

Robert LaMonica was shot to death at about 12:15 a.m. on May 30, 1980, in the parking lot of his Boston apartment. The parking lot was across the street from Faxon Park. At the time of the shooting, four young people were drinking in the park where they had gone after attending a drive-in movie, where they had also been drinking.

Two of the four youths in the park claimed to have seen a man running at some distance from them (later estimated at 180') immediately after they heard four shots. One of the four, a man, said that while the man was running he passed under a street light and looked in the direction of the park for about one second. Minutes after the shooting, when police arrived on the scene, the witness described the man as 5'-9", 175, with dark curly hair, bushy eyebrows and thick sideburns. The witness also told police that he had consumed four or five beers within the last several hours.

The day after the shooting that witness was shown an array of nine photographs and he selected the photo of Frederick Weichel as the one closest to the man he saw running, describing Weichel as "a pretty good likeness."¹ Then after he had seen a close-up photograph of Weichel, the police took him out in a van that drove by where Weichel was standing on the street: the witness said, "That's the guy."²

However, contrary to that witness' positive ID, Weichel didn't match the detailed description he provided to police minutes after the shooting: Weichel weighed 155 pounds, not 175, he was 5'-7" not 5'-9", he did not have thick sideburns, he did not have curly hair, and he did not have bushy eyebrows.

A woman was the other person in the park who said she saw the running man. On three separate occasions she was shown the same array of nine photos that had been shown to the male witness. She did not positively identify Weichel.

Weichel was indicted solely on the basis of the male witness' identification.

During his August 1981 trial the woman witness was asked if the man she saw running was in the courtroom. She did not identify Weichel. Instead, she identified a man sitting in the back of the crowded courtroom. The man she identified was one of the victim's brothers.

A Boston restaurant owner supported Weichel's alibi and testified that Weichel was in his restaurant until about midnight. Other witnesses testified he then went to a South Boston lounge and was in the lounge at the time of the shooting.

MA Supreme Court Reinstates Frederick Weichel's Conviction

By Hans Sherrer

There was no physical or forensic evidence linking Weichel to LaMonica's murder.

The jury disregarded the lack of evidence, Weichel's alibi witnesses, the woman's eye-witness testimony, and the fact that the male witness's description didn't resemble Weichel in any particular. Instead, they relied on the male witness' courtroom identification of Weichel to convict him on August 20, 1981.

"Whitey" Bulger – Mobster Extraordinaire

For decades until the mid-1990s, James "Whitey" Bulger was a gangster involved in gambling, narcotics and weapons who "used fear, intimidation, coercion, threats, and murder to hold the community of South Boston hostage."³ Before his trial began, Weichel was visited five times by Bulger and his right-hand man, Stephen ("The Rifleman") Flemmi. Bulger warned Weichel during those visits, "I do not want you to bring up Tommy Barrett's name ever."⁴ Bulger threatened to harm Weichel and his family (his mother) if he didn't heed his warning. Weichel, and everyone in South Boston, knew that a threat by Bulger could be ignored only at one's personnel peril.

In December 1994 Bulger was federally indicted on 18 counts of murder (and other charges). Bulger was tipped off about the sealed indictment by an FBI contact, so he was able to go underground before he could be arrested. Bulger disappeared and 12 years later remains on the FBI's list of Ten Most Wanted Fugitives – alongside Osama bin Laden. The FBI is offering a \$1 million dollar reward for information leading directly to Bulger's arrest, and there is no one on the list with a larger FBI reward.⁵

Barrett's written and verbal confessions to murdering LaMonica

In 1982 Weichel's mother lived in Boston and received a letter with a March 19th California postmark from Barrett. In the letter Barrett clearly and repeatedly stated he killed the man Weichel had been convicted of murdering and that Weichel was innocent.⁶ When she told Weichel that she received a letter from Barrett, he was mindful of Bulger's threats and stopped her before she could tell him what was in the letter. Weichel "did not inquire or learn of the contents of the

letter until 2001, after his mother's death and after Bulger had become a fugitive from justice."⁷

In January 2002 Weichel filed a motion for a new trial primarily based on the new evidence of Barrett's written confessions to murdering LaMonica. The motion also included new information corroborating Weichel's alibi, namely that an FBI agent on Bulger's payroll saw Weichel at the lounge at the time of the murder, and that Bulger told another FBI agent that Weichel wasn't involved in the murder.⁸

Weichel's trial judge had retired, so Superior Court Judge Isaac Borenstein was assigned to his case.

