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This Week in Gang Land

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By Anthony DiPietro

Carmine Persico Was Framed For Murder In Historic Commission Case



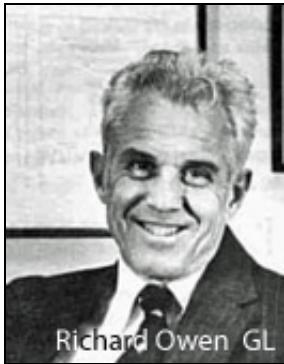
There is truly nothing *historic* about the "Commission Case," except that it marks the real beginning of injustices perpetrated by the Department of Justice in Italian-American organized crime cases. Although

Carmine [Persico](#) was convicted of nonviolent bid rigging and labor bribery offenses, he received 100 years of imprisonment based on false murder accusations presented by prosecutors at sentencing. Despite many misconceptions, Persico has never been charged with committing a single murder. To date, he has served almost 50 years in prison for nonviolent offenses, and at age 85, his projected release date remains 2050.



Carmine Persico G

More than three decades ago, prosecutors requested that the Manhattan Federal Court Judge Richard Owen, impose a sentence that Persico would "not be physically capable of completing." They claimed that Persico deserved a life sentence based on their belief that he had participated in several uncharged murders. There was no hearing to address the prosecution's accusations, no witnesses identified by the prosecution to support these claims, nor any discovery provided to his lawyers so that they could investigate and rebut those allegations. Instead, Judge Owen summarily accepted the prosecution's hearsay proffers that Persico was a murderer, and it sentenced him to [100 years](#) in prison. The judge did not even bother to ask Persico if he had any objections to the uncharged allegations until after his sentence was imposed.



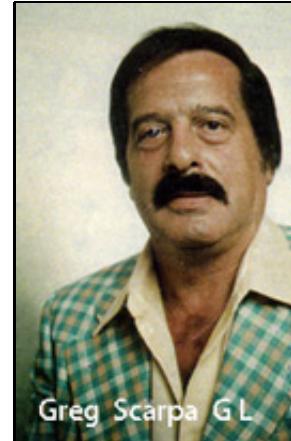
While such a scurrilous process and outcome may appear to be an outlier, it is not. These types of occurrences remain a stark reality for many who are prosecuted in federal court as being associated with Italian American organized crime. A noticeable, but unspoken reality is that the federal criminal justice system actually facilitates and condones these types of results.

There is no down side for FBI Agents and prosecutors who bend the rules in these cases, and the courts rarely hold a prosecutor accountable for playing fast and loose with the facts. While a prosecutor's constitutional obligation to restrict use of perjured cooperator witness testimony and to disclose favorable evidence to the defense are said to remain sacrosanct in our system, these obligations are too often ignored and abused when it comes to so-called mob cases.

The [Commission Case](#) is exemplary. Persico was convicted on nonviolent offenses, but sentenced to 100-years based largely on uncharged hearsay and false murder accusations. Unbeknownst to his defense, prosecutors possessed exculpatory evidence proving that Carmine was innocent of many of the murder accusations they had alleged against him. They suppressed records proving Carmine's innocence, but they used the withheld evidence to prosecute others years later for the same murders. Connected to these events, the FBI agent in charge of the Commission Case was subsequently prosecuted by the Brooklyn District Attorney's Office for participating in several murders for which Carmine had been blamed.

Unfortunately, it took nearly three decades for Carmine's lawyers to discover that many murder allegations proffered by prosecutors were false. Until recently, it remained undisclosed that the uncharged murder allegations against Carmine had been based on information gathered by a rogue FBI agent and his notoriously unreliable informant, [Gregory Scarpa, Sr.](#) As a "top echelon" informant, Scarpa committed numerous acts of violence and murder — that at a minimum, his FBI handlers ignored — and he falsely attributed blame for those crimes to other individuals, including Persico.

To best summarize, the late New York Supreme Court Justice Gustin L. Reichbach explained, "the FBI engaged in a policy of self-deception, not wanting to know the true facts about [the] informant-murderer whom they chose to employ." The FBI shielded "Scarpa from prosecution for his own crimes," and knowingly allowed Scarpa to "provide information to the FBI that was purposively deceptive and untrue in an attempt to point the finger away from his own misdeeds and on to that of gang rivals." Federal officials "gave Scarpa virtual impunity for close to 15 years in return for information, true and false, he willingly supplied."





