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DATE: 11-14-2017

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DATE: 11-14-2017

STANDARD FORM NO. 64

Mr. Tolson	_____
Mr. Belmont	_____
Mr. DeLoach	_____
Mr. McGuire	_____
Mr. Parsons	_____
Mr. Rosen	_____
Mr. Sullivan	_____
Tele. Room	_____
Miss Holloman	_____
Miss Gandy	_____

# Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, Federal Bureau of Investigation

DATE: September 24, 1959

FROM: *WED* William E. Foley, Acting Assistant Attorney General  
Criminal Division

WEF:PW:cm

123-51-471

SUBJECT: FBI reports submitted in connection with case of  
United States v. Bonanno, Joseph

The Special Assistant to the Attorney General in charge of the prosecution of the subject case has called our attention to the fact that many of the FBI reports received since the return of the indictment in this case have reflected interviews conducted by Agents a year or more before the date of the typed reports. For example a report will be furnished of an interview of witness Jones in March 1958, but the report will be dated June 1959.

It is anticipated that when these witnesses testify at the Trial a demand will be made pursuant to 18 U.S.C. 3500 for the production of statements by the witness in the possession of the Government. The reports of interviews are probably not subject to production under the statute and production thereof will be opposed by Government Counsel. The fact remains, however, that under the statute the reports can be, and in all probability will be, examined by the trial judge in camera.

We must anticipate that in the event of such inspection the Court will require some explanation for the interval between the date of the interview and the date of the report.

There are at least two possible explanations:

1. That the 1959 reports were made from notes not previously transcribed.
2. That the 1959 reports were taken from earlier reports which covered more than the single interview and that defendants are entitled only to the full text of interview of the witness involved.

In view of this you are requested to advise us as to the explanation for the time lapse noted above in order that Government Counsel can supply it to the Court if required to do so.

EX-105  
SEP 23 1959

EX-105 REC-7 92-4225-83

23 SEP 24 1959

*Memorandum to Director, 10-2-59  
lit. Wilkey, 10-5-59  
RBF: aud*

DATE: 11-14-2017  
STANDARD FORM NO. 64

Mr. Tolson	_____
Mr. Belmont	_____
Mr. DeLoach	_____
Mr. Mohr	_____
Mr. Bishop	_____
Mr. Casper	_____
Mr. Callahan	_____
Mr. Conrad	_____
Mr. Felt	_____
Mr. Gale	_____
Mr. Rosen	_____
Mr. Sullivan	_____
Mr. Tavel	_____
Mr. Trotter	_____
Tele. Room	_____
Miss Holmes	_____
Miss Gandy	_____

# Office Memorandum • UNITED STATES GOVERNMENT

TO : Director, Federal Bureau of Investigation

DATE:

*NEP*

FROM : William E. Foley, Acting Assistant Attorney General, Criminal Division

WEF:PW

Miss Holmes  
Miss Gandy

SUBJECT: United States v. Joseph Bonanno

123-51-171

*JS*  
*WV*

We enclose for your information a copy of a portion of the transcript of the pretrial arguments in the subject case. Your attention is particularly directed to the page thereof numbered 96 in which Judge Kaufman requests all Government agencies to refrain from public comment concerning this case, the defendants or the co-conspirators.

Enclosure

EX-100  
SEP 24 1959

ENCLOSURE  
COPIES DESTROYED  
37 JUN 1 1972

ENCLOS

REC-37

92-4225-82

14 16-4  
SEP 24 1959

216 54 10 02 1959

*Memo Conway 9-24-59  
To Rosen  
RBF:ccw*

*h*

MR. NISSEN: Your Honor, again my firm  
and this motion on behalf of all defendants,  
but I take it, Mr. Baichle, you want to withdraw  
from this phase?

MR. BAICHLE: I don't mean it quite that  
way, but I do not endorse an argument or adopt an  
argument I have not heard, and at the moment I have  
made no motions. So, as they say, include me out.

MR. NISSEN: Okay. Your Honor has exhibited  
that we have culled from newspapers in the New York  
area. They involve the first three months after  
November 14 and they show articles from the newspapers  
and from national magazines since the bringing of this  
indictment. There is a gap. There is a gap  
because we just did not have time to cull all that  
material between the first three months, but it  
intends only to be representative even for the months  
it does cover because I know, for example, there are  
several articles that were missing.