Borenstein ruled an evidentiary hearing was warranted, during which Barrett's mother testified. Based on her testimony a friend of Barrett's, Sherry Robb, was contacted for the first time for possible information she might know about LaMonica's murder. Robb, a social worker, had lived in South Boston in the 1970s where Barrett had met her. In the early 1980s when she was living in California, Barrett stayed for a time with her and a roommate. Robb testified at the hearing that Barrett told her "that he wanted to kill himself because "someone was taking the rap for something that he had done."⁹ He then told her Weichel "had been wrongly accused and that Barrett had in fact killed someone."¹⁰

After the evidentiary hearing Borenstein found that based on an expert's handwriting analysis Barrett had written the confession letter. He also ruled that Barrett's 1982 letter was new evidence because Weichel could not have reasonably discovered the letter's contents due to his legitimate fear for his and his mother's life if he dared publicly implicate Barrett as LaMonica's murderer. Borenstein likened Weichel's situation to that of a battered woman who fails to act out of fear of the consequences.

Borenstein also found that Robb's testimony concerning Barrett's verbal confession was new evidence, credible, and admissible "under the exception to the hearsay rule for statements against penal interest."¹¹ The exception has a requirement that when a person makes incriminating admissions, "the statement, if offered to exculpate the accused, must be corroborated by circumstances clearly indicating its trustworthiness."¹¹ After considering factors such as that Barrett knew he was a suspect and he would have expected authorities to eventually learn of his confession, Borenstein determined "the totality of circumstances "clearly show that

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Barrett had little to gain and much to lose by confessing to the murder.”¹²

On October 25, 2004, Borenstein issued his ruling. He wrote in his decision’s concluding paragraphs:

The case against [Weichel] was not one of overwhelming evidence of guilt; it was an identification case in which only one of four eyewitnesses on the scene ... was able to identify [Weichel], and with only seconds, late at night, to make the observations. ... Beyond that, however, the evidence of guilt was thin. A gun was found nearby that was consistent with bullets that shot the victim but nothing linked the defendant to that weapon. There was no other evidence; no weapon, fingerprints, or vehicle identification connecting the defendant to the crime.

Both Barrett’s written and oral confessions cast real doubt on the justice of Weichel’s conviction, especially since the conviction was not based on overwhelming evidence of guilt. The exculpatory evidence contained in Barrett’s letter to the defendant’s mother and in his confession to Robb were not available at trial. Since Weichel did not have the opportunity to present this exculpatory evidence to the jury, he is entitled to that opportunity now, in order to receive a fair trial, and because the newly discovered evidence casts doubt on the conviction.

The court notes that either Barrett’s letter or his statements to Robb, taken alone, are enough to merit a new trial in this case. All of the evidence together provides particular strength to its weight.

The court ORDERS that the defendant’s motion for a new trial is ALLOWED.¹³

The Suffolk County District Attorney appealed Borenstein’s ruling to the Massachusetts Supreme Court.

Massachusetts Supreme Court issues its Weichel decision.

Since Borenstein was not the trial judge, the Court only deferred to his credibility determinations; the rest of the case’s record was open to their assessment. On May 22, 2006, the Court issued its decision.

The Court first ruled that Barrett’s confession letter was not new evidence. The Court reject-

ed Weichel’s rationale for not previously discovering “the exculpatory content of Barrett’s confession letter because he feared, and had been threatened by, Bulger and had been intimidated by Bulger and Flemmi.”¹⁴ The Court declared, “In essence, the judge ... carved out a coercion or fear exception to the reasonable diligence requirement of newly discovered evidence. This was inappropriate.”¹⁵

The Court explained, “Consistent with his duty of reasonable diligence, the defendant could have “uncovered” the content of Barrett’s confession letter and revealed the content to his attorney, and he could have sought protection for himself and his family from the government. “A hard choice is not the same as no choice.” *United States v. Martinez-Salazar*, 528 U.S. 304, 315 (2000). He should not be rewarded for making the wrong choice with resulting impairment of the integrity of the jury’s verdict.”¹⁶

The Court continued, “In reaching his conclusions, the judge made findings concerning the ‘backdrop’ of South Boston and the past activities, past reputations, and current status of both Bulger and Flemmi. ... Subsequent disclosures about the evils and wrongdoings of Bulger and Flemmi are not legally relevant. We are satisfied that the defendant had it within his means to ascertain the content of the Barrett letter long before he filed his current motion, and his deliberate failure to do so renders the information clearly not newly discovered.”¹⁷

The Court then ruled that Barrett’s confession to Robb was not new evidence because Weichel was aware that she and Barrett knew each other, yet he did not pursue finding out if she had any exculpatory information until Barrett’s mother testified during Weichel’s evidentiary hearing.

