant will introduce three types of evidence in support of his assertion. First, the defendant will testify at this trial, and provide a detailed account of his receipt of immunity by O'Sullivan. As one of the earliest examples, the defendant and others will relate an occasion when O'Sullivan personally ordered that the defendant's name be removed from a proposed indictment of numerous individuals for fixing horse races.

Second, the defendant will call witnesses who were in leadership positions in the U.S. Attorney's Office in Boston to corroborate that they knew of the defendant's alleged commission of dozens of federal offenses, and probe why they did nothing. The jury will determine if the witnesses' inactions were consistent with - and corroborative of - the defendant's grant of immunity from O'Sullivan.

Third, the defendant will present evidence from former Department of Justice employees. These witnesses will testify

about their conduct compromising investigations in which the defendant was a target, consistent with - and corroborative of - the defendant's immunity agreement with O'Sullivan. These witnesses will also describe the degree to which their superiors overlooked these violations, which allegedly resulted in multiple murders.

The witnesses to be called by the defendant include Judge Richard G. Stearns and F.B.I. Director Robert S. Mueller, III. Judge Stearns joined the United States Attorney's Office in Boston in 1982. His first position was as Chief of the General Crimes Unit. He was appointed Chief of the Criminal Division in 1984, and held this position until 1986, when he was promoted to First Assistant United States Attorney. He became a Senior Litigation Counsel in the office in 1989, and was appointed a Massachusetts judge the following year. He was nominated to be F.B.I. Director in 1993 by President Clinton, but that nomination was withdrawn and Judge Stearns was appointed instead to the United States District Court for Massachusetts.

F.B.I. Director Robert Mueller joined the office of the United States Attorney in Boston in 1982 as Chief of the Criminal Division. He remained in that position until 1985, when he was appointed First Assistant United States Attorney. He served as either United States Attorney or Deputy United States

Attorney in Boston from 1986 until 1988, when he entered private practice.

Federal law mandates in this situation that Judge Stearns recuse himself from this case. No individual wants to be a defense witness at a federal criminal trial. The trial judge ultimately decides whether the witness has relevant testimony that can aid the defense. The law - and common sense - says that a person cannot be both judge and witness. Moreover, Robert Mueller is not simply a former colleague of Judge Stearns. The evidence will show that at a ceremony to honor Judge Stearns held in this courthouse, Robert Mueller characterized him as a "friend and mentor." Judge Stearns noted that Mueller's presence at the ceremony was "the greatest tribute that a friend could pay." Judge Stearns cannot be impartial in deciding whether the defendant can call Robert Mueller as a defense witness.

The defendant submits that the unique aspects of this case require Judge Stearns to recuse himself from presiding over these proceedings. To do otherwise will put an irreparable taint on the public's view of the fairness of the defendant's trial, and allow citizens to believe that the infamous cover-up of misconduct by past members of the Department of Justice, the United States Attorney's Office, and the F.B.I. is continuing.

I. Facts

James Bulger's alleged involvement in organized crime was well-known to the Department of Justice ("DOJ"), to the United States Attorney's Office in Boston, and to the New England Organized Crime Strike Force. Many in the general community during this time knew about James Bulger's reputation for significant organized crime activity, including murder. The Bulger Mystique: Law Enforcement Officials Lament About an Elusive Foe: Where was Whitey? Boston Globe, Sept. 20, 1988, available at http://www.boston.com/news/packages/whitey/globe_stories/1988_the_bulger_mystique_part_3.htm. (hereinafter "Bulger Mystique"). One of the government's key witnesses, Stephen Flemmi, testified that James Bulger had a "murderous reputation" during the late 1970s and early 1980s. Flemmi Deposition, Rakes/Dammers v. United States 124:21-125:3 (Oct. 12, 2004).

