## CONFIDENTIAL

# MEMORANDUM REGARDING PROPOSED INDICTMENT OF NINE PERSONS FOR CONSPIRACY TO OBSTRUCT JUSTICE

This memorandum is submitted in connection with the attached indictment, which the Special Group proposes to submit for final consideration by a Special Grand Jury in the Southern District of New York on May 13, 1959.

The proposed indictment charges 9 defendants and 51 co-conspirators with a conspiracy to obstruct justice and defraud the United States, in violation of Title 18, U.S. Code, Section 371. It also charges three of these defendants with the substantive crime of perjury, in violation of Title 18, U.S. Code, Section 1621.

All of the crimes stem from the defendants' concerted and unlawful interference with the Federal Government's attempts to investigate the meeting held at Apalachin, New York, on November 14, 1957.

The recommended prosecution is an attempt to strike directly at the heart of an important criminal syndicate. As set forth in the Special Group's February 10, 1959 Report to the Attorney General, obstruction of justice is often the primary crime of the large modern syndicate. Successful prosecution of that obstruction is an important step in attacking the government of the underworld.

## The Apalachin Meeting

On Thursday, November 14, 1957, a group of more than 60 persons congregated from all over the United States and Cuba at the home of Joseph Barbara, Sr., in a little town in upstate New York,

The day before, November 13, 1957, alert New York State Troopers grew suspicious that something was about to happen. After preliminary investigation the afternoon and evening of November 13 and the morning of November 14, the Troopers drove to the Barbara parking area at 12:40 PM November 14. In sight of the co-conspirators they began to copy license plate numbers.

The Troopers left quickly, and at 12:50 PM set up a roadblock some distance away, but at a point where cars entering and leaving the Barbara property would have to pass. At 1:15 PM, soon after the roadblock was set up, one co-conspirator, Guccia, drove through it. At 1:20 PM he returned to the Barbara property, apparently to advise the others of what was happening.

A large group of persons left the Barbara grounds that afternoon and evening, some on foot thousands of miles from home, and some running through soon the woods after the roadblock was discovered. The Troopers rounded up as many of the persons as possible. Thereafter, commenced probably the most comprehensive federal, state and local investigation ever conducted of a single event.

### Federal Investigation

Federal investigation of the activities of many of the Apalachin attendants had already been going on for some time. Beginning in 1956, intensive grand jury investigations in the labor management, garment—trucking and narcotics fields had been undertaken in the Southern District of New York. A number of co-conspirators at Apalachin and many of their associates had testified before these Grand Juries; the co-conspirators also knew that many of their businesses were under investigation.

Clearly these investigations were of serious concern to many of the Apalachin attendants and undoubtedly influenced their conduct on November 14, 1957, although they may not have known of the narcotics investigation until some time after Apalachin.

As soon as information was obtained about the Apalachin meeting, grand juries in the Southern District of New York commenced (and to this day have continued) an intensive investigation into all aspects of that meeting.

# Obstruction of Justice

In spite of the intensive Federal investigation in the Southern District of New York, assisted by Federal Grand Juries and investigating agents all over the United States, defendants' obstructive tactics have successfully prevented any disclosure of the true purpose of the meeting. One co-conspirator, DeSimone, has already been convicted of Federal contempt; the proposed indictment charges three additional instances of perjury. Other instances of

perjury or obstruction will be proved at trial, such as those by co-conspirators

Guccia, Carmone, Zicari and Scozzari, set forth in Attachment B to this

Memorandum.

These same defendants and co-conspirators have also obstructed a large number of other inquiring bodies, including Federal, state and local commissions, legislative committees, licensing authorities, grand juries, police, revenue agents, and other investigating agents. Many state contempt convictions and indictments have been returned, and licenses of various kinds have been revoked. While most of these acts of obstruction are not themselves Federal crimes, they do evidence the unlawful conspiracy.

# Summary of the Conspiracy

It is a fair inference from all the facts that as soon as they learned that their meeting had been discovered, these defendants and co-conspirators unlawfully combined to obstruct Federal justice by whatever means was necessary, including perjury and obstruction of justice.