We bring it before this Court because we  
ask that they consider that and that we would like  
an opportunity at a hearing not only to fill the  
record but to do something that we couldn't possibly  
do on a motion, and that is to subpoena the files

ENCLOSURE

92-4225-82



...and radio

THE COURT: You didn't you have time?

You have to have time, who is this case than any case

...any case...

...we have subpoena

...you...

THE COURT: Can you not be subpoenaed?

Under 17(07)...

...you...

THE COURT: You didn't you come in before?

...you... I say --

THE COURT: Or do you think I give you all

...to have you...

...more time?

THE COURT: No, your Honor. But let me just

...point, if I say. That is that I do not believe

...you did you give a decision, from what I see in the

...to go to go out and subpoena records for today.

THE COURT: How could I give you permission

...unless you ask for it?

THE COURT: I did ask for it in our motion

papers.

THE COURT: In your motion papers, but you



315P  
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should have come in and asked for it either on June 21 or as soon as you were retained.

MR. NESSEN: I was retained at the end of July, your Honor.

THE COURT: I can't help that. That is your client's fault. We had our preliminary meeting, and I made it clear that there were to be no excuses for delay and no excuses for adjournments, and all the lawyers had plenty of time to take vacations and do their preliminary work.

MR. NESSEN: Let me see if I understand your Honor. Your Honor is not contending that we could subpoena the records of these various television stations and radio stations today. I don't believe we could.

THE COURT: I did not say that either.

MR. NESSEN: What you are saying is that I should have made this motion earlier?

THE COURT: Yes. You should have asked informally, or you should have asked informally for a subpoena at once, which has been done.

MR. NESSEN: Your Honor, may I say that I have asked something informally before, and we were all aware of that.



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THE COURT: That was a little too informal, and I did not like that. When I say informally I mean with notice to the United States Attorney.

MR. NESSEN: A copy of which went to Mr. Hessel.

THE COURT: But you could have served notice on the United States Attorney that you would want your subpoena. Let's have an understanding right now: There will be no further delays; there will be hearings only granted where necessary on motions already made.

THE COURT: I will deny an application on your behalf to subpoena radio station records at this moment, but you certainly have your right later on, when you are picking a jury, to pick their minds apart and ascertain whether or not they have heard anything on the air, whether anything has come to their attention whatsoever, and if it appears at that time that there should be a further probe there will be time.

MR. NESSEN: Your Honor, may I ask for this: that obviously your Honor is not going to pass on all these motions tomorrow or the next day, so I offer to subpoena these records and put them before the



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Court tomorrow or Monday.

THE COURT: Good. Then you can have them.

MR. WESSER: Thank you.

Apart from what these other facts show, the record itself shows, I think, the worst kind of publicity imaginable for any trial. The atmosphere that was created immediately after November 14 and followed all the way through was of the worst type. I don't have to advert to it. It is all this Mafia business, and there is no doubt of the fact, your Honor, that the prosecution or the Treasury Department considered the statements that appear in the press on May 22, I believe it is, 1959, the day after all the people were rounded up. Somehow, somewhere from the prosecution or from the Treasury Department narcotics agents the newspapers got a complete and accurate picture -- rather, the picture that the government would like to paint.

Read Exhibit A, a Life Magazine article, where, with all due deference to Mr. Wessal, unless the reporter was making up a story, apparently he was quoted, and it was not an in tort statement either.

All this I say clearly comes within the



...and a ... the publicity that exists  
... the Daily  
... the ...

THE COURT: What would you suggest?

MR. NESSEN: An indefinite continuance,  
your Honor. If you would look at United States v.  
Marshall in the Supreme Court --

THE COURT: I looked at it.

MR. NESSEN: Then I don't have to tell you  
the facts. I don't think that a juror who reads the  
Daily ... the ... the ...  
could possibly say I am giving these men a fair trial.  
This is worse than the Marshall case. There it was  
a criminal record. This is the Mafia, with all  
sorts of things in Sicily.

This fellow Anelinger has a very vivid  
imagination and he puts it in writing. So I ask for  
an indefinite continuance.

THE COURT: In Marshall isn't it my  
recollection that all of that occurred after the  
trial was over?

MR. NESSEN: Yes, your Honor. The jury  
said they read it.