The crimes with which Mr. Bulger is now charged, and which the U.S. Attorney's Office, Department of Justice, and the New England Organized Crime Strike Force chose to ignore in the 1970s and 1980s, began before Judge Stearns became an A.U.S.A. in 1982. The crimes constituted Bulger's racketeering enterprise, and were long suspected by those in the law enforcement community. They included, as noted in the instant indictment:

- An 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."
- The enterprise was "among other things, earning money through extortion, loansharking, bookmarking, trafficking in narcotics and other controlled substances and committing crimes of violence including murder, attempted murder and assault."
- The following murders in 1973-1975 (of members of the Notorangeli Group): 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, James Sousa, Paul McGonagle, Edward Connors, Thomas King and Francis "Buddy" Leonard.
- Murder of Richard Castucci (December 1976).
- Unindicted Murder of Louis Litif (1979).
- Conspiracy to Murder Roger Wheeler (May 1981)
- Murder of Debra Davis (Late 1981).
- Funding Joseph McDonald and James Sims as fugitives of justice from 1975 to 1982.

After Judge Stearns became Chief of the General Crimes Unit, Bulger allegedly participated in the following conduct:

- Between 1984 and 1999, the Bulger Group conducted money laundering at South Boston Liquor Mart and obtained money through extortion and "other racketeering activities." These included threats, murder and attempted murder. They also included illegal possession and brandishing of firearms and ammunition as well as obstruction of justice through violence.
- Murders of Brian Halloran and Michael Donahue (May 1982).
- Conspiracy to Murder John Callahan (July 1982).
- Murder of Arthur "Bucky" Barrett (July 1983).
- The illegal, intercepted shipment of arms and ammunition to the IRA in Ireland on the Valhalla fishing vessel. John McIntyre was one of the crew members/co-conspirators on this vessel. (Fall 1984).
- Murder of John McIntyre (November 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 Buccheri (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 4th 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 (1984-1986).
- 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 1999.
- From around 1980 until 1993, extortion of Richard O'Brien.

The defendant was not charged with any of these crimes by federal prosecutors until 1994, after O'Sullivan, Stearns, and Mueller had left the U.S. Attorney's Office.

James Bulger will testify that his immunity agreement allowed him to have protection from federal prosecution. In addition to direct evidence by Mr. Bulger, he will call witnesses and present other evidence at trial to support his immunity claim. The defense will call Judge Stearns and Director Mueller regarding their tenures as Chief of the Criminal Division. Given the notoriety of "Whitey" Bulger, it approaches judicial notice that the law enforcement community was aware of the conduct Bulger was involved in. It will be a jury question whether the Chiefs of the Criminal Bureau were oblivious to this fact. The materiality of their testimony will focus on the reasons they did not seek to prosecute Bulger during this period. The fact that they did not is consistent with - and corroborative of - a grant of immunity, and will be highly material at this trial.

II. Judge Stearns Must Recuse Himself Because He Has a Direct Conflict

A judge must disqualify himself from presiding over a trial when he is likely to be a material witness in the proceeding. 28 U.S.C. § 455(b)(5)(iv). The judge also must recuse himself if a person he has a close relationship with is likely to be a material witness at trial. 28 U.S.C. § 455(b)(5)(iv).

a. The Defense Will Call Judge Stearns as a Witness at Trial.

Judge Stearns' order denying the defendant's previous motion for recusal states:

Finally, recusal is not required by defendant's suggestion that it would be appropriate to summons me as a witness in a hearing on his claim of immunity Because at no time during my service as an AUSA did I participate in or have any knowledge of any case or investigation in which defendant was a subject or target, I have nothing of a relevant or material nature to offer with regard to this case or any claim of immunity.

Recusal Order, Doc. #695, at 8 (internal citations omitted). In fact, a failure to participate in *any* investigation targeting the defendant by a Chief of the Criminal Division of the U.S. Attorney's Office during the 1980s is circumstantial evidence that corroborates the defendant's assertion of his immunity agreement.

An analogy will illustrate the point. Defendant Smith is charged with committing a burglary at an Apple store. He contends that the police were aware of his plot and Defendant

Smith was assured that he would not be arrested. This defendant backed an unmarked van to the rear of the store at 3:30 am. A police cruiser was observed driving through the parking lot every fifteen minutes during the forty-five minute burglary, but did nothing to stop it. These facts would be consistent with - and corroborative of - Defendant Smith's contention that he had an agreement with the police that he would not be arrested, even if the officer in the cruiser denied knowledge of an agreement not to arrest the defendant. It would be a question for the jury to assess the credibility of the witnesses and the weight of the evidence.