The primary question, as in any conspiracy case, is whether defendants' unlawful conduct was the result of conspiracy or of individual action. Because the alleged conspiracy has up to now successfully blocked any witness to the meeting from disclosing the truth, the evidence of the unlawful agreement is entirely circumstantial.

A summary of the admissible evidence bearing on conspiracy is set forth in Attachments A-H to this Memorandum. These facts can be considered

under the following categories of uniform or joint conduct, evidencing agreement rather than individual action:

# 1. Uniform denial that the meeting was planned:

All of the defendants, and all but four of the persons who admit presence at the meeting, claim they just happened to be there, either to visit a sick friend or for some other reason of their own and without prearrangement (Attachments A and B).

The evidence that the meeting was planned for some time in advance is so overwhelming as to make these denials clearly false, and indicate that the denials are the result of an agreement after the roadblock was discovered (Attachment C).

# 2. Uniformity of "sick friend" alibi:

Before having a chance to develop more refined alibis, seven of the nine defendants and twenty of their co-conspirators told the same false "visiting a sick friend" story (Attachment D). Upon consideration of its obvious weaknesses, many of these persons modified or switched alibis (Attachments A and B).

Most alibis given at the time of the meeting were stated in the presence of many other persons, particularly at the Vestal State Trooper Barracks, where attendants were milling around together. This acquiescence in the false stories of others is further evidence of group action to conceal.

What to tell the Troopers and how to act seems also to have been the subject of agreement after the roadblock was discovered.

### 3. Joint action to conceal presence at the time of the meeting:

As soon as the roadblock was discovered, defendants LaDuca and Montana and several co-conspirators affirmatively participated in group action for the purpose of concealing the presence of some of the persons at the meeting (Attachment E). Some of these attempts probably met with success (Attachment F).

## Cooperation in specific false alibis:

Seven defendants and fourteen of their co-conspirators developed specific false alibis (other than visiting a sick friend) for their presence at or absence from the meeting. Eight defendants and sixteen co-conspirators support these demonstrably false alibis, some changing their earlier stories to do so (Attachment G; Attachments A and B).

# 5. Uniform denial that any common business was discussed at the meeting.

All defendants and all the co-conspirators who have made any statements about the meeting deny that there was any overall joint purpose or purposes, or that any common business was involved.

The evidence that the meeting was carefully planned and included persons from all over the United States and Ouba, warrants on inference that some common business was considered. Were the

attendants long criminal records and associations, and such recent events as the Anastasia murder, problems in the narcotics traffic, the garment/trucking investigation and threats to the Cuban gambling business admissible evidence at trial, it could probably be further established that such propose was criminal.

Because of the success of the conspiracy to date, there is not sufficient admissible evidence to establish any specific business or purpose for the meeting.

### 6. Evidence of association:

Most of the attendants had close business and family relationships and a history of association with others present.

These relationships and associations are of relatively minor probative value and are not summarized in the Attachments, although they do bear upon the likelihood of joint rather than individual action.

In addition, groups came to the meeting together, stayed at hotels and motels with other groups and left with still other groups, further suggesting group or concerted action (Attachment H).

Attachments A - H set forth only a very small part of the admissible evidence, primarily that relating to group action evidencing conspiracy.

As the result of unprecedented investigation by Federal, state and local authorities, there is probably well over 50,000 pages of sworn testimony,\*

\* For example - (continued on next page)

plus many thousands of pages of witnesses' statements, police reports and documentary evidence.

\* (footnote continued) sworn testimony alone has been adduced by at least the following:

Grand Juries: SDNY (three)

SD Cal.

ND III.
WDNY
Tioga Co., NY
New York Co., NY
Mercer Co., NJ

Immigration & Naturalization Service

Internal Revenue Service McClellan Committee

N. Y. State Commission on Investigation

N. Y. Legislative Watchdog Committee

N. Y. State Liquor Authority

# The Defendants

The nine co-conspirators named as defendants were selected because of the weight of the admissible evidence of their active participation in the conspiracy and specific acts of obstruction,

The important evidence in this connection is set forth in Attachments

A and B. However, because of the volume of the evidence, its circumstantial character and the number of the co-conspirators, it is difficult for one not acquainted with the facts to understand the significance of each terse statement. Accordingly, for the nine persons named as defendants, the following is a brief narrative factual summary.