The Court also ruled Barrett’s confession to Robb was inadmissible hearsay, stating, “The judge erred on the third criteria [assessing the admissibility of statements “against penal interest”] because Barrett’s statements were not adequately corroborated.”¹⁸ The Court’s rationalized his confession wasn’t reliable because, “... Barrett’s character was, at best, questionable. ... Robb had observed Barrett drinking and suspected that he used drugs because of his “destructive” and “erratic” behavior. Barrett also had been arrested (in the 1970’s) for armed robbery and for assault and battery by means of a dangerous weapon. The judge should have factored this evidence into his assessment. Had he done so, he would have had no choice (on this record) but to question the reliability and trustworthiness of any statements made by Barrett.”¹⁹

Having found reasons to reject consideration of Barrett’s written and verbal confessions to murdering LaMonica, the Court concluded its decision with, “The order allowing the defendant’s motion for new trial is vacated. A new order shall enter denying the motion.”²⁰

Does the MA Supreme Court’s decision make sense?

Weichel’s motion for a new trial is unusual because of the central role played by the long shadow “Whitey” Bulger has cast over his case for more than a quarter of a century. A casual observer might find merit in the Massachusetts Supreme Court’s rejection of the possibility that retaliation by Bulger and Flemmi was a legitimate reason for Weichel to have avoided promptly learning of, and acting on the confession in Barrett’s letter, because “he could have sought protection for himself and his family from the government.”²¹

However, the Court’s analysis about the timeliness of discovering the letter’s contents is flawed for two reasons.

First, a threat by Bulger was unusual in that not only did he personally partake in killing people who crossed him, but so did the people around him, including Flemmi. They were both perceived to be killers. To people living in Boston who knew of Bulger, such as Weichel, a threat to kill a person who crossed him could be considered a promise. Bulger was indicted for 18 murders in 1994, but those were only the murders federal prosecutors thought they could prove he committed – it doesn’t include dozens of possible murders that were legally unprovable.

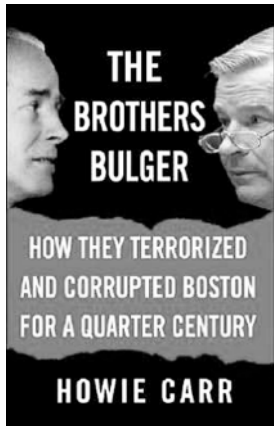
Second, Bulger able to engage in a veritable reign of terror in South Boston for over 20 years because he was protected by state and federal law enforcement authorities. Bulger’s status as an FBI informant protected him for many years from prosecution by federal prosecutors. He was so ingratiated with law enforcement that at one time he had at least six FBI agents on his payroll.²² Who tipped Bulger off about his federal indictment in December 1994 so he could go underground before being arrested? An FBI contact. How has Bulger eluded capture for almost 12 years even though it is known he has traveled around the United States almost like a tourist with two different girlfriends, even returning to South Boston on several occasions? His law enforcement contacts, who continue to aid him.²³

Three months before the Court’s decision, *The Brothers Bulger: How They Terrorized and Corrupted Boston for a Quarter Century*

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(Warner Books Feb. 2006) was published. Written by Boston Herald columnist Howie Carr, among other things the book documents that Bulger kept his closest associates in line



by their fear that if they crossed him they would be killed just as unhesitatingly as anyone else who crossed him – which was common knowledge in South Boston. It also documents how deeply Bulger was protected by law enforcement.

So the information was publicly and readily available to the justices of the Massachusetts Supreme Court at the time of their May 2006 decision, that Weichel couldn't have safely "sought protection for himself and his family from the government,"²⁴ at least until his mother died, because Bulger's tentacles extended deeply into state and federal law enforcement agencies.