Judge Stearns opines in his order on recusal that, "Defendant's recusal motion is based, for the most part, on a historically mistaken premise. Contrary to defendant's assumption, in the 1970s and 1980s, the United States Attorney's Office was separate from the New England Organized Crime Strike Force (OCSF)." Order at 5 (citations omitted).

The defendant did not rely on any historic premise. Rather, he relied in part on findings made by Chief Judge Mark Wolf in a 1994 criminal case against the defendant and others. United States v. Salemme, 94-10287. Judge Wolf made clear that there was not an absolute division between the Strike Force and U.S. Attorney's Office when he was the Deputy United States Attorney. "The Strike Force and the United States Attorney's Office did,

however, interact at times." United States v. Salemme, 164 F. Supp. 2d 49, 55 (D. Mass. 1998).

I [Judge Wolf] did discuss certain public corruption matters with [Strike Force Chief] O'Sullivan . . . I played a role in developing an investigation of possible corruption . . . which was transferred from the SIU to the Strike Force. Assistant United States Attorney Robert Cordy and Strike Force Attorney Diane Kottmyer were primarily responsible for any necessary coordination concerning that investigation. The summaries of Mr. O'Sullivan's logs and calendar entries furnished to me . . . indicate that he and I also discussed that investigation on several occasions. Such discussions would have been consistent with our relative roles and I assume that they occurred.

Id. This reliance upon Judge Wolf's written order should not be categorized as mistaken, but rather as a belief founded on fact, evidence, and good faith.

Some investigations at issue in this case traversed the boundary between Strike Force and U.S. Attorney's Office. For example, a report about the race fix case by two F.B.I. agents was sent to the then-Chief of the Strike Force, Gerald McDowell, and to Assistant United States Attorney Jeremiah O'Sullivan.¹ The defendant has appended a pleading jointly filed by the U.S. Attorney and Strike Force Chief Jeremiah O'Sullivan.² It also appears that O'Sullivan was attending weekly Organized Crime Strike Force meetings while he was an Assistant U.S. Attorney.³

¹ Attachment A-1 (under seal).

² Attachment A-2 (under seal).

³ Attachment A-3 (under seal).

O'Sullivan himself crossed from the Strike Force to the U.S. Attorney's Office throughout his career, further demonstrating the lack of an airtight seal between the two offices.⁴ O'Sullivan communicated extensively with prosecutors with whom Judge Stearns worked closely. For example, O'Sullivan's daily log reveals communications with Robert Mueller about a member of the Winter Hill gang, which was the defendant's group.⁵ O'Sullivan's log also reveals that Mueller spoke to O'Sullivan about the Operation Beans Title III.⁶

William Weld was the U.S. Attorney in the District of Massachusetts from 1981 until 1986. Weld reported that Jeremiah O'Sullivan reported directly to him on Strike Force matters.⁷ Weld "made it plain to Jerry [O'Sullivan] that [he] wanted to have the opportunity to look at any indictment before it was issued, among other things, to proofread them." Weld Deposition, Rakes/Dammers v. United States 13:7-12 (Oct. 6, 2004).

O'Sullivan obliged this request. Id. at 13-15. Judge Stearns served as the Chief of the Criminal Division of the U.S. Attorney's Office under Weld from 1984 until 1986. An informed member of the public may question whether, as the highest ranking member of the Criminal Division, Judge Stearns was privy

⁴ Attachment A-4 (under seal).

⁵ Attachment A-5 (under seal).

⁶ Attachment A-6 (under seal).

⁷ Attachment A-7 (under seal).

to information Weld received from O'Sullivan's briefings in the 1980s while these investigations were taking place.

b. The Defense Will Call Robert Mueller as a Witness at Trial.

On June 25, 2012, the defendant filed a motion for the recusal of Judge Stearns in this case, based in part on 28 U.S.C. § 455(a). The defense listed Robert Mueller as a witness. This witness and his relationship to Judge Stearns went unmentioned upon by the court in the order denying the defendant's motion to recuse.