Gustin Reichbach GL

With rare exceptions, however, most federal judges, like Judge Owen in Persico's case, ignore, or find a way to justify scurrilous actions by government agents when defense attorneys uncover them, and bring them to light. As the Second Circuit Court of Appeals decided last year, it was not necessary for it to address the government's misconduct and the veracity of the sentence Carmine received "in light of the fact that Persico was convicted and sentenced approximately 30 years ago and has already had the opportunity to raise challenges on direct appeal and collaterally under" other statutes.

Yet, if justice is truly blind, how can the U.S government's use of false information, and its violations of the Brady rule that directs prosecutors to turn over exculpatory evidence to defendants, be tolerated or go uncorrected simply because the defendant was unable to find such violations sooner. Would this be the result if the defendant was a convicted congressman?

Surely, it cannot be said that the law or human decency supports the continuance of Carmine's unjust 100-year term of imprisonment for labor bribery offenses. And no matter how much the rules are bent by the federal government in so-called "Mafia" cases, no man should ever be sentenced to die in prison based on knowingly false and uncorroborated accusations, especially when the government intentionally hides the evidence proving his innocence — so help us God.

Editor's Note: Anthony DiPietro is an up and coming attorney who opted for big league criminal defense work as soon as he passed the bar exam several years ago after graduating magna cum laude from Pace Law School. He has a knack for finding evidence that the government withheld from defendants in organized crime cases, and was Gang Land's 2016 Rookie Of The Year. He has already worked on two successful exonerations of wrongfully convicted inmates, and is admitted to argue cases before the U.S. Supreme Court.



Anthony DiPietro GL

Along with veteran attorney Mathew Mari, DiPietro also represents defendants previously convicted of being high-level organized crime figures in federal court, including Colombo family boss Carmine (Junior) Persico, acting Bonanno family boss Vincent (Vinny Gorgeous) Basciano and Gambino associate Edmund Boyle. In these types of cases, DiPietro argues, the rule of law and equal justice have failed the most, with the full support of a complicit U.S. government.

The Government Broke Everything Except Vincent Basciano



Being out of solitary confinement after 11 years makes for a Happy Thanksgiving for Vinny Gorgeous

The government's prosecution of Vincent J. Basciano is instructive for all the wrong reasons. It exemplifies the win-at-all-cost attitude of FBI agents and federal prosecutors against alleged members of organized crime and the uneven playing field that the accused face in such proceedings. For Vincent Basciano, there was no monetary cost, presiding judge, law, or ethical standard that would deter certain rogue federal officials from trying every scheme possible to break him — to coerce Basciano into giving up and capitulating. And when that failed, to destroy any legitimate chance he had for a successful defense.

While he was facing two prosecutions, one in which [Basciano](#) faced the death penalty, the FBI claimed that Vincent compiled a "hit-list" including the presiding judge, the trial prosecutor, and several cooperating witnesses. This farce of an accusation came from a FBI jailhouse informant, the likes of which has become all too common in "organized crime"

cases. It precipitated the government's intended prejudicial chain of events that left Basciano to rot in hell-like pretrial conditions while he prepared for back-to-back-to-back trials. This accusation, which was later proven false, was not only designed to break Basciano into cooperation, but a mechanism to inflame the partiality of the judge in his case, the jury pool, and public perception.

Plainly put, [Basciano](#) was mentally and physically tortured by his captors. He was imprisoned under the most inhumane and evil conditions. Locked into a 6-by-6-foot cell for 24 hours per day, with the lights on all the time. There was no window to let in sunlight, no fresh air, and no human contact whatsoever. Vincent's prison cell was video monitored 24-7 by prison officials and the FBI, as they watched his every movement within the four concrete walls that enclosed his captivity.

Both guards and psychiatrist would call into the cell on a daily basis to ensure that Basciano had not broken down and tried to commit suicide by hanging or mutilation. And notwithstanding what appeared to be a daily prodding by officials for his call for mercy, Vincent never once exposed to his captors the mental and physical anguish being caused by these hell-like conditions.

For the most part, [Basciano](#) lived with only his shadow to confide in. He had no human contact or visibility beyond his completely enclosed cement cell. He had no daily visits or phone calls, and communication with family and friends was a distant privilege. At all hours, a super bright floodlight shined in the center of Basciano's cell, fluorescing off the four cement walls and a



Hon. Nicholas Garaufis

frosted window that once provided a view to the outside. Sleep deprivation was the norm for Basciano, as the bright floodlight shinned directly into his concrete bed. The light remained a constant, reminding Basciano that time had stopped and the daily passing from day to night was only a memory from a past life.