The Court's ruling that Barrett's verbal confession was inadmissible hearsay because "the reliability and trustworthiness of any statements" he made was questionable due to his history of committing violent crimes and his history of drinking and illegal drug use is inexplicable. Confessions in Massachusetts (and across the country) by suspects with a long record of violent crimes and a history of drug and alcohol use similar to Barrett are not just deemed admissible, but typically underpin a conviction. In some of those cases the lone witness was a facially unreliable jailhouse informant with a violent criminal history and personal history of excessive alcohol and drug use similar to Barrett – which wasn't an issue with determining Robb's credibility. The Court's *Weichel* decision may backfire on them if Massachusetts defendants confessing under far less reliable circumstances than Barrett, rely on it to have their confession ruled as inadmissible hearsay.

The Court's decision carefully avoids discussing that Weichel's argument for a new trial is fundamentally based on the premise that Barrett's confessions not only support Weichel's actual innocence, but also provides law enforcement with professions of guilt by a person who was originally investigated as involved in the murder. Bulger's interventions on Barrett's behalf before

Weichel's trial also powerfully supports the veracity of Barrett's subsequent confessions.

The decision also didn't address a subtext issue supporting Weichel's conviction as a miscarriage of justice: Barrett's written and verbal confessions to murdering LaMonica, the numerous alibi witnesses, and the identification of a different man in the courtroom by the female eyewitness explains the inconsistency of Weichel's courtroom identification by the one witness the jury relied on to convict Weichel. The simplest and most likely reason the courtroom identification of Weichel by that male witness was inconsistent with his description given to police minutes after he saw the man running on the street, and the other evidence in the case, is he did not see Weichel at the crime scene. Since 1981 much has been learned about factors that can affect the accuracy of an eyewitness identification – and the circumstances under which the people in the park saw the man (it was late at night with only a street light, he was running parallel to them, they were about 180 feet from him, they were inebriated, etc.) weren't conducive to a reliable identification.

Recent research at the University of Washington documents that even one alcoholic drink within an hour can severely impair a person's awareness and ability to accurately recollect obvious and significant details of an event occurring under conditions of perfect lighting and zero stress.²⁵ Another study based on a simulated crime scene found that a person considered legally drunk (.08-1%) is *1/3rd less* likely than a sober person to make an accurate identification of a thief they witnessed committing a crime under perfect conditions (lighting, etc.)²⁶ This research has serious implications for the accuracy of eyewitness memory, and the testimony the jury relied on to convict Weichel was by a witness who admitted he had been heavily drinking for hours prior to the shooting. Application of this and similar scientific research to the circumstances of Weichel's identification may constitute new evidence.

Even though the Court never questioned the veracity of Barrett's confession in the letter, they asserted that since they rejected it as "new evidence," there wasn't "the chance that a miscarriage of justice occurred."²⁷ Yet Barrett's confession means Weichel is innocent. So the Court's *de facto* rationale is that in determining whether "a miscarriage of justice occurred" in Weichel's case, compelling evidence of his actual innocence is trumped by the liberal prosecution favorable application of procedural and evidentiary rules to exculpatory evidence his jury didn't consider. Contrary to the Court's assertion, "the integrity of the jury's verdict" is not impaired by

evidence of Weichel's innocence the jury did not consider, and that neither Weichel nor the prosecution had at the time of his trial, and which if it had been available, arguably would have resulted in the prosecution's dismissal of the charges against Weichel.

Did the MA Supreme Court make a political decision?

When notified that *Justice: Denied* would be publishing an article about his case in the Summer 2005 issue (Issue 29), Weichel expressed guarded optimism the state Supreme Court would affirm the order for a new trial. He explained that political influences affected the Court's interpretation and application of the law in its decisions, and that powerful political forces didn't want his conviction disturbed. The Court's May 22 decision shows he had good reason for concern, and it also shows that Judge Borenstein was able to rise above political concerns to grant relief to Weichel, who based on the evidence now available is actually innocent of LaMonica's murder.

Although it is not well known to people outside Massachusetts, "Whitey" Bulger's younger brother, William, is one of the most powerful and prominent politicians in the state. He was president of the State Senate for 17 years (1978-1996), and was president of the University of Massachusetts for seven years (1996-2003). Did William Bulger use his influence to sway the state Supreme Court to overturn Borenstein's order for a new trial? And if so, why? Or did someone else? And if so, why?

What's next?

Weichel can now pursue a federal habeas petition, or possibly first pursue a challenge in state court of his identification by the lone eyewitness, based on new scientific research that an intoxicated person cannot reliably provide eyewitness details. If his jury had known about the significantly reduced likelihood of an accurate identification by an intoxicated person such as the male witness in Faxon Park, there is a reasonable likelihood they would have acquitted him. Cutting through the semantic fog, the essence of Weichel's case is he has compelling evidence of his actual innocence that his jury didn't consider.