Robert Mueller is presently the director of the F.B.I., one of the agencies that has been deemed responsible for facilitating and promoting various crimes, including murder, by the defendant and many of the government's own witnesses. Mueller also was Chief of the Criminal Division of the United States Attorney's Office in Boston during the relevant time period when the Criminal Division failed to indict James Bulger for any crime. Mueller's knowledge about the defendant's alleged crimes, and his failure to prosecute Bulger, is circumstantial evidence that is consistent with - and corroborative of - the defendant's immunity from prosecution.

The judge at the defendant's trial will be called upon to determine if Robert Mueller has evidence consistent with - and corroborative of - the defendant's claim of immunity. After

Judge Stearns' decision denying recusal was issued, defense counsel and many members of the public learned of the close personal relationship between Judge Stearns and Director Mueller through a report by local radio station WBUR's David Boeri. David Boeri, Should Bulger Trial Judge Recuse Himself? WBUR, Aug. 8, 2012 (hereinafter "Boeri").⁸ After inquiry by Mr. Boeri, Judge Stearns provided Mr. Boeri with a videotape of a 2006 ceremony where Judge Stearns was honored in an unveiling of his commissioned portrait. Both Mueller and his wife attended, and Mueller spoke at the presentation. Mueller concluded his remarks about Stearns by saying, "I am indeed honored to be part of this ceremony and honored to count him as a friend and mentor." Presentation of Portrait, Honorable Richard G. Stearns, U.S. District Court, D. Mass., May 18, 2006, LV.⁹ Stearns returned the compliment, calling Mueller's attendance "the greatest tribute that a friend could pay." Id. at LXX. This is a first degree relationship, much closer than the third degree relationship requiring recusal under 28 U.S.C. § 455(b)(5)(iv). As a matter of law, it presents a conflict for Judge Stearns to decide if his close friend will be permitted to be called as a witness.

The decision by the trial judge in the defendant's case on the admissibility, scope, and relevance of Mueller's testimony

⁸ Attachment B.

⁹ Attachment C.

will be critical in this case, and closely watched by the public. It is disputed whether the relationship between the defendant and the F.B.I. was limited to two "rogue agents," John Morris and John Connolly. The Department of Justice's attempt to amputate their liability by placing the blame on these two men has repeatedly been rejected.¹⁰ See, e.g., McIntyre v. United States, 545 F.3d 27, 29 (1st Cir. 2008) (rejecting government's argument that "Connolly was a rogue agent whose disclosure of McIntyre's identity violated fundamental F.B.I. policies and was beyond any rational view of conduct falling within the scope of his employment."); see also Matt Connolly, "The FBI Should Not Let Whitey Bulger's Handler John Connolly Die In Prison," The Trial of Whitey Bulger, Aug. 25, 2012.¹¹ ("I am suggesting that when the rules and regulations are deliberately vague and FBI agents are allowed to freelance with informants, just because this becomes public knowledge and the FBI is embarrassed, the FBI should not run away from an agent when it knew exactly what he was doing and allowed him to think he was doing his job.").

The defendant has made a good faith showing that Judge Stearns and Robert Mueller are material witnesses to show lack of action on the part of the United States Attorney's Office,

¹⁰ Oklahoma Sergeant Mike Huff, describes his experience with the Justice Department here in Boston: "I had never been exposed to such a cesspool of dirt and corruption." Investigation of Allegations of Law Enforcement Misconduct in New England: Hearing Before the H. Comm. on Gov. Reform, 107th Cong. 267 (2002).

¹¹ Attachment D.

consistent with a grant of immunity. Cf. United States v. Morrison, 153 F.3d 34, 49 (2d Cir. 1998). The defendant has a constitutional right to call them as witnesses. As Judge Stearns cannot be both a witness and preside over the trial, nor can he fairly assess whether and to what bounds his close personal friend must testify, Judge Stearns must recuse himself under 28 U.S.C. § 455(b)(5)(iv).

III. Judge Stearns Must Recuse Himself Because A Reasonable Person Might Question His Impartiality.

Congress has mandated recusal in order to "promote public confidence in the impartiality of the judicial process". H.R. Rep. No. 1453, 6355 (1974). The question then becomes whether the above facts might cause a reasonable person to question the impartiality of Judge Stearns. 28 U.S.C. § 455(a). The public's questions regarding the appearance of impartiality cannot be gainsaid. The defendant submits that the evidence is compelling that a reasonable person would question Judge Stearns' impartiality.