### Profaci - Magliocco

Joseph Profaci and Joseph Magliocco are brothers-in-law living in Brooklyn. Their alibi is that Joe Profaci had to make a business trip to the Wilkes Barne area, and because of a bad knee asked Magliocco to drive him. They left November 13 but took a wrong turn in the road, finally ending up near Endicott.

Upon learning that he was so near Barbara's home, Profaci decided he would visit Barbara, who was a friend of Profaci's recently deceased employer. Profaci and Magliocco stayed at a motel the night of November 13 and drove to Barbara's in the morning, arriving some time before noon on November 14. Magliocco stayed outside in the car the whole time. Profaci went in and spake for about one half hour about his own and Barbara's health

seeing only one old man in the house and less than five people outside.

There is positive evidence that the Apalachin meeting was a planned event, and the Profaci/Magliocco alibis for being there are geographically and logically most unlikely, especially in light of their attendance at a similar meeting in Cleveland in 1928 (at which time Magliocco successfully gave the same excuse). Indeed, it is possible to infer from the facts that Profaci and Magliocco left Brooklyn on their way to Barbara's to attend the important preliminary meeting held there the late afternoon and evening of November 13.

There are many important inconsistencies in the alibis given by each, both with other statements by each and with each other. For example, Magliocco has stated that after November 14 Profaci told him that he had intended to see Barbara all along, and would have seen him the next day had they not gone to Apalachin November 14. In addition to these, however, there is evidence that each testified falsely with respect to material parts of his alibi.

Magliocco's claim that he did not know he was at the Barbara house until after they left and were stopped by State Troopers is refuted by his own admissions made at other times. Profaci has testified that he spoke to Magliocco about going to Barbara's house.

As to Magliocco's testimony that he sat outside in the car the
whole time Profaci talked to Barbara, a number of witnesses (including
State Troopers) verify that there was no person where Magliocco claims to

have been sitting and waiting for Profaci to come out.

Profaci also testified falsely with respect to material parts of the alibi. He supports Magliocco's false statement that he was outside in the car the whole time. In addition, there is very substantial evidence that there were a great many other people in the Barbara house while he was there, although he claims to have seen only one old man. Of lesser significance, he lied in his denial of being interviewed by the State Troopers at the Vestal Barracks and that he had never previously been in the Binghamton area.

As to the Profaci/Magliocco alibi of getting lost, earlier statements by each indicate that the "getting lost" alibi was thought up some time after the event.

# Turrigiano

Turrigiano is clearly one of the lesser important Apalachin attendants and would not be included as a defendant but for his positive, clearly demonstrable perjury.\* He is a long trusted companion of Barbara,

<sup>\*</sup> Indeed, only a small number of persons at Apalachin were really key leaders in the syndicate. Most of the persons present were acting as chauffeurs, bodyguards, traveling companions and trusted servants. In this category are such persons as Cannone, Guccia and Zicari, each of whom has affirmatively taken enough positive action to qualify as a defendant, but each of whom is obviously of such lesser stature in the group that his inclusion as a defendant would detract from the impact of the prosecution.

obviously invited to attend to help with running the large affair. Outside caterers, chauffeurs and the like could not be trusted.

Turrigiano's claim is that he was just visiting his sick friend Joseph Barbara. He states that he was present with Barbara the whole afternoon and evening of November 13 and claims that absolutely no one else was present, except on occasion Mrs. Barbara and the two Barbara children.

The preliminary meeting of November 13 is a key part of the Apalachin picture and Turrigiano's denial of the presence of other persons is most important. There is much independent evidence of the presence of other persons in the Barbara home on November 13. One co-conspirator, Evola, at an early point admitted having been there. The Troopers observed 3 cars in the Barbara driveway and 9 persons are known to have arrived in those cars. In addition, 4 other persons present probably saw either Barbara Sr. or Jr. at the house to pick up the keys to their rooms at the Parkway Motel. The handyman, Norman Russel, testified that he was liming the lawn in the late afternoon or early evening of November 13 and looked through a window and saw six or eight strangers in one room of the Barbara home. The maid made up four guest beds early the following morning, and saw four or five guests at breakfast.