THE COURT: The jurors said they read it,



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...and was questioned by the judge privately  
in his chambers, and they said they had read it and  
it would make no difference, and what it was there  
was a record of what, previous abortions or some-  
thing?

MR. NESSEN: Previous crimes which they  
couldn't get admitted on a claim of entrapment.

THE COURT: That was after the trial had  
commenced and so forth. Now here most of this  
stuff has been put out months ago. There may be  
sporadic stuff here and there. How do you think  
this is distinguishable from the Bando case?

MR. NESSEN: Well, your Honor, I must say  
that I haven't read that case, but I have read --

THE COURT: It is a Second Circuit case.

MR. NESSEN: I am sorry, but I have not read  
it.

THE COURT: In substance what it said was  
that no new venue would cure it, and I think you  
agree with that, because you say an indefinite  
continuance.

MR. NESSEN: I ask in the alternative,  
and/or, send it up to the Virgin Islands.

THE COURT: Is that where you want to go?

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MR. NESSER: Sure, any place where the government hasn't created prejudice. I challenge the government to show us a place --

THE COURT: All right. Then you are agreeing that there is no place where any different climate exists?

MR. NESSER: I don't know. Certainly the climate in the Virgin Islands is much better in the winter months.

THE COURT: Why haven't you picked Honolulu while you are at it?

MR. NESSER: I don't know.

THE COURT: Are you seriously urging the Virgin Islands?

MR. NESSER: Any place.

THE COURT: I am asking you: where?

MR. NESSER: I would say the Virgin Islands, Puerto Rico, Alabama. I don't know.

THE COURT: Alabama? Would you like to go to Alabama? Are you serious about that?

MR. NESSER: Mr. Singer wants Florida.

MR. SINGER: I don't want Florida, but pick a warm place.

THE COURT: I want to know what alternatives



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there was.

MR. HADSEN: I suggested that the first thing is an indefinite postponement. Now, the second thing: If you do not want to indefinitely postpone, I will conduct an investigation -- as a matter of fact, what I wanted was a hearing to find out where we could go. I don't know where. I don't know how far the publicity that has been created in part by the government has permeated the United States and its possessions. I just don't know right now. But I do know that in New York City anybody who read the New York Daily News, the Sun, the Journal-American, the Post, the Times, the World Telegram, anybody who has read anything couldn't possibly, no matter what they said, give these men a fair trial.

THE COURT: Let me tell you something. I think Mr. Singer's ability as a trial lawyer is the best answer to what you are saying, and I refer to the Hoffs case. I cannot think of a case that received more adverse publicity than that case did, and he got an acquittal, didn't he? So ultimately doesn't it really depend upon the selection of the jury and the case that is taken on the voir dire?



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MR. WESSON: That is why I bring in the Marshall case, your Honor. Ultimately it would. But the Supreme Court said in that case that even though the jurors said that they were not prejudiced, because of the nature of those articles that came to their attention --

THE COURT: But that was after the trial had commenced. He sent for each one separately in chambers.

MR. WESSON: I am trying to analogize it. When you come to the voir dire and you ask a person who has read the Journal-American: "Have you read the articles there?" Or, take the World-Telegram; they publicized the Mafia, the hard of evil or whatever it is called, which had a foreword by Mr. Anslinger of the Treasury Department telling what a wonderful, accurate book this is. If I asked a juror, "Have you read the World-Telegram?" and he said, "Yes, I read those articles, but that would not prejudice me," it couldn't help but do so. Under the Marshall case it couldn't help but prejudice him. That is the point.

THE COURT: Do you know the difference? Here is the difference. The difference here is that



you may not believe him and you still have a very substantial number of peremptory challenges. But in the Marshall case they didn't have that. That case was on trial, and the judge was merely satisfied without questioning that the fellow was not prejudiced.

That right there is a distinction on the surface.

MR. NESSER: Well, could we do this, your Honor. I see how your Honor is disposed, so perhaps we can startle out this. I would like to renew this motion at the time of the voir dire, and at that time perhaps subpoena the records that I indicated I would subpoena.

THE COURT: At that time you are not going to ask for a subpoena. No, do what you suggested. You are going to subpoena it and you are going to submit it right now by Monday.

MR. NESSER: I hope so, your Honor. If I have any difficulty with the various companies, I will let you know.

THE COURT: You may have a subpoena. No, I don't want to know about your difficulties. There is a subpoena, and they are to respect it.



