



## **‘Animal’ crackers:**

### **US Attorney Michael Sullivan should have fortified his own glass house before casting stones at Tom Finneran**

BY HARVEY A. SILVERGLATE

WHEN US ATTORNEY Michael Sullivan announced on June 6 that the government had just indicted former Massachusetts House Speaker Thomas Finneran for perjury and obstruction of justice, he took a self-righteous swipe at Finneran for what he considered a serious betrayal of his public office: "When the people's representatives or a member of the bar perjures themselves and obstructs justice, as alleged in this case," he said, "it is a severe breach of the public trust and serves to diminish confidence in government and undermine the integrity of our judicial process." It's hard to disagree with that. Yet Sullivan appears to have a severe case of cognitive dissonance. How else to explain the staggering disparity between his outrage at Finneran, whose indictment appears to be legally flawed and much ado about little, and his unwavering support for federal prosecutor Jeffrey Auerhahn — who was recently blasted by a federal judge for withholding exculpatory evidence in a high-profile Mafia case and then lying about it under oath?

Even more troubling, the Boston press corps seems content to let Sullivan get away with this glaring double standard. Despite mountains of judicially noted evidence showing that Auerhahn has repeatedly committed serious violations of prosecutorial ethics — including, if Judge Mark Wolf's detailed fact-finding is to be credited, perjury and obstruction of justice — the gory details of one of the most serious scandals to hit the US Attorney's Office in recent memory have gone largely underreported. Only WCVB (Channel 5) reporter David Boeri, among major news reporters, has focused on the seriousness of Auerhahn's performance in the federal prosecution of Vincent Ferrara.

#### **Prosecutorial misconduct**

Ferrara was one of several defendants in the government's celebrated two-decades-long string of racketeering prosecutions against suspected members of the New England Mafia, including

the Raymond Patriarca *La Cosa Nostra* family. Ferrara, nicknamed "the Animal" by the feds, was indicted along with his cohorts and charged with, among other crimes, racketeering for having directed his associate Pasquale Barone to murder another mobster, Vincent James Limoli, in 1985.

In 1992 Ferrara accepted a plea bargain with federal prosecutors, in which he would admit to engaging in "racketeering activity" — *including complicity in the Limoli murder* — in exchange for a sentence substantially shorter than the possible life sentence he faced if convicted. Federal trial judge Mark L. Wolf, who had been randomly assigned most of the Mafia cases, imposed a sentence of 22 years. Had Ferrara *not* been involved in the murder, his sentence could have been as low as 12 and a half years.

Fast-forward to several years later, when some of the government's Mafia prosecutions came under further scrutiny after it was revealed that FBI agents had forged an unholy alliance with a variety of mobsters, including members of James "Whitey" Bulger's gang. In 2002, the Department of Justice appointed a special task force, led by Connecticut federal prosecutor John Durham, to investigate then-FBI agent and now federal prisoner John Connolly and others. As a result, some disconcerting, long-buried evidence concerning the integrity of the Ferrara prosecution bubbled to the surface.

The task force was approached by Walter Jordan, Barone's brother-in-law and the government's chief witness implicating Ferrara in Limoli's murder. It turns out that, in 1988, Jordan lied to prosecutors and the federal grand jury that indicted Ferrara and Barone when he fingered the two men as complicit in Limoli's murder. He had offered incriminating testimony to the Boston US Attorney's Office in exchange for leniency for his own crimes. Years later, realizing that the Mafia prosecutions were being re-examined by the task force, Jordan came forward voluntarily before his secret was discovered.