There are other lesser important but also false aspects to Turrigiano's testimony. Most significant of these is his modification of his original alibi after Guarnieri was immunized by the New York State Crime Commission.

Guarnieri there testified that he met Turrigiano the morning of November 14.

He said that Turrigiano told him he was going to see Barbara, and Guarnieri went along to deliver some shirts he happened to have for delivery to Barbara. Turrigiano's modification, of course, supports the Guarnieri alibi. In addition, Turrigiano asserts that he and Zicari were each busy making coffee as an excuse for not seeing or hearing anything at the meeting. This statement is denied by Sciandra. However, somewhat inconsistently, Turrigiano does claim to remember having seen Osticco repairing the Barbara water pump, thereby furnishing some support to the Osticco false alibi, discussed below under Osticco.

### Bufalino

Bufalino is clearly one of the more important of the Apalachin attendants. Before Apalachin, he was a substantial businessman, holding a position of prominance in his community

In late April, 1956, Bufalino and defendant Osticco went to Cuba with William Medico, a key person in the syndicate but one who cannot be proved to have been at the Apalachin meeting. On November 6, 1957, Bufalino and Medico flew up to see Barbara, the day after Barbara ordered the meat for the Apalachin meeting November 14. This meeting was undoubtedly related closely to the purpose of the November 14 meeting.

Bufalino seems to have been in charge of insuring that the Pacific

Coast Apalachin attendants were taken care of. Hotel registers and other

evidence prove that he met co-conspirators DeSimone (an attorney), and

Scozzari from Los Angeles and two others, Gerrito and Lanza from the San Francisco area, in New York on November 13. (The latter two were probably at the Apalachin meeting but cannot be proved to have been present).

Bufalino drove all four to Scranton where he was host to them and co-conspirator Civello from Texas at the Hotel Scranton the night of November 13. He drove at least DeSimone, Scozzari and Civello to the meeting on November 14. He was stopped by the Troopers taking another group away from the meeting, including top leaders Vito Genovese and Catena.

Bufalino attempts to explain all this away by claiming that he just happened to meet his old Army friend DeSimone (whom he hadn't seen in years), in New York an November 13, and invited DeSimone to visit a sick friend with him. He states that DeSimone invited the others, who were strangers to him, and most of whose names Bufalino could not even remember. He claims also that he took the Vito Genovese group from Apalachin all the way to the Newark Airport, thereby stranding his western guests, simply because one of the Genovese group, Oliveto, asked for a hitch for himself and three others. Bufalino claims not to have known the three other persons whom Oliveto asked him to drive away from the meeting.

Bufalino testified falsely in several respects, most important being his claim not to have seen Alaimo at the meeting. This supports Alaimo's alibi of not being present, proved false by the Troopers' positive identification of Alaimo as being at the meeting and defendant Osticco's original admission

to having driven up with him (Bufalino and Alaimo are cousins of Sciandra and all three are in the garment business together).

Bufalino further denies seeing thirteen friends who can be proved to have been present at Apalachin, one of whom, Guarnieri, states that he talked to Bufalino at the meeting.

### LaDuca

Defendant LaDuca is probably not of the same rank as people like Profaci and Montana but he appears to have held a position of importance in the group.

LaDuca's alibi is that he was not present at the meeting. He claims that there was good hunting in the area and he liked to take pictures of deer, and therefore was seeking to purchase land.

The proof of LaDuca's presence on November 14 at the important preliminary meeting on November 13 is most compelling. Co-conspirator Stanley Valenti admits to having seen LaDuca at the meeting. The Troopers also observed LaDuca's pink Lincoln at the Parkway Motel on both days and at the Barbara home November 13. His car was found hidden in the Barbara barn Sunday, November 17.