THE COURT: ... the public mind  
on this?

MR. SIMON: Well, yes, without waiving  
what has been said on this subject, I am coming to  
your honor's control of this publicity. I moved  
that your honor direct that any government agency  
or any government employee be restrained from making  
any more statements concerning this matter.

THE COURT: There is a motion to enjoin the  
government.

MR. SIMON: That's right. That is also  
made it, and it is part of this very application,  
and that is why I speak of it.

Continually, if you talk about the Hoffa case,  
you can't stop a Senate committee. You have no  
power. They are an independent branch of the  
government. But the Supreme Court has said by  
its original ruling that the Supreme Court --

THE COURT: It is also a violation of  
Canon 20, the Canon of Ethics.

MR. SIMON: That is for lawyers. But now  
we go to independent people who are not lawyers,  
members of the Treasury Department, members of the  
Narcotics Bureau, various other governmental



agencies that are under the control of our government.

THE COURT: Let me hear from --

MR. SINGER: You have control of this case now.

THE COURT: But I don't have control of people who wouldn't have notice of an order that I made.

MR. SINGER: I ask your Honor to do what you can by way of an order, and then let the United States Special Assistant publicize that order himself by making it known to every governmental agency that the time has come, while this case is in court, for nothing further to be said about any defendant or co-conspirator or about the incident at the Barbara house. I am not asking any more than that, and it is a fair request.

THE COURT: All right, Mr. Wessel.

MR. WESSEL: Before referring to Mr. Singer's application for an injunction, your Honor, the Marshall case also had an additional element which I think is quite a distinguishing factor, and that is that there the Court had excluded the very evidence which the jury subsequently saw and had made,



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therefore, a finding that it was so prejudicial that even though it was relevant and material it had to stay out.

This was in fact a reversal of the earlier finding by the trial court in the Supreme Court and, I don't know the detailed facts of the case, it must have found that that reversal was not sufficient.

With respect to the question of an injunction your Honor, and this is very similar to the matters that we dealt with in our pretrial discussions, this is after all still a matter essentially of good faith. If the prosecution staff, other departments of the government or other agencies of the government do not conduct themselves in such a way as to make for a fair and impartial jury, at the time of the voir dire then the Court has remedies available to it.

I think for the Court to issue an injunction of any kind which would cover not only the few persons before your Honor but the entire Department of Justice -- I assume it would have to be the Treasury Department, and it might well be other departments of the government -- I think would be so broad as to be almost uncontrollable. Notice would be an impossibility. I am not even sure, and I have not



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received at that point, whether or not judicial power extends to such an injunction to the executive branch.

THE COURT: Let us leave it this way:

I suggest to you that you use your best efforts to suggest to those agencies that between now and the conclusion of this trial that they make no public statements concerning any of the defendants on trial. Don't you think that is proper?

MR. WESSEL: Not only do I think it is proper, your Honor, but as a lawyer I assure you that all of that has been done and continued to be done.

THE COURT: Now you have behind you the force of the Court. It is a request by me to them.

MR. WESSEL: But the people we are talking about are decent, honorable people and they have honored my request anyway. And I will add --

THE COURT: We have to hear from Mr. Edelbaum.

MR. EDELSAUM: I have been very quiet. I just want your Honor to amend that direction to include not only the defendants on trial but the co-conspirators named in the indictment.



THE COURT: Yes, I understand. And, incidentally, this is for the defense counsel as well.

MR. EDELBaum: It will be followed to the letter, I assure you.

THE COURT: It is not an order. This is a request. It is a suggestion by the Court. It indicates a state of mind on my part. If there have been violations of it, then we will take whatever steps are necessary, using the instruments that are available. But at least I would like to set an atmosphere for this.

MR. EDELBaum: I am always very conscious, and I know my colleagues are, of Canon 20.

MR. WESSEL: I would like to add that Commissioner Anselinger, who is the specific individual referred to here, is a fine and dedicated public servant and I knew that the statements made have been in the course of his duty as a citizen and public servant, and to cast aspersions either on him or any other member of the government is in this connection I think quite unfair. Thank you.

THE COURT: Come on now. You have some more to argue here.

MR. WESSEL: On the question of prejudice,



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your Honor?

THE COURT: On the question of a change of venue and adjournment.

