The Teaparty Theory of Conspiracy

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II. Obstruct the Due Administration of Justice

In general, a conspiracy is considered a complete offense at the time of the unlawful agreement of two or more persons to act in concert, and is terminated either with the completion of the object of the conspiracy or with the last overt act in furtherance of it, in those jurisdictions which require an overt act as an element of the offense. For this reason the Federal courts in several cases made the distinction between a "continuing conspiracy" and a "conspiracy with continuing objects." This discussion will be limited to the development of criminal conspiracy in the United States Federal Courts and will be particularly focused upon those cases in which a conspiracy to obstruct the due administration of justice is charged. This particular charge has been in-
creasingly utilized during the past few years to extend the statute of limitations by charging a "conspiracy to conceal"; the concealment as an attempt to defeat prosecution is alleged to obstruct the due administration of justice. One of the elements which has been considered indispensable to an indictment for a conspiracy to obstruct the due administration of justice is knowledge; e.g., knowledge that justice was or will be administered. In Pettibone v. United States the defendants were charged with encouraging mine workers to disobey an injunction and the Supreme Court in reversing their conviction stated:

It seems clear that an indictment against a person for . . . endeavoring to influence or impede a witness or officer in a court of the United States in the discharge of his duty, must charge a knowledge or notice, on the part of the accused, that the witness or officer was such . . . such obstruction can only arise when justice is being administered. Unless that fact exists, the statutory offense cannot be committed . . . and without such knowledge or notice, the evil intent is lacking.7

The majority of cases which have interpreted 18 U.S.C. 1503 have involved a defendant or group of defendants who have attempted to bribe or intimidate witnesses or officers of the court. Within this context several significant problems emerged. The first of these concerned what Federal activities might be included within the "due administration of justice" concept and the necessity of alleging within the indictment the precise Federal activities which the conspirators agreed to obstruct. In Etie v. United States9 the defendants were charged with a conspiracy to obstruct the due administration of justice by inducing certain witnesses by threats of violence to leave the jurisdiction of a Texas District Court. The defendants urged that the indictment was faulty on the grounds that it failed to allege which of several pending cases were involved, and in affirming their conviction the United States Court of Appeals for the Fifth Circuit held: "It is unnecessary to limit the conspiracy to any particular case, because it is conceivable that the conspirators may have more than one case in mind. The indictment may be as broad as the unlawful agreement."10 Although the opinion

7 Cited supra, note 5.
8 Id., at 206-207.
10 Id., at 115.
in the *Etie* case *supra*, suggested a possible extension of the *Pettibone* criterion of knowledge, there was no doubt that there were cases pending in the District Court and hearings before its Grand Jury. The government unsuccessfully attempted to extend the obstruction of justice charge to encompass a threat by a defendant to kill another if he divulged incriminating information to the Federal Bureau of Investigation; the court in *Scoratow v. United States* held: "The act must be in relation to a proceeding pending in the Federal Court. And a proceeding is not pending until a complaint has been filed with the United States Commissioner." In *United States v. Solow* the defendant was charged with violating Section 1503 by destroying four letters in order to prevent their production before a Grand Jury. The defendant, relying upon the *Rosner* case in which it was held that it was not obstruction of the administration of justice to encourage a witness not to appear, when the witness was not under subpoena to appear, urged that no subpoena *duces tecum* had been issued for the letters and hence their destruction could not be obstructing the due administration of justice. The court in denying this contention held:

The indictment alleges the defendant knew the grand jury was conducting the aforesaid investigation . . . and had reason to believe and did believe that he would be called as a witness before the grand jury and that the production of the correspondence would be ordered by it.\(^\text{14}\)

The court in distinguishing the *Solow* case from the *Rosner* case held that in the latter, the witness could always be subpoenaed if the Grand Jury needed his testimony, while in the *Solow* case, the destroyed documents could never be recovered.

The District Court for the Southern District of New York followed the pattern it had set in the *Solow* case in the case of *United States v. Siegel* the following year. In the *Siegel* case the defendant was charged with a conspiracy to obstruct the due administration of justice by influencing a prospective witness before a grand jury to destroy the stenographic notes she had taken, to give false testimony before the Grand Jury, if she was called to testify, and to substitute other records in the place of those she had destroyed. The Grand Jury was investigating the testimony given by Matusow and his subsequent recantation of that testimony. The indictment charged that the defendant knew that the person he influenced was to be a witness before that particular Grand Jury. The court held that although the witness had not yet been called to testify, the defendant had knowledge that she would be called

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13 *United States v. Rosner*, 10 F. 2d 675 (2 Cir. 1926).
and that such knowledge constituted sufficient notice. The court stated:

No doubt it is necessary to allege the defendant knew that there was some inquiry in which these papers might be required or that the grand jury had requested them, or perhaps both. However, such knowledge is amply and fully spelled out in this indictment.\textsuperscript{16}

A further clarification of obstructing the due administration of justice, as this phrase appears in the final paragraph of Section 1503, was developed by the United States Court of Appeals for the Ninth Circuit in \textit{Haili v. United States}.\textsuperscript{17} The facts of this case are as follows: One Mrs. Bruce had been convicted of acquiring and obtaining marijuana cigarettes. The sentence imposed was suspended and she was placed on probation for a period of three years. One of the conditions of this probation was that she was to associate only with persons approved by the probation officer. The probation officer explicitly directed her to keep away from the defendant, who himself had been convicted and served a sentence for a narcotics offense. The defendant knew of the terms of the probation, but nevertheless did see and associate with Mrs. Bruce. In consequence of this the probation officer moved to revoke Mrs. Bruce's probation and accordingly the suspension of sentence was set aside and she was committed for imprisonment. The defendant was then charged with obstructing the due administration of justice by knowingly assisting Mrs. Bruce in the violation of probation. In reversing the defendant's conviction for this offense, the Circuit Court held:

Speaking generally, it might be said that many matters other than proceedings pending in court have to do with the administration of justice. Thus, the gathering of evidence and procuring statements of witnesses by the Federal Bureau of Investigation is in a general way a functioning of the Federal government with respect to the administration of justice. Yet it has been held that one who threatens to kill another if he gives any information to the Federal Bureau of Investigation cannot be found guilty under Section 1503, Title 18. \textit{United States v. Scortow}, D.C.W.D. Pa., 137 F. Supp. 620, 621. There the court noted that the phrase 'due administration of justice' in Section 1503 was 'qualified and limited by the enumeration of specific judicial functions, concerned with the 'administration' of justice.' Also, in a general way, it can be said that the supervision of a convicted prisoner in a penitentiary is a part of the administration of justice, if that term is given a very wide meaning. We would be surprised, however, if it were held that conduct designed to encourage a prisoner to escape from a penitentiary could be punished under Section 1503.