Although LaDuca did not register at the Parkway Motel and denied staying there, he was identified as a guest by the proprietor, and made a telephone call to his home area from the motel the morning of November 14; his torn Hotel Lexington and Hotel Utica bills were also found in the waster-

basket in his room at the motel.

When he was stopped by the Troopers and gave his alibi of hunting and looking for land, one of the Troopers noted the cockleburrs and dampness of his clothing, indicating that he had escaped through the woods; when the Trooper said that LaDuca must have been doing a lot of hunting that day, LaDuca began to laugh.

Other evidence indicates that LaDuca, Carlisi, Scalish and DeMarco, all of whom had been at the Parkway Motel the night of November 13, stopped a taxicab at a point indicating they had come through the woods from the Barbara home, and instructed the taxicab driver to take them to Owego via a back road. On arrival in Owego and without stopping for any purpose, they told him to take them to Endicott, and similarly upon arrival in Endicott asked to be taken to Vestal where he dropped them near a restaurant. They took a short cut past the restaurant to the Parkway Motel and all got into Scalish's car which had been left there. They drove off and were then stopped by the Troopers.

After the Troopers found his car hidden in the Barbara barn on November 17, an attorney called asking if the car could be picked up by somebody other than LaDuca. The Troopers required that LaDuca claim it personally, which he did, stating that his car had been stolen.

### John C. Montana

John C. Montana is probably one of the key men at the Apalachin meeting. Until his presence there was learned, he was a first citizen of Bufallo, having won the award as Buffalo Citizen of the Year in 1956, and being a member of the most prominent and exclusive clubs and societies.

Montana's alibi is that the brakes and windshield wipers of his new Cadillac broke down about fifteen miles from the Barbara house. He believed that Barbara had repair people available and so drove the distance to Barbara's for assistance. On arrival, Mrs. Barbara gave him a cup of tea and he spoke to Barbara for a few minutes about his car trouble when all of a sudden somebody announced "roadblock." He attempted to leave through the woods because he knew it would be embarassing to be seen under such circumstances.

The Barbara maid, Mrs. Russell, directly contradicts Montana's testimony, stating that she heard him apologize to Barbara Sr. for arriving late and explain his lateness because of car trouble along the way.

In addition there are numerous other material false statements in Montana's testimony. He had many friends and relatives present at the meeting. Several co-conspirators claim to have been in the kitchen talking to Barbara at the same time that Montana said he was there and did not see them. He has on various occasions given different explanations for attempting to leave the meeting through the woods, and when stopped by State Trooper Croswell, Montana asked if Croswell would let him get his car and leave;

he said he knew Croswell's superior, who would help Croswell. In addition to its obvious significance, this statement indicates that Montana's car had previously been fixed; in fact, he drove away from the Barbara house after being questioned.

Montana traveled with a relative, Magaddino, from whom he attempted to disassociate himself by saying that he had to take Magaddino on the trip because he was a relative. In fact, their association goes back over many years, Montana having even testified in support of Magaddino's brother at an early Immigration hearing, and telling of a relationship with Magaddino going back to 1923. He also tried to disassociate himself from Medico.

Magaddino further indicates the falseness of Montana's testimony by giving several different alibis on different occasions, none of which is consistent with Montana's. Since the last of these, Magaddino has been a fugitive.

There are minor discrepancies in Montana's explanation for his trip to New York.

### Osticco

Osticco's present alibi is that he left Pittston 8:00 AM November 14, and drove up with Sciandra to repair a broken water pump on the Barbara property. The trip took about two hours. He was met by one of the handymen on arrival and worked on the pump the whole day. He saw no one except the handyman, and at dusk someone asked him if he was going

to Scranton. He agreed to give this man and two others a ride, recalling only one whose name was "Frank."

Osticco's alibi is clearly false. He is Transportation Manager of Medico Industries (at least in title) and is not a plumber. Even if he were, it is unlikely that he would have taken a two-hour drive traveling with two friends (not one as he claims) on a working day, when Barbara himself had two handymen to do this kind of work. In addition, handyman Russel has testified that Barbara never had outside plumbers except on one occasion when a major repiping job was necessary.