The U.S. Supreme Court's decision in *House v. Bell*, No. 04-8990 (U.S. 06/12/2006) was issued three weeks after the Massachusetts Supreme Court's *Weichel* decision. It provides particular support for Weichel for two reasons: Like Weichel, the state court considered House's claims to be procedurally defaulted from consideration; and, Weichel has

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My daughter Lori Berenson has been wrongfully incarcerated in Perú since the night of Nov. 30, 1995, when she was arrested on a public bus in Lima. She was twenty-six years old.

What Was Lori Doing In Perú?

Lori became interested in Perú after reading extensively about that country. Lori traveled to Perú in November 1994 and became further intrigued with the rich indigenous history, culture, and interesting political atmosphere. In April 1992, Perú experienced a “self-coup” and political upheaval as President Alberto Fujimori attempted to bring peace and order to the chaotic nation with strong leadership and repressive anti-terrorism laws. Lori traveled throughout the country learning about the culture and meeting many poor Peruvians.

Relying on her hands-on experience with poverty and the plight of the poor in Central and South America, Lori was able to obtain assignments from two U.S. publications, *Modern Times* and *Third World Viewpoint*, to work as a free-lance journalist. She secured appropriate press credentials in Lima, Perú’s capital. At the time of her arrest Lori was researching articles about the effects of poverty on women in Perú. We are in possession of some of the transcripts of her work, but the Peruvian anti-terrorist police seized most of it when they searched her apartment.

Did Lori Know MRTA Members?

Lori now knows that some of the people she met during the months she was in Perú before her arrest were members of the rebel organization MRTA (Movimiento Revolucionario Tupac Amaru). But before her arrest she did not know their real names or that they were involved in MRTA activities. As Lori stated

Guilt By Association – The Political Jailing of Lori Berenson

By Mark L. Berenson

in an interview with *The Washington Post*, “My relationship with the other people accused was a social relationship, talking about things. Until I was in jail I finally figured out more or less what they are, which is much different than what I thought originally....”

Soon after Lori arrived in Lima, a sprawling city of almost seven million people, she and Pacifico Castrellón, a Panamanian artist she met while traveling to Perú, co-rented a house in the city’s La Molina district. It was a large, four-story house, like a boarding house, and had ample room for Castrellón to paint. Several weeks later, Lori and Pacifico sublet the house’s fourth floor to a man who said he was an engineer named Tizoc Ruiz. After that, Lori never went to the fourth floor. Ruiz subsequently hired a live-in housekeeper.

Lori moved out of the house in August 1995. At the time of her arrest almost four months later, she was living in an apartment across the city in Lima’s San Borja district. The large La Molina house, however, remained occupied by Pacifico, the housekeeper and Ruiz – along with the 18 MRTA recruits brought in from the Peruvian jungles who were clandestinely residing in the rooms on the fourth floor and training in preparation for an attack on the Peruvian Congress.

After Lori’s arrest, she first learned that Castrellón was in fact a long-time MRTA member, and that the alleged engineer Ruiz to whom Lori was introduced on a social basis, was really Miguel Rincón, a high-ranking MRTA leader. In addition, the hired house-

keeper turned out to be an MRTA member and the alleged Bolivian photographer Rosa Mita Calle, who Lori had met a few weeks earlier, was really Nancy Gilvonio, a Peruvian married to Nestor Cerpa, the MRTA leader). Nancy was arrested on the same bus as Lori.



Military Tribunal Convicts Lori of Treason

In January 1996, a hooded military tribunal (now deemed illegal in Perú) convicted Lori, a U.S. citizen, of treason against the fatherland of Peru as a leader of the MRTA. The tribunal then sentenced her to life in prison while a hooded soldier held a gun to her head. The military tribunal’s proceedings were arbitrary and did not observe any of Lori’s due process protections. Lori was unable to defend herself against any accusations, and she wasn’t informed of statements people had made about her – possibly under duress and threats of torture.

Negative Reaction to Lori’s Military Conviction Leads to Civilian Trial

In December 1998, the United Nations High Commission on Human Rights stated Lori had been deprived of her liberty arbitrarily and the government of Perú must take all necessary steps to remedy her wrongful incarceration.