Basciano's concrete bed was garnished with a moldy 4-inch thick cardboard mattress, which was occasionally dampened by the toilet and in-cell shower that leaked several feet away. A daily buildup of fog and debilitating must also remained a constant, finding only seconds of fresh air to escape when guards passed food to Basciano through a slot in his cell's door. The foggy conditions within his cell occasionally worsened dependent on the extreme temperature therapy that Basciano was also subjected to. As the days changed, so too did the either extremely hot or intolerably cold departures within his cell.



Joseph Massino GL

Even though his jailers tortured Vincent as though he were a wild animal, his captors seemed unsatisfied with the pain they inflicted. His unwillingness to waive the "white flag" or even bend a knee seemed only to fuel his adversaries. Rather than give him a fair fight at trial, the feds broke every rule to ensure Basciano would not only be caged like an animal, but also that he would be convicted and sentenced to death.

In this regard, Basciano was continually deprived access to legal materials, afforded no contact and controlled legal visits, and forced into uncounseled and coercive jailhouse interrogations with wired-up FBI snitches, including [Joseph Massino](#). From the outset, trial judge Nicholas Garaufis provided no help to his lawyers on discovery matters and did nothing to mitigate the horrific conditions of Vincent's confinement, as the judge was misled to believe that Basciano was "gunning" for him. At every turn, the feds played the false card that Basciano once ordered a "hit" on both the judge and prosecutor.

The foul play left Basciano with an untenable uphill battle to obtain favorable rulings from the court on both substantive and procedural issues. And in a Kafkaesque turn of events, Judge Garaufis ruled that false accusations about Basciano's creation of a "hit list," which included the judge, could be considered as evidence during the death penalty phase of his trial. This was done even though Garaufis previously claimed he could remain impartial in these circumstances and had tried to convince the government not to seek [capital punishment](#). For Basciano, however, the proclamation by the U.S. Supreme Court that "no man can be a judge in his own case" rang hollow as his judge found that evidence of his own victimization should be a relevant factor on whether Basciano should be punished by death.

None of Basciano's trials was a fair fight. Prosecutors even convinced the judge that its suppression of exculpatory defense evidence relating to key cooperating witness Dominick Cicale was immaterial and that there was no fault in its repeated introduction of false testimony. Even though the deck was stacked against him, Basciano's first case ended in a mistrial on the central murder charge. On this score, prosecutors suppressed not only evidence supporting Basciano's theory of defense as to the murder, but also probative evidence demonstrating that [Cicale tried](#) to frame Basciano in a separate murder plot while cooperating.



Specifically, Cicale conjured up a plan with another cooperating witness that the two could be released from pretrial detention, if they falsely told prosecutors that Basciano had sought to hire a prison guard to murder Cicale as for cooperating. Prosecutors deep-sixed that information and other powerful exculpatory evidence that Cicale was responsible for killing Frank Santoro and Randolph Pizzolo, two murders for which Vincent was convicted. The suppressed evidence included several FBI reports detailing Cicale's independent motive to kill both Santoro and Pizzolo. And within such reports, was Cicale's undisclosed confession to another FBI informant, that he [Cicale], not Basciano, "approached Santoro while he was walking his dog near the Throgs Neck Expressway, and shot and killed him."



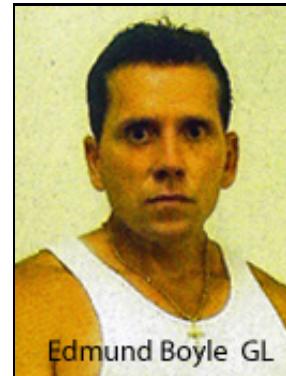
While news coverage of Basciano's trials mentioned Massino's defection and the fictitious hit list, there were no news reports about the government's misconduct, its suppression of evidence, or the years of pretrial torture Basciano endured. Not one media outlet reported the fact that Basciano was kept in inhumane pretrial conditions for years, without even a public hearing to address the uncorroborated story of an unidentified jailhouse snitch.

And even today, while the recent confirmation hearings for President Trump's SCOTUS nominee reflect a claimed fundamental respect for a person's right to confront allegations of wrongdoing and a need for corroboration regarding injury to one's reputation by senators, legal scholars, and the media, there remains no discussion about federal prisoners like Basciano, who have been tortured, detained, and arbitrarily stripped of all fundamental liberties by the government before their trial even begins.