The recusal statute, 28 U.S.C. § 455(a), requires that "courts must not only be, but *must seem to be*, free of bias or prejudice." In re United States, 158 F.3d 26, 30 (1st Cir. 1998), citing In re United States, 666 F.2d 690, 694 (1st Cir. 1981) (emphasis added). As such, the law commands that, "Any justice, judge, or magistrate judge of the United States shall

disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

The Supreme Court has made clear that for recusal to be required, "[t]he judge does not have to be *subjectively* biased or prejudiced, so long as he *appears* to be so." Liteky v. United States, 510 U.S. 540, 553 n.2 (1994) (emphasis in original). The statutory standard the judge must apply, as described by the First Circuit in In re United States requires that the judge "take the objective view of an informed outsider." 441 F.3d 44, 67 (2006). The task in determining whether to recuse "requires . . . that there be no reasonable question, in any informed person's mind, as to the impartiality of the judge." Id. Where recusal is a close question, the Court of Appeals for the First Circuit has directed District Judges that "the balance tips in favor of recusal." In re Boston's Children First, 244 F.3d 164, 167 (1st Cir. 2001), quoting Nichols v. Alley, 71 F.3d 347, 352 (10th Cir. 1995).

a. The Media has Reported the Public's Concerns Regarding Judge Stearns' Impartiality.

Judge Stearns concluded in his order denial the initial motion for recusal that held that "I am confident that no reasonable person could doubt my impartiality." Recusal Order, Doc. #695, at 9-10. This belief was immediately rebutted by the media.

Massachusetts Lawyers Weekly polled its readers for their opinions on whether Judge Stearns should have recused himself from the case. More than half of the respondents indicated that Judge Stearns should have done so.¹² Reader postings on-line following a story in the Boston Herald about the denial of the recusal motion also questioned Judge Stearns' impartiality.¹³ One post asserted:

I don't agree with the judge on this point. Because the FBI was so imbedded with Whitey, and the Federal Prosecutor's Office had to know to some degree what was going on, it is not too far a leap to suspect that several FBI, Federal attorneys and several BPO were in the "Whiteygate Loop." To avoid any further appeal issues, it is easier for the judge to stand down now and get an outside appointed. IMHO [In my humble opinion], Judge Stearns has erred in this decision. He's putting his ego ahead of common sense.

Other comments concur: "Ok so when Stearns was an AUSA he never was involved of any investigation of Bulger, why not? Bulger was the biggest criminal in town but Stearns never initiated any cases. Who did he investigate? The man's ego will be his downfall, the pride before the fall." Another noted, "I agree . . . Judge Stearns is so entrenched with the prosecutors, how can anyone NOT question his impartiality. The 11 page decision is an angry tirade against Carney. This case needs a Special Judicial

¹² Attachment E.

¹³ Attachment F.

Assignment from DC or New York outsider and the trial should be televised."¹⁴

Law professor Monroe Freedman, an advisor to the Department of Justice, examined Judge Stearns' contention that he never had any knowledge of any case or investigation involving Bulger since the U.S. Attorney's Criminal Division was independent from Organized Crime Strike Force.¹⁵ Boeri at 3. Professor Freedman remarked, "that's much too subtle a distinction for the public and certainly for the skeptic." Id.

The Boston Globe's Joan Vennochi wrote an op-ed piece questioning whether Judge Stearns should recuse himself, and suggested that a reasonable person would question Judge Stearns' impartiality. Vennochi wrote, "[e]ven if a reasonable person believes Stearns knew nothing about the Bulger deal, would that same reasonable person believe he is now unbiased about the twisted ties between Bulger, the FBI, and federal prosecutors? . . . And what about Stearns's close relationship with the head of the FBI?" Joan Vennochi, Should Bulger Judge Recuse Himself?, Boston Globe, Aug. 16, 2012.¹⁶

It is now obvious that reasonable members of the public do in fact question Judge Stearns' impartiality regarding this

¹⁴ Attachment F.

¹⁵ Simply because Judge Stearns is certain he had no knowledge, a member of the public might quickly believe otherwise.