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compelling evidence of his actual innocence, whereas House did not. House only had evidence supporting that “it is more likely than not that no reasonable juror viewing the record as a whole would lack reasonable doubt.”²⁸ That is the gateway standard under *Schlup v. Delo*, 513 U. S. 298 (1995) for obtaining federal review in spite of a state procedural default.²⁹ Consequently, Weichel not only meets the *Schlup* standard for federal review of his state conviction, but he arguably also meets the even higher standard implied in *Herrera v. Collins*, 506 U. S. 390, 417 (1993), that “a freestanding innocence claim” warrants federal relief from an unconstitutional imprisonment (or execution).³⁰

Time will tell how the next chapter of Weichel’s 26-year odyssey unfolds.

Endnotes:

- 1 *Commonwealth v. Weichel*, No. SJ-09556 (Mass. 05/22/2006); 2006.MA.0000193 ¶21 <http://www.versuslaw.com>
- 2 *Id.* at ¶22 <www.versuslaw.com>
- 3 *Id.* at ¶40 <www.versuslaw.com>
- 4 *Id.* at ¶39 <www.versuslaw.com>
- 5 Information from the FBI website on June 25, 2006, at <http://www.fbi.gov/wanted/topten/fugitives/bulger.htm>
- 6 “Dear Gloria, I really don’t know what to say! So I will get straight to the point. I haven’t had a good night sleep in almost a year because I know [the defendant] did not kill [the victim]. I did! Yes, Gloria I killed [the victim]. [The defendant] has known this. I told him a couple weeks after it happened! Gloria, I never thought in a million years that they would blame and convict a[n] innocent man. Gloria, I am so sorry for all of the pain I put you and [the defendant] through. I can’t let [the defendant] spend the rest of his life in jail for something he didn’t do! So, Gloria, if there is ANYTHING I can do to help clear [the defendant] please let me know. Gloria, I mean anything at all.” (Emphasis in original). The letter was signed “Tommy Barrett”; was dated March 19, 1982; bore a Mill Valley, California, return address; and bore a California postmark dated March 19, 1982. *Commonwealth v. Weichel, supra*, ¶87, fn. 5 <www.versuslaw.com>
- 7 *Id.* at ¶41 <www.versuslaw.com>
- 8 *Id.* at ¶31 fn.4 <www.versuslaw.com>
- 9 *Id.* at ¶46 <www.versuslaw.com>

- 10 *Id.* at ¶46 <www.versuslaw.com>
- 11 *Id.* at ¶54 <www.versuslaw.com>
- 12 *Id.* at ¶54 <www.versuslaw.com>
- 13 *Commonwealth v. Weichel*, No. 77144, Memorandum Of Decision And Order On Defendant’s Motion For A New Trial, (10/25/2004)
- 14 *Commonwealth v. Weichel, supra*, ¶64 <www.versuslaw.com>
- 15 *Id.* at ¶64 <www.versuslaw.com>
- 16 *Id.* at ¶66 <www.versuslaw.com>
- 17 *Id.* at ¶67 <www.versuslaw.com>
- 18 *Id.* at ¶73 <www.versuslaw.com>
- 19 *Id.* at ¶78 <www.versuslaw.com>
- 20 *Id.* at ¶81 <www.versuslaw.com>
- 21 *Id.* at ¶66 <www.versuslaw.com>
- 22 *The Brothers Bulger: How They Terrorized and Corrupted Boston for a Quarter Century*, by Howie Carr, (Warner Books 2006), p. 330.
- 23 Rat: Tips foiled feds’ efforts to nab Whitey, *Boston Herald*, August 23, 2005; 10 years, six continents, still no ‘Whitey’, *Baltimore Sun*, August 28, 2005.
- 24 *Commonwealth v. Weichel*, ¶66 <www.versuslaw.com>
- 25 Clifasefi SL et al. “Blind Drunk: The Effects of Alcohol on Inattention Blindness.” *Applied Cognitive Psychology* 20: 697-704, July 2006.
- 26 Some Effects of Alcohol on Eyewitness Memory, John C. Yuille and Patricia A. Tollestrup, *Journal of Applied Psychology*, 1990, Vol. 75, No. 3, 268, 271.
- 27 *Commonwealth v. Weichel, supra*, ¶61 <www.versuslaw.com>
- 28 *House v. Bell*, No. 04-8990 ¶123 (U.S. 06/12/2006)
- 29 *Id.* at ¶12, 18
- 30 *Id.* at ¶126.