The particularly defined instances of violation of that section

\textsuperscript{16} Id., at 376.  
\textsuperscript{17} 260 F. 2d 744 (9 Cir. 1958).
all relate to conduct designed to interfere with the process of arriving at an appropriate judgment in a pending case and which would disturb the ordinary and proper functions of the court. In *Catrino v. United States*, 9 Cir., 176 F. 2d 884, 887, this court quoted with approval the statement that the statute 'is designed to protect witnesses in Federal courts and also to prevent a miscarriage of justice by corrupt methods.'

Interfering with witnesses, jurors, and parties operates to bring about a miscarriage of justice in specific cases. Under the rule of *ejusdem generis*, the general words which follow the specific words in the enumeration of prohibited acts in the section here involved must be construed to embrace only acts similar in nature to those acts enumerated by the preceding specific words. See *Sutherland, Statutory Construction, 3d ed.*, Sections 4908-4909. We are of the opinion that neither the language of Section 1503 nor the history of its interpretation by the courts support the conviction of this appellant.\(^{18}\)

Thus it appears that the *Pettibone* decision is still the law sixty-five years later, and that in order that a defendant may be convicted for obstructing the due administration of justice, it is necessary that he have knowledge that such justice is being administered in a specific case and his acts must be such as are to intimidate, coerce, or influence witnesses or parties to these proceedings or destroy materials that he knows will be demanded of him in these proceedings.

### III. CONSPIRACY TO CONCEAL

Because of the essentially vague nature of a charge of conspiracy, the Federal courts have frequently repeated the necessity for care in framing the indictment. The conspiracy statute is a criminal statute and must be strictly construed. The indictment for the offense of conspiracy must contain all of the essential elements of the crime. Chief Justice Fuller in the *Pettibone* case stated:

> The general rule in reference to an indictment is that all of the material facts and circumstances embraced in the definition of the offense must be stated, and if any essential element of the crime is omitted, such omission cannot be supplied by intendment or implication. The charge must be made directly and not inferentially or by way of recital.

> The conspiracy must be sufficiently charged, and cannot be aided by averments of acts done by one or more of the conspirators in furtherance of the object of the conspiracy.

> This indictment does not in terms aver that it was the purpose of the conspiracy to violate the injunction referred to, or to impede or obstruct the due administration of justice in the Circuit Court; but it states, as a legal conclusion from the previous allegations, that the defendants conspired so to obstruct and impede . . ., but the indictment nowhere made the direct charge that

\(^{18}\) *Id.*, at 745.
the purpose of the conspiracy was to violate the injunction or to interfere with the proceedings in the Circuit Court.\(^\text{19}\)

This requirement of a direct and explicit allegation in the indictment was reiterated by the United States Court of Appeals for the Fourth Circuit in *Asgill v. United States*\(^\text{20}\) in which the court held that merely alleging the means intended to be used cannot be taken inferentially to support a conspiracy indictment, unless the essential elements of unlawful agreement and purpose have been fully and clearly stated. The court further stated: "When the charge is laid, however, the terms of the agreement must be set forth therein and until this is done evidence of the conduct of the parties cannot be held to be competent or responsive to the then alleged agreement."\(^\text{21}\) In *Direct Sales Co. v. United States* the Supreme Court affirmed the position it had taken in the *Pettibone* case fifty years prior and stated:

Without the knowledge, the intent cannot exist. . . . Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. . . . This, because charges of conspiracy are not to be made out by piling inference on inference, thus fashioning . . . a dragnet to draw in all substantive crimes.\(^\text{22}\)

In *Ingram v. United States* the Supreme Court again considered the intent element in a conspiracy indictment and after quoting with approval its holding in the *Direct Sales Co.* case stated: "Conspiracy to commit a particular substantive offense cannot exist without at least the degree of criminal intent necessary for the substantive offense itself."\(^\text{23}\) Perhaps the most eloquent plea for the limitation of prosecutions for criminal conspiracy was written by Justice Jackson in his concurring opinion in *Krulwich v. United States*\(^\text{24}\) in which he stated:

The modern crime of conspiracy is so vague that it almost defies description. Despite certain elementary and essential elements, it also, chameleon-like, takes on a special coloration from each of the many independent offenses on which it may be overlaid.\(^\text{25}\) Most other countries have devised what they consider more discriminating principles upon which to prosecute criminal gangs, secret associations and subversive syndicates.\(^\text{26}\)

However, even when appropriately invoked, the looseness and pliability of the doctrine present inherent dangers which should be in the background of judicial thought whenever it is sought

\(^{19}\) Pettibone v. United States, *supra*, note 6, at 202-203.

\(^{20}\) 60 F. 2d 780 (4 Cir. 1932).

\(^{21}\) *Id.*, at 785.

\(^{22}\) 319 U.S. 703, 711 (1943).

\(^{23}\) 360 U.S. 672 (1959).

\(^{24}\) *Krulwich v. United States*, *supra*, note 1.

\(^{25}\) *Id.*, at 446-447.

\(^{26}\) *Id.*, at 453.
to extend the doctrine to meet the exigencies of a particular case.\textsuperscript{27}

The importance of determining the duration of the conspiracy has been briefly discussed in terms of its impact on the statute of limitations and the admissibility of hearsay testimony. The distinction maintained in \textit{United States v. Irvin}\textsuperscript{28} between a "continuing offense" and "an offense the objects of which are continuing" has at least until recently been a convenient semantic distinction upon which prosecutors have been able to secure indictments. A typical example of a continuing conspiracy to conceal occurred in \textit{Rettich v. United States}\textsuperscript{29} in which the defendant was convicted of a conspiracy to assault and rob a mail truck driver and conceal the stolen registered mail for the purpose of keeping possession of the results of the robbery. The United States Court of Appeals for the First Circuit in affirming the conviction held that the conspiracy was a continuing one and continued through the acts of concealment.

