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Executive Privilege Again

By WILLIAM SAFIRE

ASHINGTON -- Stephen
(the Rifleman) Flemmi is a
gangster who spent a generation as
a valued informant for the F.B.I. in
Boston. He is now awaiting trial for
10 murders he is charged with
committing while on the F.B.I.
payroll.

Also charged is his F.B.I. handler, John Connolly Jr., accused
of tipping off Flemmi and his mobster boss before police
were dispatched to pick them up. The boss, accused of 19
murders, is still a fugitive. Six years ago the Rifleman claimed
that the F.B.I. had promised him immunity from prosecution
for his killings — allegedly including a couple of his
girlfriends — but Federal Judge Mark Wolf, in a landmark
decision, ruled that nobody in law enforcement had the power
to sanction murder.

The New England F.B.I.'s long-running abuse of power is
"the greatest failing in federal law enforcement history,"
according to James Wilson, chief counsel to the House
Government Reform Committee. Evidence of this sustained
miscarriage of justice was the 30-year imprisonment of Joe
Salvati, whom F.B.I. officials are said to have known to be
innocent of the crime for which he was convicted — but they
remained silent to protect Mafia sources.

John Ashcroft's Department of Justice does not want
Congress to air out this long, shameful story. At the time J.
Edgar Hoover belatedly began his war on the Mafia, civil
liberty was set aside to meet the perceived emergency —
abuses that lasted through three decades. The current F.B.I.
chief, Robert Mueller, was U.S. attorney in Boston during the
mid-80's and presumably did not have an inkling about the
unlawful law enforcement going on around him.

Accordingly, the Bush Justice Department induced the
president to sign an order asserting executive privilege over its
"deliberative documents" that would inform the public of
answers to questions like: Why did Justice decline to indict an

F.B.I. supervisor who admitted taking money from Flemmi's gang? Why did Justice help defend a hit man in California who killed a man while in the witness protection program?

Much of this systemic perversion of justice took place decades ago, but the Ashcroft-Mueller crowd is determined to keep the embarrassing institutional history hushed up. That's why department lawyers recently adopted a policy of refusing all documents relating to its declinations to prosecute.

One reason for Bush's executive privilege claim, unprecedented in its sweep, is: Such decisions are never to be examined by Congress lest politics influence prosecutors' judgments. But this power grab would eviscerate Congressional oversight.

The other reason, spoken sotto voce, is that some of the documents Chairman Dan Burton's committee is requesting deal with other cases — such as Janet Reno's decision to abort investigations into Bill Clinton's overseas fund-raising over the protest of special counsel. Burton, some of these Bush G.O.P. appointees say, is just an old Republican Clinton-hater out to beat a dead horse.

That's a red herring. At issue here is Congress's responsibility and authority to examine the misdeeds of the executive branch in a thorough manner — with an eye toward legislation to make criminal those policies evidently adopted by a regional division of our F.B.I. to subvert the law in the name of the law. (Burton, with Ashcroft's thumb in his eye, is considering legislation renaming the J. Edgar Hoover Building.)

Is the White House counsel explaining to the president the scope of the powers being asserted in his ill-advised orders? "Executive privilege" was restricted by the Supreme Court in the Nixon case and further circumscribed by the courts in Clinton's frantic attempts to place himself above the law. Why is Bush, so early in his term and with little to hide, going down this road to upset our system of checks and balances?

Maybe it's hubris; popularity breeds contempt. When you're sailing up there around 90 percent, your advisers tell you that wartime is the perfect time to put those Congressional pipsqueaks of both parties in their place.

Maybe it's ultra-cleverness; by wrapping the latest self-levitation in the mantle of protecting a former administration's reputation, you dream of winning liberals' support.

It's another mistake that will come home to haunt the Bush presidency. Call me Cassandra, but history will not look kindly on those who let ends justify means — and let helpful

hoodlums get away with murder.