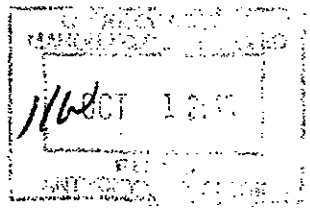

FILED UNDER SEAL

IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
MAHONING COUNTY, OHIO

THE STATE OF OHIO *vs.* **ANTHONY M. CAFARO, SR.** *and* **THE CAFARO COMPANY** *and* **OHIO VALLEY MALL COMPANY** *and* **THE MARION PLAZA, INC** *and* **JOHN A. McNALLY, IV** *and* **JOHN REARDON** *and* **MICHAEL V. SCIORTINO** *and* **JOHN ZACHARIAH** *and* **MARTIN YAVORCIK** *and* **FLORA CAFARO**	**JUDGE** William H. Wolff, Jr. **CASE NOS.** 2010 CR 00800 2010 CR 00800 A 2010 CR 00800 B 2010 CR 00800 C 2010 CR 00800 D 2010 CR 00800 E 2010 CR 00800 F 2010 CR 00800 G 2010 CR 00800 H 2010 CR 00800 I **BRIEF IN RESPONSE TO JOINT MOTION OF CERTAIN DEFENDANTS REGARDING GRAND JURY SECRECY** **AND** **REQUEST FOR HEARING**

The State of Ohio has reviewed the "Joint Motion of Defendants Anthony M. Cafaro, Sr., Flora Cafaro, The Cafaro Company, Ohio Valley Mall Company and The Marion Plaza, Inc. Seeking the Court's Action to Address Apparent Violations of Grand Jury Secrecy" and requests a hearing on said motion.

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MEMO

Ohio Criminal Rule 6(E) states the obligations with respect to Grand Jury secrecy and provides that:

> Deliberations of the grand jury and the vote of any grand juror shall not be disclosed. Disclosure of other **matters occurring before the grand jury** may be made to the prosecuting attorney for use in the performance of his duties. A grand juror, prosecuting attorney, interpreter, stenographer, operator of a recording device, or typist who transcribes recorded testimony, may disclose matters occurring before the grand jury, other than the deliberations of a grand jury or the vote of a grand juror, but may disclose such matters only when so directed by the court preliminary to or in connection with a judicial proceeding, or when permitted by the court at the request of the defendant upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury. No grand juror, officer of the court, or other person shall disclose that an indictment has been found against a person before such indictment is filed and the case docketed. The court may direct that an indictment shall be kept secret until the defendant is in custody or has been released pursuant to Rule 46. In that event the clerk shall seal the indictment, the indictment shall not be docketed by name until after the apprehension of the accused, and no person shall disclose the finding of the indictment except when necessary for the issuance of a warrant or summons. **No obligation of secrecy may be imposed upon any person except in accordance with this rule.** Ohio R. Crim. P. 6(E). (Emphasis added).

Even federal law has long recognized that the need for secrecy is relaxed post-indictment. See, generally, Schmidt v. United States, 115 F.2d 394 (1940). Moreover, the oath of secrecy taken by grand jurors has been recognized for the following purposes:

> "(1) To prevent the escape of those whose indictment may be contemplated; (2) to insure the utmost freedom to the grand jury in its deliberations, and to prevent persons subject to indictment or their friends from importuning the grand jurors; to prevent subornation of perjury or tampering with the witnesses who may testify before the grand jury and later appear at the trial of those indicted by it; (4) to encourage free and untrammeled disclosures by persons who have information with respect to the commission of crimes; (5) to protect the innocent accused who is exonerated from disclosure of the fact that he has been under investigation, and from the expense of standing trial where there was no probability of guilt. The basis of all but the last of these reasons for secrecy is protection of the grand jury itself, as the direct independent representative of the public as a whole, rather than of those brought before

the grand jury" Schmidt v United States, supra. See also United States v. John Doe, Inc. I, 481 U.S. 102, 110 (U.S. 1987)

The comments cited by the movants in their motion do not bear upon any of the reasons often stated for secrecy.

While the State is mindful of the concerns of the moving defendants regarding comments made by an as yet unidentified individual or individuals, the remedy sought by the defendants is overly broad and unduly burdensome as applied to a person airing a post-deliberation, post-true bill opinion (as opposed to a 'matter occurring before the grand jury') in a public forum. Additionally, it inappropriately seeks the remedy of what is, in essence, a court appointed special prosecutor.

The State of Ohio therefore respectfully requests a hearing on said motion.

Respectfully submitted,

Dennis P. Will
Special Prosecuting Attorney

and

Paul Nick
Special Prosecuting Attorney

and **Anthony D. Cillo** 0062497
Special Prosecuting Attorney

and by:

David P. Muhek 0024395
Special Prosecuting Attorney

REQUEST FOR HEARING

Please take notice that the State of Ohio hereby respectfully requests a public hearing on the "Joint Motion of Defendants Anthony M. Cafaro, Sr., Flora Cafaro, The Cafaro Company, Ohio Valley Mall Company and The Marion Plaza, Inc. Seeking the Court's Action to Address Apparent Violations of Grand Jury Secrecy".

Special Prosecuting Attorney

CERTIFICATE OF SERVICE

A true copy of the forgoing Notice has been served via electronic mail this 1st day of October, 2010, upon the persons named in the attached distribution list incorporated herein by reference as counsel of record for each defendant and as their names appear therein.

Special Prosecuting Attorney