In \textit{United States v. Perlstein}\textsuperscript{30} the defendants were charged with a conspiracy to influence, intimidate and impede witnesses in the District Court and before its Grand Jury in connection with its investigation of an illegal still which the defendants were operating in the Atlantic City Garbage Disposal Plant. The indictment alleged that the defendants knew and expected that certain persons were about to be called before the Grand Jury. The indictment further alleged as the overt acts in furtherance of the conspiracy seven telephone calls between the co-conspirators. The defendants contended that the indictment alleged that the conspiracy had been formed at a time long prior to the Grand Jury investigation and that under the ruling in the \textit{Pettibone} case knowledge of the proceedings was essential to the charge. The court in sustaining the conviction held that the agreement was a continuing conspiracy and that the last telephone call had been made after the Grand Jury proceedings had commenced. Circuit Judge Jones dissented on the grounds that the \textit{Pettibone} strict requirement of knowledge controlled and that since a conspiracy is complete at the time of the agreement, at which time no investigation was pending, the appellants were charged with committing an offense, which at the time specified by the allegations of the indictment, was uncommittable. Judge Jones commented in his opinion:

\begin{quote}
How thus can scienter be alleged or proven, when the thing whereof one needs to have knowledge does not exist.

Certain it is that the conspiracy statute . . . does not operate to withdraw the necessity for averment and proof of any of the
\end{quote}

\textsuperscript{27} Id., at 449.
\textsuperscript{28} 98 U.S. 450 (1878).
\textsuperscript{29} 84 F. 2d 118 (1 Cir. 1936).
\textsuperscript{30} 126 F. 2d 789 (3 Cir. 1942).
elements requisite to a charge of the substantive offense. What may be a common law crime to obstruct justice in a State Court is not germane to an interpretation of a Federal Statute, which only prohibits such in a court, as there is no federal common law.\textsuperscript{31}

Where there has been a direct concealment of a substantive offense, as in the \textit{Rettich} case, \textit{supra}, the courts have been faced with the question as to whether this concealment is an element of the substantive crime or of the conspiracy to commit the substantive crime. The Supreme Court in \textit{Fiswick v. United States}\textsuperscript{32} held that such concealment was merely the continuing object of an already terminated conspiracy. In the \textit{Fiswick} case the defendants were charged with a conspiracy to violate the Alien Registration Act of 1940 by concealing and misrepresenting their membership in the Nazi party. They had given false statements and encouraged others to give false statements in reports required of enemy aliens. The court in holding that such concealment did not constitute a continuing conspiracy stated:

Though the results of a conspiracy may be continuing, the conspiracy does not truly become a continuing one. \textit{U.S. v. Irvine.}
There was no overt act of concealment which followed the act of false statements. If the latter is permitted to do double duty, then a continuing result becomes a continuing conspiracy.\textsuperscript{33}

The \textit{Krulewitch} case, \textit{supra}, concerned the indictment of the defendants on a charge of violating the Mann Act and a conspiracy to violate the Mann Act. The government contended that hearsay testimony of statements made after the alleged object of the conspiracy had been attained was admissible because the defendants at that time were concealing their prior illegal conduct and that from such concealment one could imply a conspiracy to conceal. Such conspiracy to conceal being in force at the time referred to by the questioned testimony, it could be admitted under the hearsay exception. The court refused to accept the theory of an implied conspiracy to conceal and on this question, Justice Jackson concurred as follows:

I suppose no person planning a crime would accept as a collaborator one on whom he thought he could not rely for help if he were caught, but I doubt that this fact warrants an inference of conspiracy for that purpose. Of course, if an understanding for continuous aid had been proven, it would be embraced in the conspiracy by evidence and there would be no need to imply such an agreement.\textsuperscript{34}

Moreover the assumption of an indefinitely continuing offense would result in an indeterminate extension of the statute of limitations. If the law implies an agreement to cooperate in de-

\textsuperscript{31} \textit{Id.}, at 800-801.
\textsuperscript{32} 329 U.S. 211 (1946).
\textsuperscript{33} \textit{Id.}, at 216-217.
\textsuperscript{34} \textit{Krulewitch v. United States}, \textit{supra}, note 1 at 455-456.
feating prosecution, it must imply that it continues as long as prosecution is a possibility, and prosecution is a possibility as long as the conspiracy to defeat it is implied to continue.35

I do not see the slightest warrant for judicially introducing a doctrine of implied crimes or constructive conspiracies.36

The case of *Lutwak v. United States*,37 concerned the indictment of persons who were charged with a conspiracy to violate the War Brides Act and to conceal the fraudulent nature of the marriages which were entered into for the purpose of bringing into the United States alien spouses. The Supreme Court followed the reasoning in the *Krulewitch* case and in affirming the conviction held that the conspiracy to conceal was an element of the offense charged. Justice Jackson in his dissent underscored the circuitousness of reasoning that is prevalent in conspiracy convictions. The question upon which his dissent is based is whether the testimony of the spouses could be used to establish the conspiracy, or whether it was blocked by the privilege of married persons not to testify against each other. Justice Jackson stated:

The trial court could only conclude that the marriage was a sham from the very testimony whose admissibility is in question. The court's position seems to be that privileged testimony may be received to destroy its own privilege. We think this is not allowable, for the same reason one cannot lift himself by his own bootstraps.38

The problem of a conspiracy to conceal culminated in the case of *Grunewald v. United States*,39 decided by the Supreme Court in 1957. The petitioners had been indicted for a conspiracy to improperly influence employees of the Internal Revenue Service and with a conspiracy to conceal these acts. Paragraph seven of the indictment alleged that it was a part of the conspiracy that the defendants and co-conspirators would make continuing efforts to avoid detection of the fraud perpetrated. Paragraph thirteen alleged that it was a further part of the conspiracy that the defendants and co-conspirators at all times would misrepresent, conceal and hide the acts done pursuant to and for the purposes of said conspiracy. It is apparent that the indictment was framed to avoid the pitfalls of the *Krulewitch* indictment. Here there was no attempt to deduce a conspiracy to conceal from another conspiracy to violate a federal law. In reversing the conviction and returning the case for a retrial, the Supreme Court held:

Acts of covering up, even though done in the context of a mutually understood need for secrecy, cannot themselves constitute

35 *Id.*, at 465.
36 *Id.*, at 456.
37 344 U.S. 604 (1953).
38 *Id.*, at 662.
proof that concealment of the crime after its commission was part of the initial agreement among the conspirators.

In *Krulewitch* it was urged that a continuing agreement to conceal should be implied out of the mere fact of conspiracy, and that acts of concealment should be taken as overt acts in furtherance of that implied agreement to conceal. Today the government merely rearranges the argument. It stated that the very same acts of concealment should be used as circumstantial evidence from which it can be inferred that there was from the beginning an 'actual' agreement to conceal.