¹⁶ Attachment G.

case. See Liteky, 510 U.S. at 553 n.2 (“[t]he judge does not have to be *subjectively* biased or prejudiced, so long as he *appears* to be so.”).

b. Judge Stearns’ & Robert Mueller’s Testimony As Defense Witnesses Also Mandates Recusal Under § 455(a)

The United States Attorney’s Office’s Criminal Division did in fact investigate James Bulger during the 1980s. These investigations, predictably, did not lead to one indictment against James Bulger. Regardless of whether Judge Stearns has subjective knowledge about a particular investigation by a specific faction of the DOJ is irrelevant to the inquiry. Rather, a reasonable person might believe that a judge might be impartial if the judge, as the former Chief of the Criminal Division, did not pursue indicting James Bulger. The reason for this failure is directly relevant for the jury to consider.

The Department of Justice, including the F.B.I., the Strike Force, the United States Attorney’s Office, and the Criminal Division, including Robert Mueller, are at the heart of this case. Mueller credited Judge Stearns as someone from who he often sought advice. “He [Stearns] was the one person that we *all went to* for advice.” Presentation of Portrait at LIV (emphasis added). Mueller was a central figure in investigations targeting the defendant.

Assistant U.S. Attorney Gary Crossen discussed the controversial, and later compromised, Operation Beans Title III¹⁷ with Mueller. Several years later on July 29, 1997 an interview of Former DEA Special Agent in Charge John Coleman revealed that during a DEA investigation Mueller (spelled phonetically in the report as AUSA Bob Muller) "requested Department of Justice (DOJ) authority to not distribute the investigative report on this investigation to the FBI. He made this request because it was common knowledge that Bulger enjoyed some kind of relationship with the FBI and specifically with John Connolly."¹⁸ Despite these concerns, nobody within the Department of Justice, including the Strike Force or U.S. Attorney Criminal Division prosecutors, took meaningful steps to report, investigate or prosecute any conduct that was later characterized as criminal.

Former F.B.I. Special Agent in Charge Greenleaf testified that he believed Assistant U.S. Attorney Mueller focused on organized crime matters. Greenleaf Deposition, Rakes/Dammers v. United States, 98:21-99:2 (Sept. 7, 2004). A reasonable person might question Stearns' potential biases given not only his relationship with Mueller, but Mueller's clear connection to

¹⁷ For more information on Operation Beans and this Title III, see Defendant's Memorandum Supporting Defendant's Motion for Recusal of Judge Richard G. Stearns, Doc. 685, at 17-19.

¹⁸ Attachment H.

organized crime investigations including James Bulger, the F.B.I., and Judge Stearns.

A reasonable person would also question Judge Stearns' ability to impartially assess the materiality and scope of his own proposed testimony at trial.

Though Judge Stearns may be "pure in heart and incorruptible", Liljeberg v. Health Servs. Acquisition Corp., 486 U.S. 847, 860 (1988), the appearance of impropriety prong of § 455(a) mandates his recusal.

Conclusion

There is probably no more difficult act for an attorney than to seek the recusal of a judge. But the issue is not whether Judge Stearns lacks integrity or has a personal bias against the defendant. The issue is whether Judge Stearns has a conflict in presiding over this trial, and whether the unique facts of this case create and will continue to create questions in the minds of reasonable people of whether Judge Stearns can unquestionably be viewed as impartial in this case.

The phrase "the whole world is watching" can often be characterized as hyperbole when applied to a criminal case. That is not so in United States v. Bulger. The purpose behind § 455 is to "promote public confidence in the impartiality of the judicial process by saying, in effect, if there is a reasonable factual basis for doubting the judge's impartiality, he should

disqualify himself and let another judge preside over the case." H.R. Rep. No. 1453, 6355 (1974). This is such a case.

Motion for Oral Argument

The defendant moves that he be granted oral argument before the District Judge on this motion.

JAMES J. BULGER
By His Attorney,

CARNEY & BASSIL

/s/ J. W. Carney, Jr.

J. W. Carney, Jr.
B.B.O. # 074760

Carney & Bassil
20 Park Plaza, Suite 1405
Boston, MA 02116
617-338-5566

Dated: October 24, 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.