But Jordan's disclosures went even further — and further implicated the US Attorney's Office. He told task-force investigators that he not only had had second thoughts about falsely fingering Ferrara and Barone, *but that he said so to the feds* in 1991 in Salt Lake City, where he was being housed as a protected witness. We know this thanks to a detailed and damning 124-page legal opinion based on hearings convened in 2003 by Judge Wolf to re-examine Ferrara's guilty plea. In an opinion released this April, Wolf found that Jordan first revealed his misgivings to the member of the prosecution team to whom he felt closest, Boston police detective Martin Coleman, who served on the federal Organized Crime Strike Force. When Coleman, whom Wolf found to be an honest and conscientious cop, returned to Boston, he informed the feds' lead prosecutor, Assistant US Attorney Jeffrey Auerhahn, that the government's key — indeed, only — witness to Ferrara's and Barone's complicity in Limoli's murder had recanted.

Coleman produced a handwritten memorandum of Jordan's recantation and gave a copy to Auerhahn. Auerhahn then promptly arranged for a follow-up meeting of prosecutors with the wavering witness, in Minneapolis. There, they placed pressure on Jordan to "straighten him out," as Wolf found. Not surprisingly, Jordan reversed his recantation and returned to the original damning story. According to Wolf, Auerhahn then produced a less troubling, "cleaned-up" version of Detective Coleman's memo. In the end, however, neither Coleman's nor Auerhahn's version of the memo was disclosed to the court or to the defense lawyers — a flagrant violation of long-standing rules that compel prosecutors to provide defense counsel all evidence in government hands that can potentially show a defendant's innocence. In fact, as Wolf found, the prosecution's case would have been virtually destroyed if the defense lawyers had learned about Jordan's recantation and the pressure placed on him by the prosecution team.

Wolf concluded that Ferrara was likely *innocent* of the Limoli murder. (Barone's case was by this time not involved since he'd been released in 2003 after serving his sentence.) As Ferrara told his attorney and a federal probation officer at the time, even though he was innocent of the crime, he was afraid the jury would believe Jordan's accusation; he copped a plea to avoid a possible life sentence. In essence, an innocent man was pressured into pleading guilty on the strength of coerced testimony by a witness whom the feds knew had recanted.

Judge Wolf was harsh in his condemnation of Auerhahn. Without equivocation, he determined that Auerhahn was "well-aware of Jordan's important recantation and intentionally did not disclose it to Ferrara." Such a finding is an accusation of prosecutorial misconduct. However, Wolf went further. He noted that Auerhahn had blatantly lied about his knowledge of Jordan's recantation when the prosecutor testified during Wolf's hearings into the guilty plea. "Auerhahn," Wolf wrote, "testified that he did not recall ever seeing this document [the "cleaned-up" report of Jordan's recantation to Detective Coleman]. The court is persuaded, however, that Auerhahn not only saw the document, he prepared it." And, as Wolf sharply pointed out: "A witness who falsely testifies that he does not recall a material fact has committed perjury."

Wolf concluded that the government's withholding of exculpatory evidence rendered Ferrara's original sentence unlawful. He re-sentenced Ferrara to a shorter term, resulting in Ferrara's release on May 27. He would have been released earlier, but the US Attorney's Office sought a last-ditch order from the Court of Appeals to reverse Wolf's action. Only when that failed was Ferrara finally released.

## **Double standard**

The most revealing part of the story occurred outside Wolf's courtroom. In 2003, when the judge was uncovering the layers of corruption behind Ferrara's guilty plea, US Attorney Michael J. Sullivan told the *Worcester Telegram & Gazette* and the *Boston Globe* that, while he would refer Wolf's accusations to the Justice Department's legal-ethics arm, his own view was that Auerhahn "has dedicated his career to public service." Sullivan noted that he would await "the findings of this independent review" and would "avoid drawing any premature conclusions." This salutary practice of not drawing "premature conclusions" did not, of course, prevent Sullivan from all but declaring Finneran guilty at the June 6 press conference announcing the former Speaker's indictment.

Meanwhile, Auerhahn still has his job. While he remains under investigation by the DOJ ethics mavens, he is now assigned to the antiterrorism and national-security group in the US Attorney's Office — where, one can expect, his talents, so patiently chronicled by Judge Wolf, will be put to good use.

(Next week, the Finneran indictment: a modern prosecutorial marvel.)

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