By no means does this mean that acts of concealment can never have significance in furthering a criminal conspiracy. But a vital distinction must be made between acts of concealment done in furtherance of the main criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose of covering up after the crime. Prior cases in this court have repeatedly warned that we will view with disfavor attempts to broaden the already pervasive and wide-sweeping nets of conspiracy prosecution.40

The logic of the *Krulewitch* case and the *Grunewald* case was applied by the District Court for the Southern District of New York again in the case of *United States v. Peronne*41 the following year. The petitioners were convicted of a conspiracy to possess and transport across state lines woolens which had been stolen from interstate shipments. The court in holding that there was a continuing conspiracy through the concealment of the stolen goods stated:

In the case at bar the acts of the conspirators which took place subsequent to the completion of the delivery on May 27 are not merely attempts to conceal a crime already committed, as was the case in *Grunewald* and *Krulewitch*. They were affirmative steps in pursuance and furtherance of the conspiracy charged.42

The United States Court of Appeals for the Second Circuit distinguished the case of *United States v. Klein*43 from the *Krulewitch* and *Grunewald* rational. The petitioners were charged with a conspiracy to defraud the Treasury Department of income taxes by making entries in the corporate books so as to conceal the true ownership and compensation of the co-conspirators and with filing false income tax returns to accomplish the same objectives. The indictment further alleged that the petitioners agreed that they would conceal and continue to conceal the nature of their business activities and the source and nature of their income. The court, apparently on the theory that the concealment was an integral part of the offense to defraud, concluded that this was not a subsidiary conspiracy, but was a continuing conspiracy and on this basis upheld the conviction.

40 Id., at 402-404.
42 Id., at 259.
43 247 F. 2d 908 (2 Cir. 1958).
The Supreme Court in *Forman v. United States* again was faced with a conspiracy to conceal. The petitioners operated a pinball machine business and from the proceeds of this business held out income which they failed to report on their federal income tax returns. The statute of limitations had expired on the tax evasion offense and the petitioners were indicted for a conspiracy to defraud the United States by fraudulently making false statements to the Treasury Department in order to conceal their true income. The statements had been made after the returns were filed and the statute of limitations did not bar a conviction for conspiracy. The case was heard by the District Court prior to the Supreme Court’s opinion in the *Grunewald* case and at the request of the defendants the charge to the jury was based on the request that a conviction could not be obtained unless the jurors found a subsidiary conspiracy. The government did not object to this request and it was submitted to the jury in that form. Essentially the instructions were the same as in the *Grunewald* case. The case was appealed to the Court of Appeals for the Ninth Circuit, which reversed on the basis of the *Grunewald* opinion which had been delivered after the conviction in the District Court. The government on rehearing before the Court of Appeals requested a new trial on the grounds that the indictment had not charged the prohibited subsidiary conspiracy, but rather alleged that the defendants had concealed their true income and misrepresented same to the Treasury Department as an integral part of the original conspiracy to evade taxes. The Court of Appeals granted the motion for a retrial on the basis that the instructions were not submitted correctly and that the indictment and evidence permitted and required the case be submitted to the jury on the theory that the overt acts of concealment were a part of a continuing conspiracy to conceal the evasion of taxes, and thus not prohibited by the *Grunewald* opinion. The defendant on appeal to the Supreme Court raised the question of double jeopardy, and in affirming the order for a retrial the court clarified its *Grunewald* opinion and held that the *Grunewald* case, “was submitted to the jury on the theory that ‘the indictment alleges that the conspiracy comprehended within it a conspiracy to conceal the true facts from investigation,’” and distinguished this case on the grounds that the indictment did not allege that one of the objects of the conspiracy was to conceal the acts of the conspirators. The *Grunewald* case was again cited as controlling in the case of *United States v. Goodman*. In the *Goodman* case the Treasury Department requested records from the defendant in order to provide them with information in a tax proceeding against a corporation in which the defendant had an interest.

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44 United States v. Forman, 259 F. 2d 128 (9 Cir. 1958).
46 *United States v. Forman*, 259 F. 2d 128 (9 Cir. 1958).
defendant refused to produce the records on the grounds that they would incriminate him personally, and that though the statute of limitations had expired on evasion of his personal income, he had continued to conceal from the Treasury Department his true income for those years and hence was subject to an indictment for a conspiracy to conceal. The court in overruling his contention strictly followed the Grunewald rationale and stated: “Silence of a conspirator to avoid detection, after the accomplishment of the object of the conspiracy so as to keep it alive” is contrary to the opinion in Grunewald v. United States.

Thus the law appears to be that of Krulewitch and Grunewald. A conspiracy to conceal is not indictable if it is a subsidiary conspiracy. A continuing conspiracy may be indictable, but it must be an integral part of the substantive offense. An indictment for the crime of conspiracy to obstruct justice by concealment must meet the rigid criterion of Pettibone as to knowledge and the subsequent criteria of Solow and Siegel as to the necessity of a pending judicial case or inquiry. The indictment must charge the agreement to conceal and allege the overt acts of concealment in furtherance thereof. Yet it cannot indicate that this conspiracy to conceal is subsidiary to another conspiracy for Krulewitch and Grunewald have prohibited it.

UNITED STATES v. BONANNO

On November 14, 1957 a group of men gathered at the home of Joseph Barbara, Sr. in upstate New York. When subsequently questioned by various local, state and federal law enforcement agencies, administrative tribunals and Grand Juries, they gave various reasons for being at Mr. Barbara’s home that afternoon. On January 13, 1960 twenty of these men were convicted in the United States District Court for the Southern District of New York for a conspiracy to obstruct the due administration of justice by concealing through false and evasive statements their reasons for being at Mr. Barbara’s home and what transpired there. At this time their conviction is being appealed to the United States Court of Appeals for the Second Circuit. This conviction and the indictment upon which it is based raise for the first time in any Federal Court the proposition that a conspiracy to conceal is in itself an indictable offense, without alleging that what was concealed was in any way unlawful.