MR. WESSEL: I am sorry, your Honor. I had thought that the matter was sufficiently covered in our brief. I think it is quite clear, your Honor, that any district in the United States and, more so, a district such as the Virgin Islands or Puerto Rico would be far more prejudicial than this district would be. In New York there is a metropolitan atmosphere.

THE COURT: I will permit Mr. Nassan to withdraw his request for Alabama, too.

MR. WESSEL: As you leave the largest metropolitan areas, and by that I include New York, Chicago, Washington, D.C., and so on, and get into more rural areas where at the moment there might not be any great knowledge, once a case of this kind got there it would be incredible. I think there is no more fair district --

THE COURT: I think that is absolutely right. I think these defendants are much better off in the metropolitan district.

MR. WESSEL: Furthermore, your Honor, one



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...at least has indicated in his  
...papers that a change of venue would not be  
the answer, and many of the defendants indicated  
when the suggestion was made that they did not  
agree. To transfer, without agreement of the  
defendants, especially to certain districts, would  
certainly not be proper.

THE COURT: All right. Now, gentlemen,  
it is a quarter to one. I did not permit Mr. Singer  
to say anything in rebuttal.

MR. NESSEN: There is a point that I feel I  
have to raise that I have information on that does  
not appear in any affidavits.

THE COURT: And you cannot get over that  
feeling, can you?

MR. NESSEN: No, I cannot, your Honor.

THE COURT: All right. Make it very brief.

MR. NESSEN: It is very brief. Your Honor,  
there has come to my attention the fact that a member  
of the Treasury Department has been talking to a person,  
a producer who plans to televise a broadcast called  
"The Meeting At Apalachin." Not only is he a member  
of the Treasury Department but he is a member of the  
Bar of this State, and I intended before accusing



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... it was from the producer that I heard  
that -- to investigate the facts. However,  
since it has been said I think it should come out in  
the open now that I don't intend to name the name  
here. I will go to in chambers if you will, but on  
the record.

MR. WESSLER: I would like, if it could be  
done -- I don't know if there any members of the press  
here present -- to have this, if possible, not reported  
because I think it would be unfair to the person to  
whom I spoke, requesting that this program be adjourned  
until February, and it has been done.

THE COURT: Doesn't that make it moot then?

MR. NESSEN: I hope so, your Honor.

MR. SINGER: May I just ask you --

MR. NESSEN: But there is no doubt that this  
person was a member of the Treasury Department and had  
spoken to the producer.

MR. SINGER: Excuse me. As a result of all  
this talk, and I am only concerned with the date of the  
trial, do we still go on on October 26th?

THE COURT: Unless there has been a dis-  
missal, absolutely.

MR. SINGER: Because this is a very important



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... that's the way of it, as you can understand.

THE COURT: Absolutely. That date is not. These are the things we were going to take up at the end. I wanted to take them up before. You wanted to argue the motion.

MR. SIMPSON: When we have now we are going to try to talk at lunch.

THE COURT: The date is fixed, and I have arranged my calendar, and I must say it has been at great hardship to me because, as I told you, I will be in civil motions for two weeks before that, and you know what that is.

MR. NESSEN: Before we recess, your Honor, there were three programs that were planned on the Appalachian --

THE COURT: Mr. Nessen, would you please let somebody else go on? You have really done remarkably well, and tell your client you have. Now let's get on to some other business.

MR. NESSEN: I am concerned now about my clients. In addition to the program that I mentioned there are two other programs that are planned. One of them is scheduled --

THE COURT: Why do you tell it to me piece-meal? Why don't you tell it all at one time?





It always come as an afterthought.

MR. WESSLER: May I just say that one of them is scheduled or tentatively scheduled for a week before we have to pick a jury in this case. Now I don't know what can be done about it.

THE COURT: What has been done, Mr. Wessler?

MR. WESSLER: Your Honor, I believe I have taken care of them.

MR. WESSLER: All three of them?

MR. WESSLER: The first one you mentioned is one of the three. I have taken care of three such programs.

THE COURT: You consult with Mr. Wessler, and if you think they have not been taken care of you can tell me that.

MR. WESSLER: May I say with respect to those who have agreed that this was a completely voluntary thing on the part of a number of persons who are, I think, owed the gratitude of the government and the defendants and the Court, of course.

THE COURT: Sui generis on your part.

MR. SINGER: What time shall we return from lunch, your Honor?

THE COURT: Let me see. In the balance of

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