The overwhelming evidence suggests that the system allows certain defendants, like Vincent Basciano, to be treated differently in the way they are targeted, investigated, and prosecuted than the rest of us. It seems that the blatant constitutional failings in Basciano's case mean little to the judges and prosecutors who believe the defendant is a "Mafioso," whose rights and opportunity to be treated fairly in a court of law comes second to the need for his conviction.

Triple Jeopardy: Feds Manipulate Law To Wrongly Imprison Edmund Boyle For Decades

Edmund Boyle has been railroaded by the FBI into serving decades in federal prison for the same nonviolent bank burglaries for which he served time in state prison in the 1990s. The targeting of Boyle is of no surprise, even in light of his Irish descent. To the feds, Eddie Boyle was guilty of being friends with Italian Americans on their radar, and therefore, he too has limited rights in federal court. The fact is Boyle was classified an "organized" criminal by the system because of the neighborhood he grew up in, the friendships he held, the wakes and funerals he attended, and the monotonous communications he had with his lifelong friends and their families.



At the outset, Boyle's case began with bank burglary charges in New York State Supreme Court. He served several years in prison after pleading guilty in state court. Following his release, however Boyle found himself on the FBI radar and a "subject" of its "organized crime" units. Finding no additional criminality, the feds employed other means to ensure other prosecutions of Boyle. In back-to-back proceedings, Boyle was charged with racketeering by the U.S. Attorney's Offices in both the Eastern and Southern District of New York for the same bank burglaries he had pleaded guilty to, and had already served time for in state prison. As a result, Boyle has already served almost 20 years in federal prison of the cumulative 30-plus years in prison that he has received.



The injustice of Boyle's case not only stems from the draconian term of imprisonment, but also the government's manipulation of fundamental constitutional protections to achieve that result. In order to avoid double jeopardy preclusion, the feds simply invented and changed the name of the racketeering enterprise in each of Boyle's indictments. In Brooklyn, federal prosecutors claimed that the bank burglaries were committed by Boyle as part of his connection to a loosely connected crew of professional bank burglars, dubbed the [Night Drop Crew](#). For that case, Eddie was sentenced to 151 months. On the heels of his release from prison, FBI agents decided to take another shot at Eddie even though he had twice paid his debt to society.

This time, prosecutors in Manhattan alleged that the same bank burglaries were committed by Boyle as part of his alleged connection to the "Gambino family." In [this case](#), the feds also manipulated the law by lodging [those allegations](#), even though Eddie committed no crimes during the previous five years — he was in prison serving time for his Brooklyn case. Boyle was found guilty, and Manhattan Federal Judge Colleen McMahon upheld the conviction even though prosecutors introduced neither testimony nor evidence at Boyle's trial linking him to any activity — let alone criminal activity — with any Gambino crime family members or associates within five years of the indictment. Simply put, the Court allowed a plainly defective case to pass, and Boyle was left with another 240 months of imprisonment.

But that's not all. In both cases, Boyle was punished for acquitted conduct. In Brooklyn, Judge Sterling Johnson enhanced Eddie's sentence on the bank burglaries based on a robbery charge that the jury had rejected. In Manhattan, prosecutors convinced Judge McMahon to [hammer Eddie](#) with the statutory maximum sentence of 20 years, by imposing punishment for another charge for which Eddie was acquitted. Prosecutors sought the maximum sentence against Boyle, because it believed the jury erred by finding him not guilty of the murder of FBI informer Frank Hydell.



Troublingly, Judge McMahon found Boyle's acquittal on that charge meaningless, rejecting the jury's verdict for sentencing purposes and considered the murder when fashioning yet another prison term for the same recycled bank burglaries. The judge arbitrarily decided that 20 years of imprisonment would be proper. The Court ignored all the exculpatory evidence supporting the jury's verdict, including the testimony of a cab driver who testified that he had witnessed the murder and said Boyle didn't do it. The judge's reliance on this acquitted conduct effectively nullified the jury's verdict. It also begs the question, what is the point of a trial?

In the end, the devious and [underhanded tactics](#) the feds used to keep Eddie in federal prison for decades for crimes he had pleaded guilty to in state court, and then sentencing him for a murder a jury said he didn't commit, is not commonplace for other similarly situated defendants. Such an injustice is a phenomenon that began decades ago and continues today for a specific group of defendants in federal court, those alleged to be members and associates of Italian American organized crime who decide not to cooperate with the FBI. Many judges condone these practices in "organized crime" cases and promote the idea that acceptance of responsibility can only be had when a defendant shifts blame, whether truthfully or falsely, to another person in exchange for freedom. And it is cases like this that present the sad reality that we remain ruled as a nation of men, not laws.



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