In an interview appearing in Life Magazine, Mr. Milton R. Wessel, formerly Special Assistant to the Attorney General and the chief prosecutor in this case, faced the proposition squarely:

This agreement to lie, says the government, was conspiracy and since no one has the right to prevent a lawfully constituted

49 Case No. 159-35.
body from learning what it needs to know, this was a conspiracy to obstruct justice, a felony punishable up to five years in prison and $10,000.00 fine. Under this interpretation, said prosecutor Milton Wessel last week, the meeting at Apalachin could have been a *teaparty*. As long as they conspired to lie about its purpose, they are guilty. We will prove they did.\(^{50}\)

Although ninety-two pretrial motions were submitted in this case and Judge Irving R. Kaufman devoted three opinions to a discussion of their merits,\(^{51}\) and although the transcript of the trial consumes more than seven thousand pages, the cornerstone of the conviction is the indictment and the theory of criminal conspiracy which it proposes. The United States Court of Appeals for the Second Circuit may reverse these convictions on a number of possible Constitutional and procedural bases before this comment appears in print. The ingenuity of the theory upon which this indictment rests warrants its discussion in some detail. The indictment is fully set forth in the appendix.

In order to understand the structure of this indictment, it is necessary to assume the perspective of the prosecutor who framed it. The underlying, unstated major premise of this indictment is that the primary purpose of the meeting at Apalachin was illegal. No mention of this primary purpose appears anywhere in the indictment. This omission was not accidental. As Mr. Wessel stated at the trial:

> There has been a good deal of objection by the defendants to the fact that this indictment does not refer in words to the nature of the investigation conducted by the grand juries which the indictment alleges were at least attempted to be obstructed. That was a deliberate omission. Not that it would not have been a material or a relevant part of the indictment, but we deliberately left it out and I think for obvious reasons.\(^{52}\)

One of these reasons may very well be that if the indictment alleged as the purpose of the gathering at Apalachin the commission of a federal offense, the conspiracy to conceal this offense would fall squarely within the *Grunewald* case as a *subsidiary conspiracy* to conceal. Mr. Wessel made this point again in his opening statement to the jury when he stated: "I must tell you frankly at the outset that the government will not establish what was going on at the meeting on November 14."\(^{53}\) The failure of the indictment to allege an illegal purpose of the Apalachin meeting was the basis of pre-trial motions to dismiss the indictment. The motion to dismiss filed on behalf of defendant John A. De Marco stated:

> How can this amount to an obstruction of justice under Section 1503 when there was no question asked of any of these peo-
ple except questions about this meeting? What justice was obstructed? No one claimed in the indictment that it was a meeting for criminal purposes. No one said that this was an unlawful meeting. The Grand Jury that issued subpoenas for these people did so only after the meeting and not for any other purpose except to inquire of and about the meeting. This is alleged in the indictment. Then what Federal law violations were these Grand Juries who issued subpoenas for these defendants and their alleged co-conspirators following this meeting inquiring into when all they inquired of these people was about this meeting and the details of it? How can that possibly amount to an obstruction of justice when no one claimed in the indictment that it was a crime to hold this meeting?

It is our contention that an indictment which charges that the defendants met so that they could conspire not to reveal what took place at a meeting, and which indictment does not relate that anything unlawful did take place at such meeting and that the purpose of the meeting was to violate Federal laws or plan to violate Federal laws, fails to charge the commission of any crime.

Such conduct on the part of the authorities sounds and appears oppressive. It does not appear to be proper law enforcement when the law enforcement agencies or officers indict and attempt to convict persons for attending a meeting that they, themselves, do not claim was for criminal purposes.  

This issue is squarely raised on the appeal to the United States Court of Appeals for the Second Circuit in the brief filed for appellants Castellano and Lombardozzi as follows:

The case is unique and presents alarming departures from accepted traditions of law enforcement. . . . The government has succeeded in convicting a large number of persons, who, with others, had been present at a gathering, of conspiracy to hide the objective of the gathering from law enforcement agencies, without any proof of what that objective was, or even that its purpose was nefarious.

We suggest, moreover, that the government finds itself on the horns of a dilemma. If the purpose of the Apalachin gathering was innocent, then there is no conceivable basis for imputing to those who had been there an understanding that they would lie about that purpose if questioned. On the other hand, if, as the government argues, the gathering had a nefarious purpose—and this was never established—then it must have been implicit that the participants would hide that purpose, but that does not amount to conspiracy. (Cites Krulewitch)

For all that appears from this indictment the purpose of the gathering at Apalachin had no relation whatever to any matter

54 Attorney Henry C. Lavine, Motion to Dismiss on Behalf of Defendant John A. DeMarco, at 5, 6, 9.
of federal interest. How, therefore, could it be an obstruction of federal justice to keep that purpose hidden.\textsuperscript{55}

The \textit{dilemma} posed by an indictment based on this theory of criminal conspiracy was recognized by the prosecution at the outset. By specifically charging a continuous agreement to violate Section 1503 in paragraph 1 of the indictment,\textsuperscript{56} they hoped to avoid the prohibition of "piling inference upon inference." The government contends that this pleading constitutes a sufficient charge of the conspiracy and it need not be "aided by averments of acts done in furtherance of the object of the conspiracy." The defendants contend that such allegations plead only legal conclusions and that such legal conclusions, with a missing major premise, make the indictment fatally defective. The government, recognizing that one of the major hurdles will be the opinion in the \textit{Grunewald} case, states their position as follows:

Relying on \textit{Grunewald v. United States} defendants move to dismiss on the grounds that Court I charges only a conspiracy to conceal, which they argue is not unlawful.

To the contrary, however, Court I charges a conspiracy to commit perjury, to obstruct justice and to defraud the United States, in violation of specific Federal Statutes. It charges a conspiracy to conceal, but by committing specific Federal Crimes, wholly unlike the concealment in the \textit{Grunewald} case.

The Supreme Court held that such incidental acts of concealment (necessarily characteristic of intelligent criminal conduct after the successful completion of any crime) could not be used to avoid operation of the statute of limitations. At the same time the Court also specifically held that the indictment would be sound if such concealment were (as here) a primary object of the conspiracy, and remanded the case for a new trial on that theory... here the concealment, in addition to being by unlawful means as stated above, is the sole object of the conspiracy charged. There is no other crime charged to which it is incidental. ...\textsuperscript{57}

This "dilemma" was at least temporarily resolved in the government's favor in Judge Kaufman's order refusing to dismiss the indictment in which he stated:

The defendants, relying on \textit{Grunewald v. United States} ... and the line of cases preceding it, argue that an indictment that charges a conspiracy to conceal a crime is insufficient and must be dismissed. ... The indictment in this case, however, does not charge a conspiracy to conceal another crime, but alleges rather a conspiracy to violate three specific Federal statutes. Those statutes make defrauding the United States, obstructing justice

\textsuperscript{55} Attorney Osmond K. Fraenkel, Brief for Appellants Castellano and Lombardozzi, at 6, 7, 29.

