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# Credibility of FBI Agents Questioned

By Thom Mrozek  
Daily Journal Staff Writer

Concluding there was no conspiracy but suggesting some action should be taken to preserve the integrity of the justice system, a judge on Wednesday called into question the credibility of FBI agents who, until recently, failed to provide key information to the U.S. Attorney's office.

Chief U.S. District Judge William Matthew Byrne Jr. made the comments in relation to a confidential informant who was involved in two similar stolen goods cases that led to a defendant being indicted twice - once in the midst of a large undercover operation and once 18 months after the operation had ended.

Conflicting stories presented by several FBI agents in written declarations and live testimony "starts raising some serious doubt," Byrne said, directly citing "credibility problems" with Special Agent Virginia Malloy Curry.

"Something was going on in the FBI," Byrne said, "there's too many different versions" of why the informant was not revealed.

Byrne has suggested that the FBI covered up the informant because it did not want to "burn" him and did not want to jeopardize a stolen goods investigation called "Operation Pinlock."

Alleging that his second case has been prejudiced because of a "pre-indictment delay," the defendant has made a motion to dismiss the second case because the government waited more than 2½ years after the alleged crime to go the grand jury. In short, he maintains that the cases should have been prosecuted together because the same informant was at the center of both incidents.

But other circumstances and facts have been revealed during a series of hearings that raise questions about whether the defendant was prejudiced because he did not have access to certain information and because the cases were not consolidated.

Arik Ben Bachsian has already been convicted of possessing a truckload of stolen work gloves and has served a 12 month prison sentence. The attorney who represented Bachsian never heard about a confidential informant and three items of discovery that should have been turned over in this case have only recently been uncovered in FBI files.

Because Bachsian did not know of the informant, he was precluded from raising an entrapment defense, attorneys said.

He had been on supervised release for about one year when he was indicted again - this time for possessing a cache of stolen tennis rackets, an incident that allegedly occurred one month before the case involving the gloves.

Because he testified at his first trial, he is again prevented from using an entrapment defense, said defense attorney James E. Blatt, who also believes Bachsian has higher cumulative exposure because he could be sentenced on two separate cases instead of one consolidated case.

What has become clear in a series of hearings is that mistakes were made and the government only recently heard that the same informant worked on both cases. Assistant U.S. Attorney William Carter admitted the mistakes, but blamed them on "a comedy of errors [and] miscommunication."

Carter admitted that a person could draw the inference that the FBI did not disclose its use of an informant in order to protect Operation Pinlock, but he said there was no "smoking gun."

"At worst, we have some gross negligence, some disregard," Carter said, arguing that the mistakes do not justify a dismissal of the new indictment.

While everyone involved agrees the U.S. Attorney's office is blameless in this situation, the FBI is part of the federal government that prosecutes criminal defendants.

Byrne on several occasions suggested to Carter - and his boss, Assistant U.S. Attorney Richard E. Drooyan, who heads the office's criminal division and attended part of Wednesday's hearing - that the government missed an opportunity to fix the situation by simply dismissing the indictment on its own.

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## **'Pre-Indictment Delay' Cited by Judge as Reason for Tossing Case**

By Thom Mrozek  
Daily Journal Staff Writer

A federal judge on Monday dismissed an indictment handed down two years after the defendant was convicted and sentenced in another case that was related by virtue of the same confidential informant.

Ruling that Arik Ben Bachsian suffered prejudice because the two cases were not consolidated and the defense in the first case was not given complete discovery, Chief U.S. District Judge Wm. Matthew Byrne Jr. tossed out an indictment that alleged Bachsian was in possession of a trailer loaded with stolen tennis rackets.

"This case has just way too many problems," Byrne said as he announced his decision in United States B. Bachsian, et al, CR94-622-WMB.

Encino defense attorney James E. Blatt, who argued Bachsian's case, said Byrne "was very interested in preserving the integrity of the judicial system."

Byrne dismissed the indictment after conducting a series of evidentiary hearings on a motion filed by Blatt that alleged "pre-indictment delay."

"I believe we made new law in this case," said Blatt. He noted there have been only two other dismissals granted where a defendant alleged pre-indictment delay, but neither of these earlier cases involved "string indictments."

Bachsian allegedly was involved in the million dollar "racket case" in late 1991, one month before he was arrested for possessing a cache of stolen work gloves.

The FBI brought the "gloves case" to the U.S. Attorney's office, which successfully prosecuted Bachsian and won a one year prison sentence. But FBI agents never bothered to tell prosecutors about the informant, who was involved in both transactions.

Assistant U.S. Attorney Diane E. Birnholz was informed of the racket case - but not of the informant - just before Bachsian's sentencing in the gloves case. But she and her supervisors decided not to provide this information to the judge. Byrne said this decision, in hindsight, was wrong.

After serving his sentence and after he had been on supervised release for about one year, Bachsian was slapped with the second indictment.

What Blatt was surprised to find out was that the FBI used the same confidential informant. According to testimony, prosecutors were also surprised and immediately informed Bachsian's attorneys.

Another person surprised by this revelation was Bachsian's lawyer in the gloves case, Deputy Federal Public Defender Barbara O'Connor, who said she plans to file motions to have Bachsian's previous conviction vacated and to have the case dismissed because of government misconduct and violations of discovery rules.

Reiterating comments he recently made, Byrne questioned the credibility of FBI agents who testified about Bachsian's cases. The judge has previously suggested that agents knowingly decided not to provide the information because they wanted to protect a key informant in an ongoing operation.

"I find that in the least there was reckless conduct on behalf of the agents," Byrne said after determining that the 9th Circuit Court of Appeal in *United States v. Moran* 759 F.2d. 777 (1985) ruled that a judge need only find negligence to determine a defendant was prejudiced by government behavior.

"We're very grateful the judge sought out the truth in this matter, and then when that truth was revealed he had the courage to act on it," Blatt said.

Concluding his oral ruling, Byne said it was ironic that Bachsian was convicted in the gloves case, which had a total value of perhaps \$50,000, when he could have been prosecuted in the racket case which by some accounts was worth \$1.5 million. "It's too bad in a way," the judge said. "Bachsian was prosecuted in the wrong case."