Handyman Blossom testifies that he was the first to discover the broken pump at 9:00 AM, one hour after Osticco allegedly left Pittston; he did not tell anyone else at that time, and didn't call Osticco. Blossom also states that he worked on the pump alone during the day.

Furthermore Osticco telephoned the Barbara home on November 13, 1957, and left early on November 14 with both Sciandra and Alaimo as passengers. The broken water pump was not known November 13, and there is no indication of a telephone call in the morning before 8:00 AM November 14, nor would it have been likely that he could have arranged for Sciandra and Alaimo to join him on such short notice on a working day.

In addition to this false pump repair alibi, Osticco now denies that Alaimo drove up with him. He originally admitted being accompanied to Apalachin by Alaimo and Sciandra, but changed this to denying Alaimo"s

presence after Alaimo made known his alibi; the Troopers positively identify Alaimo as being at the meeting.

Originally Osticco told the Troopers that he had come to Apalachin to visit a sick friend.

### Riela

Riela claims that he met Joseph Barbara at the wedding of a doctor 7 or 8 years before the Apalachin meeting. He saw and heard nothing about Barbara until the early spring of 1957, when the doctor told him that Barbara was sick.

Six or seven months later, on the morning of November 14, and without further discussion with anyone, he decided that he would go to visit Barbara. He got directions from the doctor, and drove 4 or 5 hours from Orange, New Jersey, to Apalachin. When he arrived, Barbara did not recognize him and did not introduce him to others; he therefore promptly left the meeting.

The doctor denies material parts of Riela's alibi. In addition, Riela and Bonanco operate the Airport Motel in Newark. Two of the other Apalachin attendants, Coletti from Colorado and Zito from Illinois, stayed at this motel November 12 - 14. Their registrations bear the notation "Tony's friends", Tony being Riela's first name.

Riela was convicted of contempt for refusing to answer questions about Apalachin to the Tioga County Grand Jury.

## Sciandra

Sciandra denies seeing several friends whom we can prove to have been at the meeting. In addition, although he had originally said that he had just come to visit a sick friend, he changed his story after learning of the Osticco pump repair alibi and now supports that folse story (see comments under Osticco).

Sciandra also falsely states that Alaimo was not present at the meeting, although in fact he drove up to the meeting with Alaimo, and Alaimo was positively identified by the Troopers.

Sciandra denies that he heard or saw anything at the meeting, claiming to have been making coffee the whole time. This is inconsistent with
the alibis of Turrigiano and Zicari, who both claim that they were making
coffee together and that Sciandra wasn't helping.

Sciandra hitchhiked home, indicating that he had not just come on a social visit with his friend Osticco.

# The Law

The law is clear that if two or more persons unlawfully agree to do some illegal act such as obstruct justice or commit perjury, and commit an avert act pursuant thereto, they have entered into an unlawful conspiracy in violation of Title 18, U.S. Code, Section 371. As earlier indicated, the real question is whether the evidence measures up to the quantum of proof necessary to indict.

It makes no difference that there is not yet sufficient admissible evidence to establish whether the conspirators met at Apalachin for some specific criminal purpose or purposes. It is sufficient to establish, as we can, that there was a proper grand jury investigation into the meeting; that these defendants and co-conspirators conspired to prevent Federal and state law enforcement agencies from ascertaining any material truthful information relating to the meeting; and that an overt act was committed pursuant thereto. To hold otherwise would mean that defendants' success in preventing penetration of the meeting would be rewarded by the Government's inability to prosecute both whatever other crimes are concealed and the obstruction which successfully concealed those crimes.

The general principles applicable to the crimes of conspiracy, obstruction and perjury are discussed in Attachment I.

Attachment J is a memorandum of law discussing the form of the indictment itself.

Attachment K discusses the rule of the <u>Grunewald</u> case, which is not considered applicable here because no statute of limitations issue is involved in this case, and because the primary objects of the conspiracy charged in the proposed indictment are obstruction of justice and perjury.

# Conclusion

Although the success of the conspiracy alleged in the proposed indictment will make the trial a long and difficult one, the evidence is more than sufficient to warrant its return.

Dated: New York, N. Y. May I, 1959

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