\textsuperscript{56} See Appendix.

\textsuperscript{57} S. Hazard Gillespie, Jr., United States Attorney for the Southern District of New York, Memorandum in Opposition to Defendants' Pretrial Motions, at 6, 7.
and committing perjury criminal, and merely involve activity that might be considered a species of concealment. One who agrees to lie agrees to 'conceal' the truth; obstruction of justice may take the form of 'concealing' from an authorized tribunal information germane to its functions. But, it cannot be contended, that perjury and obstruction of justice, or conspiracy to commit either, are no longer crimes after the Grunewald case. . . . The main objective of the conspiracy in this case was 'concealment' the commission of fraud, perjury and obstruction of justice. . . . The distinction between conspiracies of the kind charged in Grunewald and the instant one is not merely formal.58

Interwoven with the argument of the defendants that the indictment is faulty because by failing to state the major premise on which it is based, viz., that the purpose of the gathering was illegal, the indictment pleads legal conclusions, rather than stating facts upon which a crime may be charged, is the proposition that by failing to state such a purpose, the jurisdiction of the Grand Juries is not established. Their contention is that, even if Judge Kaufman's opinion is a correct statement of the law in Grunewald, the crime of obstructing the due administration of justice requires that justice be duly administered. Their contention is that if the activities of the Grand Juries were outside of their power or scope, justice was not being duly administered by them. If an investigation into the purposes of the Apalachin gathering was beyond the scope of the Grand Jury, or in the alternative if the basis for such investigation is not alleged in the indictment, no conduct before such Grand Juries can constitute obstruction, and likewise no statements can be considered perjury, as the statements are not material to the investigations of an authorized judicial body. From the point of view of the prosecution, this objection was anticipated when the indictment was framed. And although it never directly averred that the Grand Jury founded its jurisdiction on the suspicion that a crime was involved in the Apalachin gathering, it implied that such was the fact. Paragraph 2 of the first count of the indictment, as it was returned by the Grand Jury, was as follows:

That, further, as the said defendants and their co-conspirators well knew, a special investigation had been commenced by a United States Grand Jury in March of 1956 in the United States District Court for the Southern District of New York (into racketeering and criminal syndicates with particular emphasis in the ladies' garment and ladies' garment-trucking industry, labor management field, and the narcotics traffic), and has continued before Federal Grand Juries up until the date of the filing of this indictment.

This wording provided the knowledge of an existing federal investigation at the time of the conspiracy, as well as implying the major premise

of the indictment, that the meeting at Apalachin was concerned with the stated criminal activities. It also founded the basis for the questioning of the defendants by the Grand Juries on the assumption that it was part of a continuing investigation into these criminal activities. On a pretrial motion to strike portions of the indictment Judge Kaufman struck from this paragraph the bracketed descriptive phrase of the Grand Juries' investigation as prejudicial surplusage. The defendants contend that, by removing this phrase, the conviction has been secured on an indictment that was never returned by a Grand Jury and perhaps even more important the indictment, as it is modified, alleges no basis for the Grand Juries' jurisdiction.

The problem of the jurisdiction and scope of Grand Juries is not a settled one and "Although abuses of the power of a grand jury are conceivable, such as prying into the details of domestic or business life, the full extent of the inquisitorial power has never been settled by the precedents."59 In Federal matters "the inquisitorial powers of the grand jury are limited by the jurisdiction of the court of which it is an appendage."60 This attack on the indictment as failing to allege the jurisdiction of the Grand Juries was made in pretrial motions and was reiterated in the appeal brief of appellants Castellano and Lombardozzi, as follows:

It is, we submit, inconceivable that persons in the United States should be called to account because it is claimed they agreed to hide from a federal investigation agency something with which the agency had no concern at all. Here the indictment contains not one word to justify the impaneling of any federal grand jury to investigate what went on in Apalachin.61 At the trial in a colloquy with Judge Kaufman, counsel for defendant Joseph Profaci reiterated the basic proposition; the indictment was faulty, it did not allege a crime; the Grand Jury mentioned in the original indictment had been dismissed forty days before the gathering at the Barbara house. Counsel stated:

That is why I said to you before—you know—one argument depends on the other—that this so-called background information was deliberately inserted in the indictment. Matters long prior to the alleged Barbara house incident are put in there to confuse and obscure the fact that they failed to charge that the specific grand jury where justice was supposed to have been obstructed was investigating any crime at all . . . and don't let anybody say that background material prior to the conspiracy is going to be used to support a fatal weakness in the absence of a direct and simple allegation.62

60 Id., at 438.
61 Supra, note 55, at 28.
62 Supra, note 52, at 287a, by Attorney Henry G. Singer.
This "fatal weakness" of the indictment was denied by the government in their Memorandum in Opposition to Defendants' Pretrial Motions; the government, however, argued the sufficiency of the original indictment before paragraph 2 of Count I was modified by Judge Kaufman. The government's argument proceeded as follows:

In answer to the defendant's question 'What duty does a man owe to a Grand Jury, or any other body, to answer questions about a lawful meeting?' it is unlawful to agree to lie or obstruct a Grand Jury, even if it ultimately turns out that the conduct under inquiry was lawful. The powers of a Grand Jury are not limited to inquiries into conduct which is actually criminal.

This broad power of a Grand Jury is also response to defendants' argument that Count I does not sufficiently set forth facts showing that the Grand Jury's investigation at Apalachin was lawful. There is a presumption that the Grand Jury's conduct was proper.

Defendants also argue that the indictment charges that the Grand Juries were impaneled for the purpose of inquiring into Apalachin, and imply that the object was to investigate something lawful in order to find perjury or a conspiracy to conceal. The suggestion is that Federal authorities were trying to manufacture a crime where none existed.

There is no factual foundation for this unwarranted attack, and it finds no support in the indictment. The indictment does not say that Grand Juries were impaneled to look into Apalachin, but that juries 'duly impaneled' conducted such inquiry. What else they were doing and when they were impaneled is not stated; if any inference of purpose must be read into the indictment, it would be that the inquiries into Apalachin (paragraph 4) were a part of the continuing special rackets investigation begun in March 1956 (paragraph 2), about which the defendants had knowledge and in which some of the Apalachin attendants were involved (paragraph 3).

The indictment thus charges specific knowledge of the special rackets investigation at the commencement of the conspiracy on November 14, 1957 and specific knowledge of the Federal inquiry into Apalachin thereafter. Accordingly, at all times during the conspiracy defendants are charged with knowledge of a present Federal Grand Jury interest in their conduct. This is clearly sufficient and distinguishes this case from Pettibone v. United States, relied on by defendants.65

In its rejection of the defendants' contention that the jurisdiction of the Grand Jury had been exceeded and that no jurisdictional allegation appeared on the fact of the indictment, the government relied heavily on the majority opinion written by Justice Jackson in United States v. Morton Salt Co.64 In that case the Federal Trade Commission

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63 Supra, note 57, at 8, 9, 10, 13.
64 338 U.S. 632 (1950).
ordered the petitioner to prepare and produce additional highly com-
plex reports showing that they had complied with a cease and desist
order issued four years prior by the Court of Appeals for the Seventh
Circuit. The order enjoined the petitioner from practicing certain pro-
duction, marketing and pricing policies. The petitioner objected to the
power exercised by the Commission and contended that its investiga-
tive function was circumscribed by actual violations. In rejecting this con-
tention, Justice Jackson held:

It (the Commission) is more analogous to the Grand Jury,
which does not depend upon a case or controversy for power to
get evidence, but can investigate merely on suspicion that a
crime is being violated, or even because it wants assurance that
it is not.65

Even if one were to regard the request for information in this
case as caused by nothing more than official curiosity, neverthe-
less law enforcing agencies have a legitimate right to satisfy
themselves that corporate behavior is consistent with the law
and the public interest.66

The government attempted to bolster their conviction that a Grand
Jury has a wide latitude to investigate what it pleases with the cases of United States v. Costello,67 Blair v. United States,68 and Carroll v. United States;69 in none of these cases was the jurisdiction of the
Grand Jury the issue; in all of them it was clearly apparent that they
were exercising legitimate power. In the Costello case the petitioner
appealed from a conviction for evading federal income taxes on the
grounds that the Grand Jury submitted an indictment which was based
on solely hearsay testimony. The Supreme Court in dismissing this
appeal held: "An indictment returned by a legally constituted and un-
baised grand jury, like any information drawn by the prosecutor, if
valid on its face, is enough to call for a trial of the charge on the
merits."70 In the Carroll case the petitioner had been called before a
Grand Jury investigating his possible violations of the Volstead Act. In
his testimony before the Grand Jury he denied that at a certain theater
party he had given, a young lady had been immersed in a bathtub of an
alcoholic beverage. Faced with other testimony that at least the act had
taken place, even though the beverage could not be proven, the Grand
Jury indicted the defendant for perjury. He unsuccessfully contended
on appeal that the bathtub incident was not material to the investiga-
tion and hence a charge of perjury would not lie. The Court of Ap-
peals in affirming the conviction held that the case of Blair v. United
States controlled and stated:

65 Id., at 642-643.
66 Id., at 652.
69 16 F. 2d 951 (2 Cir. 1927).
70 Supra, note 67, at 363.
... (The Grand Jury is) not limited narrowly by questions of propriety or forecasts of the probable results of the investigation. The test of materiality in a grand jury investigation is whether the false testimony has a natural effect or tendency to influence, impede or dissuade the grand jury from pursuing its investigation.71

The Blair case, cited by the government for the proposition that a Grand Jury has wide latitude and cited with approval by Judge Kaufman in his order denying the motion to dismiss the indictment, involved a witness before a Federal Grand Jury in Michigan who questioned the jurisdiction of the Grand Jury. The witness claimed that a Federal Grand Jury was not empowered to investigate alleged corrupt practices in the primary election of a United States Senator. The witness had been explicitly and directly informed by the foreman of the Grand Jury, that the investigation was not directed toward an indictment of the witness. The Supreme Court held that one who is a witness before Grand Jury proceedings, who has been informed that they are not investigating him, does not have an interest in the proceedings which will give him a standing to question the jurisdiction of the court or Grand Jury over the subject matter that is under inquiry. Judge Kaufman's opinion relied on the Blair case as the ruling from it was reiterated by the Court of Appeals for the Second Circuit in United States v. Cleary.72

The Cleary case involved a witness at a Grand Jury which was investigating mail thefts. The witness complained that he had testified before the Grand Jury without being informed that he had the constitutional right to refuse to answer their inquiries. The court in affirming his conviction held: "Accordingly the question here is not so much whether Cleary, knowing his Constitutional rights, consciously elected not to assert them, but whether the testimony was freely given all things considered."73

The basic argument returns to and devolves upon whether the investigation of a presumably lawful gathering is subsumed under the dicta in the Morton Salt Co. case. That case involved the Federal Trade Commission and the Commission had knowledge of prior violations; it was a corporation and not an individual. The extension of the holding in this case to the proposition that a Grand Jury may investigate lawful meetings of individuals may not be warranted. Judge Kaufman ruled on the propriety of the investigation by the Grand Jury as follows:

The defendants argue that they cannot be charged with conspiring to obstruct justice by interfering with the grand jury investigations into the gathering at Apalachin, because it is not alleged that anything unlawful took place at that gathering and

71 Supra, note 69, at 953.
72 265 F. 2d 459 (2 Cir. 1959).
73 Id., at 462.
grand juries have no power to investigate gatherings which they characterize as proper. . . . The grand jury is an important investigative body with broad powers and functions. (cites the Cleary case)

Undoubtedly a point may be reached where the grand jury inquiry is so divorced from any possibility of uncovering or charging a crime that its investigation may be considered void. But I need not undertake gratuitously to discuss when that point is reached, since it was certainly not reached in this case. It is alleged in the indictment that at the time of the gathering at Apalachin, into which the indicting grand jury was inquiring, several of the defendants were under investigation in the district for other alleged offenses. If only two of these defendants had previously been before a grand jury and subsequently met together and with others, it would be within the province of a grand jury engaged in the due administration of justice to inquire into the purpose, motive, and other surrounding circumstances of that meeting. The point is that this grand jury was not embarking on a fanciful journey. From the face of the indictment it would appear that it had a legitimate and reasonable interest in ascertaining, among other things, whether some of these individuals who had appeared before other grand juries might be laying a foundation for their conduct in future investigations, should any ensue. It is not for those subpoenaed before grand juries to set up their own standards of what is or is not the legitimate business of the grand jury. If such a principle were adopted every man would become a law unto himself and the work of grand juries would come to a halt.\textsuperscript{74}

Judge Kaufman in his charge to the jury made clear the fact that the major premise of the indictment need not be considered and that the question of the jurisdiction of the Grand Jury was not a matter for the jury to weigh. The charge occupied over one hundred pages of transcript; the following are excerpted therefrom:

It is the government's position that if you find that the statements given were false or evasive, and if you also find that when compared they disclose a pattern of essential similarity, the logical inference you can draw is that these false or evasive similar stories were given pursuant to an agreement. According to the government whatever the real purpose may have been for the alleged conspirators to visit Apalachin, it was a purpose which those attending desired to conceal.

Evasive testimony, however, need not be false, although it may contain some material of that nature. You may find testimony to be evasive if you find it calculated to obstruct or impede the due administration of justice, as might be the case with testimony designed to conceal the existence and true details of an alleged meeting.

\textsuperscript{74} \textit{Supra}, note 58, at 115.
I charge you that in your deliberations you are not to concern yourselves with whether these various bodies and persons had any right or authority to question any of the alleged co-conspirators concerning their activities at Apalachin.\footnote{Supra, note 52. at 1952a, 1951a, 1943a, 1964a.}

**SUMMARY**

The conviction of the twenty co-conspirators in *United States v. Bonanno* places before the United States Court of Appeals for the Second Circuit the Constitutionality of the government's theory of conspiracy to conceal as an independent crime; independent of any allegation as to what was being concealed and whether what was concealed was unlawful. If the appeal is not decided on the Constitutionality of this issue, the government will use this technique again and some other court will be faced with this decision. Justice Jackson in *United States v. Di Re*\footnote{332 U.S. 581, 593 (1948).} stated that "Presumptions of guilt are not lightly to be indulged from mere meetings." The case of *United States v. Bonanno* places this statement in issue.

JAMES M. SHELOW

**APPENDIX**

The grand jury charges:
1. That commencing on or about the 14th day of November 1957, and continuously thereafter up until the date of filing this indictment, at the Southern District of New York, Joseph Bonanno, Russell A. Bufalino, Ignatius Canzone, Paul C. Castellano, Joseph F. Civello, Frank Cucchiara, John A. DeMarco, Frank A. DeSimone, Natale Evola, Salvatore Falcone, Joseph Ida, James V. LaDuca, Louis A. Larasso, Carmine Lombardozzi, Antonio Magadino, Joseph Magliocco, Frank T. Majuri, Michele Miranda, John C. Montana, John Ormento, James Osticco, Joseph Profaci, Anthony P. Riela, John T. Scalish, Angelo J. Sciandra, Simone Scozzari, Pasquale Turrigiano, defendants herein and Dominic J. Alaimo, Joseph Barbara, Jr., Joseph Barbara, Sr., Giovanni Bonventre, Roy Carlisi, Gerardo V. Catena, Charles Chiri, James Colletti, Dominick D'Agostino, Joseph Falcone, Carlo Gambino, Michael J. Genovese, Vito Genovese, Anthony F. Guarneri, Bartolo Guccia, Sam Lagattuta, Russell V. Mancuso, Sam Mannarino, Patsy Monachino, Sam Monachino, Dominick Oliveto, Vincent Rae, Armand T. Rava, Joseph Riccobono, Joseph Rosato, Patsy Sciortino, Salvatore Torrease, Santo Traffante, Jr., Frank J. Valent, Stanley P. Valenti, Emanuel Zicari and Frank Zito, co-conspirators not defendants herein, did unlawfully, wilfully, and knowingly combine, conspire, confederate and agree together, and with each other and with others to the said grand jury unknown, to commit offenses against the United States, to wit: to violate Title 18, Sections 1503 and 1621, United States Code.
2. That, further, as the said defendants and their co-conspirators well knew, a special investigation had been commenced by a United States Grand Jury in March of 1956 in the United States District Court for the Southern District of New York, and has continued before Federal Grand Juries up until the date of the filing of this indictment.
3. During the course of said conspiracy as the said defendants and their co-conspirators well knew, a meeting of individuals, some of whom were involved in the aforesaid investigation, was held at the home of Joseph Barbara, Sr., a co-conspirator herein, in Apalachin, New York, on or about November 14, 1957, which was attended by the defendants and their co-conspirators, among others.
4. During the course of said conspiracy, as the said defendants and their co-conspirators well knew, following the aforesaid meeting, Grand Juries of the United States, duly impaneled and sworn in and for the United States District Courts for the Southern District of New York and elsewhere, began conducting an investigation into all of the material circumstances concerning the aforesaid meeting, and issued subpoenas directing the said defendants and their co-conspirators to appear before the said Grand Juries and give testimony and evidence.

5. During the course of said conspiracy, it was the belief of the defendants and their co-conspirators, that the individuals who had been present at the aforesaid meeting would be questioned in connection with said investigation concerning the aforesaid meeting, with respect to its purpose, the number and identity of persons who were present, the arrangements preceding the aforesaid meeting, the conversations and other events which took place and all the other circumstances surrounding the said occasion.

6. It was a part of the said conspiracy that the defendants and their co-conspirators, by false, fictitious, and evasive testimony, and by the commission of perjury, would conceal from the aforesaid Grand Juries and from other investigating bodies and agencies of the United States the fact that the aforesaid meeting had taken place, the purpose and advance planning of the aforesaid meeting, the number and identity of the persons who were present on said occasion, the conversations and other events which took place, and all the other material circumstances surrounding the said occasion.

7. It was a further part of said conspiracy that said defendants and their co-conspirators, having taken oaths before competent tribunals, to wit, said Grand Juries, in matters in which a law of the United States authorizes an oath to be administered, that they would testify truly, would wilfully and knowingly and contrary to said oath, state material matter which they did not believe to be true.

8. It was a further part of said conspiracy that said defendants and their co-conspirators would corruptly influence, obstruct and impede, and corruptly endeavor to influence, obstruct and impede the due administration of justice in the United States District Courts for the Southern District of New York and elsewhere, by giving false, fictitious and evasive testimony and by the commission of perjury.

9. It was a further part of said conspiracy that the defendants would give and would corruptly influence the said co-conspirators and others to give false material information about the said meeting to investigating bodies and agencies of the United States, and give false, fictitious, fraudulent, vague, evasive and manufactured material testimony under oath about the aforesaid meeting before the said Grand Juries.

OVERT ACTS

1. In furtherance of the aforesaid conspiracy and to effect the objects thereof, on or about the 14th day of November 1957, in the Northern District of New York, Joseph Bonnano, a defendant herein, made a statement to members of the New York State Police.

2.-29. Substantially the same; alleging similar statements by some of the defendants before local, state and federal investigating agencies and grand juries.